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Federal Register

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-1160]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Pittsburgh check processing office of the Federal Reserve Bank of Cleveland and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland. These amendments reflect the restructuring of check processing operations within the Federal Reserve System. The Board also is amending appendices A and E of Regulation CC to replace all references to Thomson Financial Publishing Inc. with more general references to "an agent of the American Bankers Association."

DATES: The final rule will become effective on November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director, (202) 452-2660, or Jeffrey S. H. Yeganeh, Manager, (202) 728-5801, Division of Reserve Bank Operations and Payment Systems; or Adrienne G. Threatt, Counsel, (202) 452-3554, Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depository bank may wait between receiving a deposit and making the deposited funds available for withdrawal.¹ A depository bank

generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depository bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depository bank. Otherwise, a check is nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

Earlier this year, the Federal Reserve Banks decided to reduce the number of locations at which they process checks.² As part of this restructuring process, the Pittsburgh office of the Federal Reserve Bank of Cleveland will cease processing checks on November 1, 2003. As of that date, banks with routing symbols currently assigned to the Pittsburgh office for check processing purposes will be reassigned to the Cleveland Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the Pittsburgh and Cleveland check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the list of routing symbols assigned to Fourth District check processing offices to reflect the transfer of operations from Pittsburgh to Cleveland and to assist banks in identifying local and nonlocal banks. These amendments are effective November 1, 2003, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these

amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.³ The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, will issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the announcement earlier this year.

The Board also is amending Regulation CC and its appendices to eliminate all references to Thomson Financial Publishing Inc., which has changed its name to TFP. To avoid having to make future changes because of a name change or substitution of service provider, the rule and appendices henceforth simply will refer to "an agent of the American Bankers Association."

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendices are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the Pittsburgh check processing office of the Federal Reserve Bank of Cleveland and reassign the routing symbols listed under that office to the

³ Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

¹ For purposes of Regulation CC, the term "bank" refers to any depository institution, including

commercial banks, savings institutions, and credit unions.

² See 68 FR 31592, May 28, 2003.

head office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check processing regions and that include the routing symbols in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The first sentence of paragraph A and the Fourth Federal Reserve District routing symbol list in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

A. Each bank is assigned a routing number by an agent of the American Bankers Association. * * *

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

- 0410 2410
- 0412 2412
- 0430 2430
- 0432 2432
- 0433 2433
- 0434 2434

Cincinnati Branch

- 0420 2420
- 0421 2421
- 0422 2422
- 0423 2423

Columbus Office

- 0440 2440
- 0441 2441
- 0442 2442

* * * * *

■ 3. Appendix E is amended by removing the phrase “Thomson Financial Publishing Inc.” in sections II.DD., XVIII.A.2.b.ii., and XXII.B.2.b.i.

and adding the phrase “an agent of the American Bankers Association” in its place.

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

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03-22333 Filed 8-29-03; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-CE-64-AD; Amendment 39-13291; AD 2003-17-16]

RIN 2120-AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This AD requires you to repetitively inspect the tailplane attachment brackets and replace each bracket at a specified time. This AD also requires you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found. This AD is the result of reports of stress corrosion cracking found on the tailplane attachment brackets and fatigue cracking and chaffing of the engine mount frame. The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

DATES: This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 10, 2003.

ADDRESSES: You may get the service information referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone:

+44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-64-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; telephone: (770) 703-6078; facsimile: (770) 703-6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

We received reports that an unsafe condition exists on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After reviewing several of these airplanes, stress corrosion cracking was found on the tailplane attachment brackets and fatigue cracks and chaffing were found on the engine mount frame.

Cracks in the engine mount frame were found in the area of the junction of the front and rear top tube and engine mounting foot support brackets and in the front of the frame. We have determined that fatigue is the cause of the cracks. The upper aft mount frame tubes were also found to have damage caused by chaffing by the cowling support rod.

What Is the Potential Impact if FAA Took No Action?

These conditions, if not corrected, could result in failure of the tailplane attachment brackets and failure of the engine mount. Such failures could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on April 15, 2003 (68 FR 18571). The supplemental NPRM proposed to require you to repetitively inspect the tailplane attachment brackets and replace each bracket at a specified time. The NPRM also proposed to require you to repetitively inspect each joint of the port and starboard engine mount frame and the

rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest

require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the Supplemental NPRM.

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

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of

compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 54 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish an inspection of the tailplane attachment brackets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
32 workhours × \$60 per hour = \$1,920	No parts required	\$1,920	\$1,920 × 54 = \$103,680

We estimate the following costs to accomplish any necessary replacements that would be required based on the

results of the proposed inspection. We have no way of determining the number

of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per bracket
3 workhours × \$60 per hour = \$180 per bracket	\$600 per bracket (2 brackets per airplane)	\$180 + 600 = \$780

We estimate the following costs to accomplish an inspection of the engine mount frame:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × \$60 per hour = \$960	No parts required	\$960	\$960 × 54 = \$51,840

The FAA has no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary of each airplane.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time for the initial inspections in this AD is "within the next 90 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

An unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of TIS.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

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

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2003-17-16 Robert E. Rust: Amendment 39-13291; Docket No. 2000-CE-64-AD.

(a) *What airplanes are affected by this AD?*
This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1-001 through C1-1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1-001 through C1-1014, with experimental airworthiness certificates comply with the actions required in this AD.

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

(c) *What problem does this AD address?*
The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

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

(1) TAILPLANE ATTACHMENT BRACKETS

Compliance	Actions	Procedures
(i) Initially inspect within the next 90 days after October 10, 2003 (the date of this AD). (A) Inspect thereafter at intervals not to exceed 6 months or 150 fatigue hours, whichever occurs first, until the modification required by paragraph (d)(1)(ii) of this AD is incorporated. (B) When the modification required by paragraph (d)(1)(ii) is incorporated, you may terminate the repetitive inspections of the tailplane attachment brackets.	Inspect, using dye penetrant, the tailplane attachment brackets, part-number (P/N) C1.TP.167 (or FAA-approved equivalent part) for cracks.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(ii) At whichever of the following that occurs first: (A) Prior to further flight after the inspection where any crack is found; or (B) Upon accumulating 9,984 fatigue hours or within the next 90 days after October 10, 2003 (the effective date of this AD), whichever occurs later.	Replace the tailplane attachment bracket by incorporating Modification H357 (P/N C1.TP.313) or FAA-approved equivalent part number. Installing P/N C1.TP.313 (or FAA-approved equivalent part number) terminates the repetitive inspection requirement of the tailplane attachment brackets.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(iii) As of October 10, 2003 (the effective date of this AD).	Only install a tailplane attachment bracket that is P/N C1.TP.313. or FAA-approved equivalent part number.	Not applicable.
(iv) As of October 10, 2003 (the effective date of this AD).	Incorporate the following into the Aircraft Logbook: "In accordance with AD 2003-17-16, the tailplane attachment bracket is life limited to 9,984 fatigue hours."	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997.

(2) ENGINE MOUNT FRAMES

Actions	Compliance	Procedures
(i) Inspect each joint of the port and starboard engine mount and the rear upper mount frame tubes for cracks and damage.	Initially inspect within the next 90 days after October 10, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 600 hours TIS.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(2) ENGINE MOUNT FRAMES—Continued

Actions	Compliance	Procedures
<p>(ii) If cracks or damage is found during any inspection required in paragraph (d)(2)(i) of this AD:</p> <p>(A) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99; or</p> <p>(B) replace with a new or serviceable part.</p>	<p>Prior to further flight after the inspection in which any crack or damage is found. Repeatedly inspect as required in paragraph (d)(2)(i) of this AD.</p>	<p>Repair in accordance with AC 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99.</p>
<p>(iii) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowling support rod clip is secured.</p>	<p>Prior to further flight after any inspection required in paragraph (d)(2)(i) of this AD if no cracks or damage is found, and prior to further flight after any repairs or replacement is made as required in paragraph (d)(2)(ii) of this AD .</p>	<p>In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.</p>

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703-6078; facsimile: (770) 703-6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984; British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985; and British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, including Appendix 1 (Part B), dated April 1, 1995. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: info@dhsupport.com. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on October 10, 2003.

Issued in Kansas City, Missouri, on August 19, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-21742 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-74-AD; Amendment 39-13287; AD 2003-17-12]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 and MD-11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD-11 and MD-11F airplanes, that requires a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and

main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5343; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD-11 and MD-11E airplanes series airplanes was published in the **Federal Register** on June 11, 2003 (68 FR 34847). That action proposed to

require a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary.

Comments

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

Conclusion

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

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$358,800, or \$5,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-17-12 McDonnell Douglas:
Amendment 39-13287. Docket 2002-NM-74-AD.

Applicability: Model MD-11 and MD-11F airplanes, as listed in Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 24 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11-24A137, dated February 28, 2002), per Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: At the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD, replace the circuit breaker with a new, approved circuit breaker, per Revision 01 of the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker having a part number listed in the "Existing Part Number" column in the table specified in paragraph 2.C.2., of Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permit

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11-24A137, Revision 01, dated March 11, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-21869 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-109-AD; Amendment 39-13288; AD 2003-17-13]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes. This AD requires replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. The actions specified by this AD are intended to prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7512; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC-8-102, -103, and -106 airplanes; Model DHC-8-201 and -202 airplanes; and Model DHC-8-301, -311, and -315 airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 2, 2003 (68 FR 32695). That action proposed to require replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

Request To Provide for Incorporation of Temporary Revisions (TRs) Into General Revisions of Maintenance Program Support Manual (PSM)

One commenter requests that the FAA revise the supplemental NPRM to address the issue of the future incorporation of the TRs referenced in the supplemental NPRM into the general revisions of the applicable PSMs. The commenter states that providing for this eventuality in this AD would eliminate the need for operators to request approval from the FAA of an alternative method of compliance (AMOC) with this AD in the future.

We concur. Once TRs have been incorporated into the PSM, the TRs are voided. Thus, referring to the TRs alone may necessitate that operators must apply for an AMOC once the information in the applicable TR has been incorporated into the applicable PSM. We have added a new paragraph (c) to this AD, and re-identified subsequent paragraphs accordingly, to state that, when the information in the applicable TR has been included in the general revisions of the applicable PSM, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the Airworthiness Limitations section of the Instructions for Continued Airworthiness.

Conclusion

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

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Change to Labor Rate Estimate

Since the issuance of the supplemental NPRM, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 195 Bombardier Model DHC-8-102, -103, and -106 airplanes; Model DHC-8-201 and -202 airplanes; and Model DHC-8-301, -311, and -315 airplanes; of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be \$25,350, or \$130 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between

the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-17-13 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39-13288. Docket 2001-NM-109-AD.

Applicability: Model DHC-8-102, -103, -106, -201, -202, -301, -311, and -315 airplanes; certificated in any category; serial numbers 003 and subsequent.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane, accomplish the following:

Revision of Airworthiness Limitation (AWL) Section

(a) For all airplanes: Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the following applicable de Havilland, Inc., temporary revision into the AWL section:

TABLE—TEMPORARY REVISIONS

For model Nos.—	de Havilland, Inc., TR	Dated	Of maintenance program support manual (PSM)
DHC-8-102, -103, and -106 airplanes	AWL-84	December 20, 2002	1-8-7
DHC-8-201 and -202 airplanes	AWL 2-24	December 20, 2002	1-82-7
DHC-8-301, -311, -314, and -315 airplanes	AWL 3-91	December 20, 2002	1-83-7

(b) Thereafter, except as provided in paragraphs (d) and (e) of this AD, no alternative replacement intervals may be approved for the elevator stop bumpers.

Incorporation of TRs Into General Revisions

(c) When the information in the applicable de Havilland, Inc., TR listed in the table in this AD has been included in the general revisions of the applicable PSM listed in the table in this AD, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the AWL section of the Instructions for Continued Airworthiness.

Phase-In Replacement

(d) For elevator stop bumpers that have accumulated more than 5,000 total flight hours or have more than 30 months total time-in-service as of the effective date of this AD: Within 6 months or 1,000 flight hours

after the effective date of this AD, whichever occurs first, replace the left and right upper and lower elevator stop bumpers of the horizontal stabilizer with new bumpers having the same part numbers as the existing bumpers, per the procedures specified in the applicable Dash 8 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001 (for series 100, 200, and 300). Repeat the replacement thereafter per the intervals specified in the AWL revision required by paragraph (a) of this AD.

Alternative Methods of Compliance

(e) Per 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with

de Havilland, Inc., Temporary Revision AWL-84, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1-8-7, and Dash 8 Series 100 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; or de Havilland, Inc., Temporary Revision AWL 2-24, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1-82-7, and Dash 8 Series 200 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; or de Havilland, Inc., Temporary Revision AWL 3-91, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1-83-7, and Dash 8 Series 300 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in Canadian airworthiness directive CF-2001-08R1, effective January 10, 2003.

Effective Date

(g) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-21870 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-50-AD; Amendment 39-13289; AD 2003-17-14]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4-600, A300 B4-600R, and A300 F4-600R (Collectively Called A300-600); A310; A319; A320; A321; A330; and A340 Series Airplanes; Equipped With PPG Aerospace Windshields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4; A300 B4-600, A300 B4-600R, and A300 F4-600R (collectively called A300-600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields. This AD requires replacement of certain windshields manufactured by PPG Aerospace with new windshields. This

action is necessary to prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4; A300 B4-600, A300 B4-600R, and A300 F4-600R (collectively called A300-600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields; was published in the **Federal Register** on June 4, 2003 (68 FR 33416). That action proposed to require replacement of certain windshields manufactured by PPG Aerospace with new windshields.

Comments

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

commenter concurs with the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 622 airplanes of U.S. registry will be affected by this AD. Currently, there are no Model A340 series airplanes on the U.S. registry.

The following table shows the estimated cost impact to do the required actions for airplanes affected by this AD. The following table also shows the estimated cost impact for Model A340 series airplanes affected by this AD, should an affected airplane be imported and placed on the U.S. Register in the future. The average labor rate is \$65 per work hour, and there are 2 windshields per airplane. The estimated maximum cost for all airplanes affected by this proposed AD is \$12,029,480 (assuming both windshields must be replaced on all affected airplanes); however, some warranty relief may be available.

Model	Number of U.S. registered airplanes	Work hours per windshield (estimated)	Parts cost per windshield (estimated)	Maximum Cost Per airplane (estimated)
A300 B2 and B4, A300-600, A310, A319, A320, A321, A330	622	8	\$9,150	\$19,340
A340	0	8	9,150	19,340

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–17–14 Airbus: Amendment 39–13289. Docket 2002–NM–50–AD.

Applicability: Airplanes listed in Table 1 of this AD, certificated in any category, as follows:

TABLE 1.—APPLICABILITY

Model	Equipped with PPG aerospace windshields having—			Airbus All Operators Telex (AOT) listed in
	Part number (P/N)	or	And serial numbers (S/N) as listed in	
A300 B2 and B4 series airplanes	NP–175201–1, 175201–4.	NP–175201–2, or	NP–	A300–56A0011, dated October 2, 2001.
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes.	NP–175201–1, 175201–4.	NP–175201–2, or	NP–	A300–600–56A6004, dated October 2, 2001.
A310 series airplanes	NP–175201–1, 175201–4.	NP–175201–2, or	NP–	A310–56A2005, dated October 2, 2001.
A319, A320, and A321 series airplanes	NP–165311–2, NP–165311–3, NP–165311–4, NP–165311–5, or NP–165311–6.	NP–165311–2, NP–165311–3, NP–165311–4, NP–165311–5, or NP–165311–6.	NP–	A320–56A1010, Revision 01, dated October 1, 2001.
A330 series airplanes	NP–175201–1, 175201–4.	NP–175201–2, or	NP–	A330–56A3005, dated October 2, 2001.
A340 series airplanes	NP–175201–1, 175201–4.	NP–175201–2, or	NP–	A340–56A4005, dated October 2, 2001.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield

assembly, and consequent loss of the windshield during flight, accomplish the following:

Windshield Replacement

(a) Within 6 months after the effective date of this AD, replace windshields manufactured by PPG Aerospace having certain P/Ns and S/Ns listed in the applicable Airbus all operators telex (AOT) listed in Table 1 of this AD with new windshields, per the applicable Airbus AOT listed in Table 1 of this AD.

Note 2: The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement required by this AD.

Part Installation

(b) As of the effective date of this AD, no person shall install on any airplane a

windshield manufactured by PPG Aerospace having a certain P/N and S/N listed in the applicable AOT listed in Table 1 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with the applicable Airbus all operators telex (AOT) listed in Table 2 of this AD, as shown below:

TABLE 2.—AIRBUS ALL OPERATORS TELEXES

Airbus all operators telex	Revision level	Date
A300–56A0011	Original	October 2, 2001.
A300–600–56A6004	Original	October 2, 2001.
A310–56A2005	Original	October 2, 2001.
A320–56A1010	01	October 1, 2001.
A330–56A3005	Original	October 2, 2001.
A340–56A4005	Original	October 2, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–606(B), dated December 12, 2001.

Effective Date

(f) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21871 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–169–AD; Amendment 39–13284; AD 2003–17–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 and ATR72 series airplanes, that requires inspecting the wire bundle in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundle is in the

proper position, and installing a clamp between the wire bundles and the carbon shelves structure. This action is necessary to prevent chafing of a wire bundle, which could result in an electrical short and potential loss of several functions essential for safe flight. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 and ATR72 series airplanes was published in the **Federal Register** on June 18, 2003 (68 FR 36525). That action proposed to require inspecting the wire bundle in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundle is in the proper position, and installing a clamp between the wire bundles and the carbon shelves structure.

Comments

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

Conclusion

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$60 per work hour to \$65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 86 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is \$65 per work hour. Required parts will cost approximately \$259 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$44,634, or \$519 per airplane.

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

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003-17-09 *Aerospatiale*: Amendment 39-13284. Docket 2002-NM-169-AD.

Applicability: Model ATR42-500 and ATR72 series airplanes, certificated in any category, on which ATR Modification 1447 has been incorporated and ATR Modification 4840 has not been incorporated.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of a wire bundle in the area of electrical rack 90VU, which could result in an electrical short and potential loss of several functions essential for safe flight, accomplish the following:

Modification

(a) Within 500 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a detailed inspection to detect damage of the wire bundles in the area of electrical rack 90VU, ensure that the conduit around the wire bundles is in the proper position, and install a clamp between the wire bundles and the carbon shelves structure (93VU, 94VU, 95VU); in accordance with Avions de Transport Regional Service Bulletin ATR42-92-0007 (for Model ATR42-500 series airplanes) or ATR72-92-1007 (for Model ATR72 series airplanes), both dated January 25, 2002, as applicable. Repair any damaged wiring before further flight in accordance with Chapter 20-27-17 of the applicable ATR Aircraft Schematic Manual.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42-92-0007, dated January 25, 2002, or Avions de Transport Regional Service Bulletin ATR72-92-1007, dated January 25, 2002, as applicable; and Chapter 20-27-17, dated October 1, 1995, of Avions de Transport Regional ATR42 Aircraft Schematic Manual, or Chapter 20-27-17, dated October 1, 1995 of the Avions de Transport Regional ATR72 Aircraft Schematic Manual, as applicable. The Avions de Transport Regional ATR42 Aircraft Schematic Manual contains the following list of effective pages:

Page Number	Date shown on page
List of Effective Pages 1-9	April 2001.

(Only the title page of the Avions de Transport Regional ATR42 Aircraft Schematic Manual references the airplane model; no other page contains this information.) The Avions de Transport Regional ATR72 Aircraft Schematic Manual contains the following list of effective pages:

Page Number	Date shown on page
List of Effective Pages 1-9	April 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained

from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directives 2002-090-092(B) and 2002-091-066(B), both dated February 20, 2002.

Effective Date

(d) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 15, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-21413 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120-AA66

[Docket No. FAA 2003-15061; Airspace Docket No. ASD 03-ASW-1]

Revision of Federal Airways V-13 and V-407; Harlingen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Federal Airway 13 (V-13) northeast of the McAllen, TX, Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) by realigning the airway to intersect with V-163 south of the Corpus Christi, TX, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) rather than proceeding to the Harlingen, TX, VOR/DME. Additionally, this action revises the point of origin of V-407 from the Harlingen VOR/DME to the Brownsville, TX, VORTAC and realigns V-407 north of the Harlingen VOR/DME to reflect a change of the radial of the airway. The FAA is taking this action due to the relocation of the Harlingen VOR/DME and to enhance the management of aircraft operations over the Harlingen, TX, area.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA is relocating the Harlingen VOR/DME approximately 8 nautical miles to the southeast of its current location. As a part of that effort, on May 23, 2003, the FAA proposed to realign V-13 northeast of the McAllen VOR/DME to intersect with V-163 south of the Corpus Christi VORTAC (68 FR 28179). Additionally, the FAA proposed to revise the point of origin of V-407 from the Harlingen VOR/DME to the Brownsville VORTAC and to revise a segment of V-407 north of the Harlingen VOR/DME from the current Harlingen VOR/DME 357° radial to the new Harlingen VOR/DME 351° radial. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to 14 CFR part 71 revises V-13 and V-407 in the Harlingen, TX, area. Specifically, this action realigns V-13 northeast of the McAllen VOR/DME to intersect with V-163 south of the Corpus Christi VORTAC; revises the point of origin of V-407 from the Harlingen VOR/DME to the Brownsville VORTAC; and realigns V-407 north of the Harlingen VOR/DME to reflect the change of radial due to the relocation of the Harlingen VOR/DME. The FAA is taking this action due to the relocation of the Harlingen VOR/DME and to enhance the management of aircraft operations over the Harlingen, TX, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not

warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§71.1 [Amended]

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

Paragraph 6010(a)—Domestic VOR Federal Airways.

* * * * *

V-13 [Revised]

From McAllen, TX, via INT McAllen 060° radial and Corpus Christi, TX, 178° radials; Corpus Christi; INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; Humble, TX; Lufkin, TX; Belcher, LA; Texarkana, AR; Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006° and Razorback, AR, 190° radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Farmington, MN; INT Farmington 017° and Siren, WI, 218° radials; Siren; Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

* * * * *

V-407 [Revised]

From Brownsville, TX; Harlingen, TX; via INT Harlingen 351° and Corpus Christi, TX, 193° radials; Corpus Christi; via INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; via INT Palacios 017° and Humble, TX, 242° radials; Humble; Daisetta, TX; Lufkin, TX; Elm Grove, LA; to El Dorado, AR.

* * * * *

Issued in Washington, DC, on August 22, 2003.

Reginald C. Matthews,
Manager, Airspace and Rules Division.
[FR Doc. 03-22207 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 141 and 157

[Docket No. RM03-6-000; Order No. 643]

Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)

July 23, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the Federal Energy Regulatory Commission's regulations requiring companies to make information directly available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information (CEII). In Order No. 630, the Commission determined that it must take steps to restrict the availability of sensitive information about the nation's energy infrastructure so as to reduce the possibility of terrorist attacks. In doing so, the Commission explained that CEII would be exempt from disclosure under the Freedom of Information Act (FOIA). The order set out a definition of CEII and established procedures for persons with a legitimate need for such information to follow in seeking access to it. Order No. 630 only covered information submitted to or prepared by the Commission. The revisions in this final rule address instances in which the Commission's rules and regulations require companies to make information available directly to the public. The revisions are necessary to ensure that protection of CEII is consistent in both contexts.

EFFECTIVE DATE: The rule will become effective October 23, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, (202) 502-8953.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Pat Wood, III,

Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. This final rule makes specific changes to the Commission's regulations that require companies to make certain information available directly to the public. The changes are necessary to reconcile those regulations with Order No. 630, which established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). Because Order No. 630 addressed only situations in which a person might seek access to CEII that is in the Commission's possession, further changes to ensure consistent treatment and protection of CEII are needed where companies possess CEII and are required by the Commission's regulations to make it available to the public unconditionally.

2. This final rule revises the Commission's regulations in the following areas: (1) 18 CFR part 4, which requires that applicants for hydropower licenses, permits, and exemptions make various types of information available to the public; (2) 18 CFR part 16, which requires that applicants for projects subject to sections 14 and 15 of the Federal Power Act, 18 U.S.C. 807–808, make specified information available to the public; (3) 18 CFR 141.300, establishing requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report, which requires that portions of the form be made available to the public by the public utility upon request; and (4) 18 CFR part 157, which governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under Section 7 of the Natural Gas Act.

II. Background

3. As explained in the Notice of Proposed Rulemaking (NOPR), 68 FR 18538, 18540 (Apr. 21, 2003), IV FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003), Order No. 630 arose from the Commission's concern that CEII could be employed by terrorists to engineer attacks against the nation's energy facilities. The Commission had previously taken steps to remove various categories of documents that were likely to contain CEII from public availability through the internet, the Federal Energy Regulatory Records Information System (FERRIS), and the Commission's public reference room. 68 FR at 9858. Order No. 630 reaffirmed

that conclusion and established that the Commission would institute procedures to protect CEII submitted to it. *Id.*

4. Order No. 630 defined CEII in § 388.113(c)(1) of the Commission's regulations as information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and

(iv) Does not simply give the location of the critical infrastructure. 68 FR at 9870. The order defined "critical infrastructure" in § 388.113(c)(2) as: existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. *Id.*

5. Order No. 630 adopted a process for submission of CEII to the Commission that largely parallels the process for submission of confidential materials in Section 388.112 of the Commission's regulations. That section now provides that an entity submitting CEII to the Commission is responsible for identifying and marking CEII with the legend "Contains Critical Energy Infrastructure Information—Do Not Release." Information identified as CEII is placed in a nonpublic file, with the Commission retaining the right to make a determination whether CEII treatment has been properly claimed. The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made. 68 FR at 9870.

6. To handle requests for release of CEII, Order No. 630 established the position of CEII Coordinator. A person desiring access to CEII must file a written request with the CEII Coordinator containing the following information:

Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.

68 FR at 9870–71.¹ The CEII Coordinator will consider the requester's need for the information, as well as the information's sensitivity. In the event the request is granted, the CEII Coordinator may impose conditions upon the requester's use of the information, including the requirement that the requester sign a non-disclosure agreement. Determinations by the CEII Coordinator are subject to rehearing under § 385.713 of the Commission's regulations. *Id.* at 9870.

7. The Commission issued the final rule on February 21, 2003. 68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). In doing so, it recognized that its regulations in some areas require companies to make information that might constitute CEII available directly to the public. Because Order No. 630 addressed only CEII in the possession of the Commission, this situation created a window of vulnerability whereby CEII that would be protected under Order No. 630 could become available to persons of malicious intent. This final rule is intended to close that window. 68 FR at 18540.

A. The NOPR

8. The NOPR identified the following portions of the Commission's regulations as provisions that might require the disclosure of CEII:

Electric Transmission Provisions

FERC Form No. 715, Annual Transmission Plan and Evaluation Report, contains information that will likely constitute CEII. For example, part 2 requires power flow data, part 3 requires system maps and diagrams, and parts 4 and 5 require transmission planning data. The instructions to the form require submitting companies to make it available to the public upon request. 68 FR at 18540.

Natural Gas Provisions

Several provisions of part 157, which governs applications for certificates of public convenience and necessity and for orders permitting and approving abandonment, require that information be made available to the public that might constitute CEII. Information such as flow diagrams and gas supply data must be supplied on request to intervenors and made available in central locations in the project area. These provisions are found in 18 CFR 157.5(d), 157.10(b), 157.22(e)(3)–(4), and 157.203(d). 68 FR at 18540.

¹ In an order on rehearing of Order No. 630 being issued concurrently, the Commission has added the requirement that these requests be signed by the requester.

Hydropower Provisions

Part 4, which governs licenses, permits, exemptions and other applications under the Federal Power Act, requires that applicants make various types of information about their projects available to the public, including items such as detailed maps and scientific studies. Specifically, under 18 CFR 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. Under § 4.32(b)(3)–(4), an applicant must make a copy of the application and exhibits available to the public for inspection and copying at specified locations. Under §§ 4.34(i)(4)(i) and 4.34(i)(6)(iii), an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents. Finally, under § 4.38(g), which provides for pre-filing consultation in the case of an original license, the applicant must make available for public inspection various items, including detailed maps and design information. 68 FR 18540. In addition, part 16 of the Commission's hydropower regulations, which specifies procedures for takeover and relicensing of existing projects, contains notice provisions that require applicants to make items such as drawings, diagrams and emergency action plans available for public inspection. Such provisions are found at 18 CFR 16.7(d)–(e) and 16.8(i). 68 FR 18540

9. The NOPR also proposed to revise several sections that require information possibly constituting CEII to be made available to Indian tribes and other government agencies. Such provisions are found at 18 CFR 4.32(b)(1)–(2), 4.38(b)(1), 4.38(c)(4), 4.38(d), 16.8(b)(1), 16.8(c)(4), and 16.8(d). As explained in the NOPR, the Federal Records Act, 44 U.S.C. 3510(b), does not require one federal agency to accord the same treatment to information as another federal agency where the former receives the information directly from a third party. Consequently, to ensure consistent treatment of CEII, the Commission proposed to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission noted that its proposed revisions would not prohibit a company from sharing CEII with a government agency, but would only ensure that the Commission's regulations did not require it to disclose CEII. 68 FR 18541.

10. The changes proposed by the NOPR were intended to parallel the

treatment of CEII under Order No. 630. The NOPR proposed that a company required by the affected regulations to make available information that might constitute CEII would make a determination whether the information was in fact CEII. If it was, the company would omit the CEII from the information being made available and instead include a brief statement describing the omitted information without revealing CEII, and informing the reader of his or her right to challenge the omission through submission to the CEII Coordinator under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113. The NOPR added that companies would be expected to adhere to previous determinations made by the Commission or the Coordinator with respect to specific information. 68 FR 18541.

11. The Commission issued the NOPR on April 9, 2003, and ultimately received twelve comments.²

B. Related Orders

12. The Commission on this date is issuing two other orders that have some bearing on this rulemaking. As noted, one is the order on rehearing from Order No. 630. The other is a final rule, in RM02–16, revising the Commission's hydropower licensing procedures. The hydropower revisions contain provisions requiring companies to make information available to the public that may constitute CEII. Consequently, the licensing rulemaking is adding a provision to 18 CFR part 5 that will parallel the revisions made in this Final Rule.

III. Discussion

13. Some of the comments supported the proposals in the NOPR in whole or in large part.³ Disagreements or suggestions centered on several areas.

A. Availability of Needed Information

14. Some commenters expressed concern that the NOPR, if adopted, would restrict market opportunities and interfere with other interests by keeping information away from persons with a legitimate need for it. One commenter expressed significant concerns that the NOPR would interfere with the operation of the electric market by making it difficult for market participants to obtain needed data.⁴ For

example, the Study Group was concerned that information would become unavailable from OASIS;⁵ that transmission owners would selectively withhold Form No. 715 information, resulting in discrimination;⁶ that industry councils would be unable to obtain information for studies and models, or that some companies would be unable to obtain the studies or models themselves;⁷ and that intervenors would be unable to obtain needed information in a timely fashion.⁸ The Study Group specifically contends that the Commission should enunciate and enforce a comparability standard to ensure equal access to information.⁹ It also suggests a system under which CEII owners would be required to accept OASIS passwords, identification numbers employed by regional councils, or certifications made by regional transmission organizations (RTOs) as proof that a person was a suitable recipient. Any dispute would be appealable to the CEII Coordinator.¹⁰

15. Other comments expressed similar concerns. One commenter stated that the use of the word “shall” in the proposed regulations might lead companies to believe that they were prohibited from disclosing CEII voluntarily.¹¹ The Bonneville Power Administration (BPA) noted that the Commission cannot prohibit it from disclosing information pursuant to statutory requirements such as the Freedom of Information Act (FOIA) and the National Environmental Policy Act (NEPA).¹² The Department of Interior (Interior) expressed concern that its access to information pursuant to its own statutory authorities might be hampered.¹³

16. The Commission believes that these concerns are misplaced. As the Commission stated in the NOPR, neither the revisions proposed there nor in Order No. 630 is intended to require companies to withhold CEII, or to prohibit voluntary arrangements for sharing information. These revisions are intended only to ensure that the Commission's regulations do not require the disclosure of CEII. 68 FR 18541. There is nothing in these revisions that affects one entity's ability to reach appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements. In many

⁵ *Id.* at 6.

⁶ *Id.* at 7–9.

⁷ *Id.* at 10–18, 21.

⁸ *Id.* at 18–20.

⁹ *Id.* at 21.

¹⁰ *Id.* at 22–23.

¹¹ Consumers Energy Company at pp. 2–3.

¹² BPA, at p. 2.

¹³ Interior at pp. 1–3.

² A list of commenters is appended to this order.

³ MidAmerican Energy Company at pp. 1–3; PJM Interconnection, L.L.C. at pp. 2–3; Southern California Edison at pp. 1–2.

⁴ American Public Power Association & Transmission Access Policy Study Group (Study Group) at pp. 6–20.

cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is thus nothing in these revisions that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies. Nevertheless, in new §§ 4.32(k)(4), 16.7(d)(4), 141.300(d)(4), and 157.10(d)(4) of the Commission's regulations, the Commission has added language to the revisions to make as it as clear as possible that its CEII regulations do not prohibit or restrict voluntary disclosures of information pursuant to private arrangements.

17. With respect to the specific concerns raised by these commenters, the Commission does not believe such concerns are justified. Nothing in these revisions, or in Order No. 630 for that matter, addresses OASIS in any way and there should be no impact on it. The revisions made in this final rule apply only to specific sections and do not cover the Commission's regulations generally; the Commission has decided against including a "catch-all" provision, as suggested by one commenter,¹⁴ so as to avoid such unwanted consequences. The Commission also does not believe companies should be disadvantaged in obtaining Form No. 715 data. As Form No. 715 is an annual report, its timing can be anticipated and gaining access to CEII contained in it should be possible in a timely manner. Most likely, the same entities will seek access every year, so that permission in most cases will be quickly granted. The Commission's numerous statutory mandates are undergirded by principles of non-discrimination (*i.e.*, comparability). Thus, these revisions contemplate that all persons with a legitimate need for CEII will be able to gain access to it with a minimum of difficulty. The revisions already envision and intend to provide comparable treatment in access to CEII.

18. The Commission understands the Study Group's concern that CEII owners might discriminate in making information available to market participants, but believes that its concern may be premature. Failure to provide required Form No. 715 data would be a violation of the Commission's regulations, even without the changes to the regulations effected by this rule and Order No. 630. The Commission remains responsible for ensuring that companies comply with

its regulations, and the Commission will not tolerate abuses. Nor does the Commission believe that this final rule will necessarily do anything to enhance a CEII owner's ability to engage in such abuses. Form No. 715 data must still be submitted in full to the Commission. Should a company fail to disclose the data fully to a requester that has been granted access to CEII, that failure would be easy to identify. Furthermore, the Commission anticipates that companies such as the Study Group's members will have little trouble, and experience little delay, in obtaining such access. Finally, the Commission wishes to emphasize again that this final rule affects only those informational provisions that are specifically listed here. It does not apply generally across the industries that the Commission regulates. In the case of the electric market, no requirements are being affected in any way other than Form No. 715.

19. The Study Group recommended several suggestions to facilitate access to CEII consistent with security concerns. Their concern is that whatever process ultimately adopted by the Commission is reliable, non-discriminatory and easy to use. While we share the Study Group's concerns with the need to facilitate access, we continue to believe that the process contained in the final rule is sufficiently straightforward and should operate quickly in situations involving access to Form No. 715 data. Moreover, by employing standards set by outside entities in determining whether to grant access to CEII under the Commission's regulations, the Study Group's proposals would have the undesirable effect of requiring the Commission to monitor approval processes employed by these organizations to ensure that they provided sufficient security.

20. With respect to access and dissemination of information by entities such as BPA and Interior, it goes without saying that the Commission lacks authority to override obligations imposed by statute or regulation. Clearly, this final rule cannot, and is not intended to, prevent agencies from complying with the FOIA or NEPA, or to prevent persons or companies from complying with lawfully enacted regulations that require the provision of information. Finally, the question of intervenors obtaining information in a timely fashion was addressed in Order No. 630. 68 FR 9866.

B. Approval Process

21. Several commenters expressed concerns about the process for handling requests for access to CEII. Some

believed that the process for approval would be too slow and suggested changes to speed it up. Some recommended a pre-approval process.¹⁵ One commenter suggested that CEII owners be required to provide CEII to persons with OASIS passwords, or that regional transmission organizations be able to certify customers for access automatically.¹⁶ Another suggested a process whereby a requester must first go to the company, then file a request with the Coordinator.¹⁷ One commenter requested assurance that the Commission will not place requests for access on separate tracks, the point presumably being that there should not be a "slow track."¹⁸

22. Some of the comments about the approval process concerned the handling of CEII. One suggested that a CEII owner be required to notify everybody on the service list when information is determined not to be CEII.¹⁹ One asked the Commission to establish a time limit in which a CEII owner must provide information once a request for access has been granted.²⁰ Another suggested that the Commission employ standardized non-disclosure agreements, and that it specify that a recipient, once granted access to CEII, be permitted to use it for ongoing business activities, such as a consultant with more than one client.²¹ The Study Group also asked the Commission to clarify that, once a requester is granted access, it may communicate directly with the CEII owner.²² One commenter asked that the Commission establish guidelines for the Coordinator to follow, and suggested that CEII owners be involved in any negotiations over non-disclosure agreements.²³ Finally, one commenter requested that the Coordinator perform a monitoring role intended to determine whether companies are making required information available. This commenter stated that outsiders to the system cannot tell what information is being withheld.²⁴

23. All of the above comments address the approval process generally and, thus, are not appropriate for consideration as part of this docket. The NOPR proposed to follow the approval

¹⁵ Interior at pp. 1–2; Consumers Energy Company at pp. 3–6; Study Group at pp. 23–24.

¹⁶ Study Group at p. 22.

¹⁷ National Hydropower Association at pp. 3–4.

¹⁸ Northern Natural Gas at pp. 5–6.

¹⁹ Interior at p. 3.

²⁰ Northern Natural Gas at p. 4.

²¹ Study Group at pp. 22–23.

²² *Id.* at 24.

²³ PJM Interconnection, L.L.C. at pp. 3–5.

²⁴ Southwest Transmission Dependent Utility Group at pp. 1–2.

¹⁴ National Hydropower Association at p. 6.

process already established in Order No. 630 and stated that the Commission would not revisit issues already addressed in that order. 68 FR 18541. The procedures and guidelines for requesting and obtaining access to CEII, and for challenging CEII designations, were addressed at length in Order No. 630. This included timeliness, verification issues, standards for granting access, and the viability of a pre-approval process. *Id.* at 9863–65. Some of these issues are addressed again in the order on rehearing being issued concurrently. The Commission will not revisit these issues here.

24. Some clarification is, however, required with respect to several of these suggestions. The Commission does not have separate tracks for CEII access requests. There also is nothing in the Commission's regulations to prevent a requester from directly contacting a CEII owner, either before or after access is granted. Finally, the Commission does not believe it would be practical for the CEII Coordinator to perform a monitoring role. For the most part, the Commission's various regulations requiring that regulated companies make information available rely on voluntary compliance, regardless of whether CEII is involved. The Commission does not believe that the risk of a company simply flouting the regulations is any greater when CEII is involved than it has ever been. Existing mechanisms for dealing with companies that do not comply with their legal responsibilities should suffice in such situations.

25. This rule, as well as Order No. 630, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it intends to monitor the experiences under these two rules to ensure that it has done so. Therefore, in six months the Commission will solicit public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.

C. Miscellaneous Issues

26. The Interstate Natural Gas Association of America (INGAA) suggests that the Commission include 18 CFR 157.18 in the provisions being revised in this final rule.²⁵ That section governs applications to abandon

facilities or service and requires the applicant to file exhibits, including material, such as flow diagrams and detailed location information, that likely would include CEII. 18 CFR 157.18(c) and (g). The section includes only filing requirements, however, rather than requirements that information be made available to the public. Consequently, any CEII that the section requires be disclosed should already be covered by Order No. 630.

27. One commenter states that the use of the term "landowner" in proposed 18 CFR 157.6(d)(6) is too restrictive.²⁶ The revision as proposed in the NOPR referred to situations where the regulation might require disclosure of CEII "to a landowner." The notification provision is worded more broadly to require notification to "affected landowners and towns, communities, and local, state and federal governments and agencies." 18 CFR 157.6(d)(1). The Commission thus has replaced the phrase "to a landowner" with "to any person."

28. The Commission received a suggestion that it establish procedures specifying how and where information denied CEII treatment must be made available.²⁷ The Commission considers this unnecessary and potentially confusing, because different situations may be presented depending on the exact context. If a request that information be treated as CEII is rejected, then the underlying requirement to disclose the information remains operative and, absent any other provision or direction from the Commission, the owning company must comply as promptly as practicable.

29. The National Hydropower Association comments that the Commission should include a provision stating that a company may withhold information considered to be CEII even though it was made publicly available before the Commission enacted these revisions.²⁸ The Commission agrees with the underlying principle, but considers an explicit provision unnecessary. Neither Order No. 630 nor this final rule contains any provision requiring that CEII be disclosed because it was previously disclosed. In fact, as noted in Order No. 630, the Commission went to considerable effort to remove from its Web site documents that previously had been available to the public. 68 FR 9858. Absent an explicit provision requiring previously available CEII to remain available, the logical and intended conclusion is that such

information may be removed or made unavailable.

30. The National Hydropower Association also comments that a company owning CEII should not be required to make the information available to one requester solely because it was made available to another requester.²⁹ The Commission has already indicated its agreement with this principle. Order No. 630 explained that access is to be determined on a case-by-case basis. 68 FR 9864. The fact that one person or organization has been determined not to present a security risk obviously does not mean that a different person or organization would not do so. The Commission cautions owners of CEII, however, that it will not tolerate abuse of these revisions designed to discriminate against competitors or otherwise adversely affect competition in the energy markets. The revised rules are intended solely to enable owners of CEII to prevent information from getting into a terrorist's hands.

31. INGAA expresses concern over the provision in 18 CFR 157.10(d) requiring treatment of CEII to adhere to previous determinations, because companies may not be aware of previous determinations.³⁰ This should rarely be a problem because in most instances the previous determination will involve information owned by the same company. Nevertheless, the Commission has added the phrase "to the extent practicable" to new §§ 4.32(k)(2), 16.7(d)(2), 141.300(d)(2), and 157.10(d)(2).

32. Except as discussed above, the Commission adopts the proposed revisions to its regulations.

Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12. The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the coverage of the regulations. 5 CFR 1320.3(c)(2). The only information collection requirement contained in this final rule is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this final rule.

²⁵ Northern Natural Gas at p. 3.

²⁶ *Id.* at 4–5.

²⁷ National Hydropower Association at p. 6.

²⁸ National Hydropower Association at p. 5.

²⁹ INGAA at pp. 3–4.

³⁰ INGAA at pp. 2–3.

Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.

Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

35. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601–612, generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC’s Home Page (<http://www.ferc.gov>) and in FERC’s Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From FERC’s Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

38. Assistance is available for FERRIS and the FERC’s Web site during normal business hours. Contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll

free at (866)208–3676, or for TTY, contact (202)502–8659.

Effective Date

39. These regulations are effective October 23, 2003. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,
Secretary.

■ In consideration of the foregoing, the Commission amends Parts 4, 16, 141 and 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 4.32 is amended by adding paragraph (k) to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(k) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

- (i) A statement that CEII is being withheld;
- (ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: “Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission’s CEII Coordinator.”

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

■ 3. Section 4.34 is amended by adding paragraph (i)(9) to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(i) *Alternative procedures.*

* * * * *

(9) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

■ 4. Section 4.38 is amended by adding paragraph (h) to read as follows:

§ 4.38 Consultation requirements.

* * * * *

(h) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

■ 5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 6. Section 16.7 is amended by adding paragraph (d)(7) to read as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

* * * * *

(d) *Information to be made available.*
* * *

(7)(i) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(A) A statement that CEII is being withheld;

(B) A brief description of the omitted information that does not reveal any CEII; and

(C) This statement: “Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission’s CEII Coordinator.”

(ii) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(iii) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(iv) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

* * * * *

■ 7. Section 16.8 is amended by adding paragraph (j) to read as follows:

§ 16.8 Consultation requirements.

* * * * *

(j) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 16.7(d)(7).

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 8. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

■ 9. Section 141.300 is amended by adding paragraph (d) to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

* * * * *

(d) *Critical Energy Infrastructure Information.* (1) If the instructions in Form No. 715 require a utility to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the utility shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: “Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission’s CEII Coordinator.”

(2) The utility completing Form No. 715, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that utility has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the utility will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 10. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

■ 11. Section 157.6 is amended by adding paragraph (d)(6) to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.*

* * * * *

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

■ 12. Section 157.10 is amended by adding paragraph (d) to read as follows:

§ 157.10 Interventions and protests.

* * * * *

(d) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: “Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission’s CEII Coordinator.”

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a

request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

■ 13. In § 157.14, paragraph (a) introductory text is amended by adding the following sentence at the end, to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* * * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 14. In § 157.16, the introductory text is amended by adding the following sentence at the end to read as follows:

§ 157.16 Exhibits relating to acquisitions.

* * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 15. Section 157.22 is amended by adding paragraph (e)(9) to read as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(9) If paragraphs (e)(3) or (e)(4) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 16. Section 157.203 is amended by adding paragraph (d)(4) to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(4) If paragraphs (d)(1) or (d)(2) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix—List of Commenters

American Public Power Association and Transmission Access Policy Study Group
 Bonneville Power Administration
 Consumers Energy Company
 Interstate Natural Gas Association of America
 ISO New England
 Mid-American Energy Company
 National Hydropower Association
 Northern Natural Gas
 PJM Interconnection, L.L.C.
 Southern California Edison
 Southwest Transmission Dependent Utility Group
 United States Department of the Interior
 [FR Doc. 03-19606 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-03-265]

RIN 1625-AA97

Safety Zone; Motor Vessel FAIRLANE, Port Washington, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the anchored motor vessel FAIRLANE while she transfers equipment to a barge in the vicinity of Port Washington, WI. The rule is necessary to prevent vessels from transiting too close to the M/V FAIRLANE and causing wakes that may hinder the safe transfer of equipment from the ship to the barge. This rule is intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003.

ADDRESSES: Comments on this rule may be addressed to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. (CST) and 3:30 p.m. (CST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Michael Schmidtke, Marine Safety Office Milwaukee, (414) 747-7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of those working on the M/V FAIRLANE, as well as other workers in the area, while extremely heavy machinery is being unloaded. This rule also ensures that any interested spectators do not accidentally place themselves in danger should any problems occur. As such, immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This Safety Zone is established to safeguard the vessel and the public while the M/V FAIRLANE is unloading heavy equipment and machinery in the vicinity of Port Washington, WI. The size of the zone was determined by the necessities of safe navigation in the Captain of the Port zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003. This rule will be enforced when the motor vessel FAIRLANE is in the vicinity of Port Washington conducting transfer operations on Lake Michigan.

Discussion of Rule

The Coast Guard will implement a safety zone around the motor vessel FAIRLANE while anchored in the vicinity of Port Washington, WI. Vessels are not to come within 100 yards of the motor vessel FAIRLANE. The purpose of the safety zone is to prevent vessels from transiting too close to the M/V FAIRLANE and causing wakes that may hinder the safe transfer of equipment from the ship to the barge. In addition, the Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

All persons and vessels shall comply with the instructions of the Captain of

the Port Milwaukee or his designated on-scene representative. Entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

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

Small Entities

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

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

This rule will affect the following entities: the owners or operators of vessels intending to transit in the vicinity of the motor vessel FAIRLANE, while conducting transfer operations in the vicinity of Port Washington on Lake Michigan, from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced to safeguard the navigation of the boating public and the transfer operation of the FAIRLANE while the vessel is conducting transfer operations

on Lake Michigan. In addition, commercial vessels transiting the area can transit around the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on-scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee. (*See ADDRESSES.*)

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year.

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and

have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09-265 is added to read as follows:

§ 165.T09-265 Safety Zone; Motor Vessel FAIRLANE, Port Washington, WI.

(a) *Location.* The following area is designated a safety zone: all waters of Lake Michigan within a 100 yard radius of the motor vessel FAIRLANE while the vessel is conducting transfer operations at anchor in the vicinity of Port Washington, WI.

(b) *Effective period.* This section is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003. This rule will be enforced when the FAIRLANE is conducting transfer operations at anchor in Lake Michigan in the vicinity of Port Washington, WI.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on-scene representative. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-

by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF-FM.

Dated: August 22, 2003.

H.M. Hamilton,

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

[FR Doc. 03-22204 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-03-122]

RIN 1625-AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Port of Baltimore, Maryland for the USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its mooring, to the Patapsco River, and return. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River.

DATES: This rule is effective from 3:30 p.m. to 7:30 p.m. local time on September 5, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-03-122 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226-1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576-2674 or (410) 576-2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable due to the unique nature of the rule and its short duration. The USS CONSTELLATION will be towed “dead ship,” which means that the vessel will be underway without the benefit of mechanical or sail propulsion. However, it is imperative that there be a clear transit route and a safe buffer zone around the USS CONSTELLATION and the vessels towing her. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard expects a large spectator fleet. For safety concerns, it is in the public interest to have a safety zone in place for the event, since immediate action is needed to protect mariners against potential hazards associated with the turn-around of the USS CONSTELLATION.

Background and Purpose

The USS CONSTELLATION Foundation, Inc. is sponsoring its “turn-around” of the historic sloop-of-war USS CONSTELLATION in Baltimore, Maryland. The event is part of the ongoing maintenance and care of the ship, making sure that it weathers evenly on both sides. Planned events include the “dead ship” tow of the USS CONSTELLATION and an onboard salute with navy pattern cannon while off Fort McHenry National Monument and Historic Site.

The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the Port of Baltimore.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Rule

The historic sloop-of-war USS CONSTELLATION is scheduled to conduct a “turn-around” on September 5, 2003. The USS CONSTELLATION is

scheduled to be towed from its berth, to Fort McHenry, and return, along a route of approximately 2.5 nautical miles (5 nautical miles total) that includes specified waters of the Inner Harbor, Northwest Harbor and Patapsco River.

The safety of dead ship tow participants requires that spectator craft be kept at a safe distance from the intended route during this evolution. The Coast Guard is establishing a temporary moving safety zone around the USS CONSTELLATION "turn-around" participants on September 5, 2003, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zone, the minimal time that vessels will be restricted from the zone, vessels may transit a portion of the Inner Harbor, Northwest Harbor, and Patapsco River around the zone, and the zone will be well publicized to allow mariners to make alternative plans for transiting the affected area. In addition, vessels that may need to enter the zone may request permission on a case-by-case basis from the COTP Baltimore or his designated representatives.

Small Entities

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

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

entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels, which are more likely to be small entities, may transit around the zones and request permission from the COTP Baltimore on a case-by-case basis to enter the zones.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety zone. A final “Categorical Exclusion Determination” will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T05–122 to read as follows:

§ 165.T05–122 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions.* As used in this section—

Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

USS CONSTELLATION “turn-around” participants means the USS CONSTELLATION and its accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: all waters within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION, while operating on the Inner Harbor, Northwest Harbor and Patapsco River, Baltimore, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general

regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port or his designated representative. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 3:30 p.m. to 7:30 p.m. local time on September 5, 2003.

Dated: August 15, 2003.

Curtis A. Springer,

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

[FR Doc. 03–22206 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims for Domestic Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for indemnity claims as set forth in the *Domestic Mail Manual* (DMM) S010, Indemnity Claims and related provisions of DMM S913, Insured Mail and DMM S921, Collect on Delivery (COD) Mail. Other than the changes concerning time periods for filing claims and retention periods for undelivered accountable mail, the changes clarify existing DMM provisions or codify, in the DMM, policies not currently set forth in that manual.

DATES: This rule becomes effective on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gilbert LeMarier, 202–268–4632.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 6, 2002 [Vol. 67, No. 235, pages 72626–72629], the Postal Service proposed to revise the procedures in the DMM for filing indemnity claims, to clarify the standards for payment of claims, and to incorporate policies not currently set forth in the DMM. One comment was received. After thorough consideration to the issues raised in this comment, the Postal Service adopts the proposed revisions with the modifications discussed below.

The revisions to the procedures for filing claims are made in conjunction with the redesign of the Postal Service’s claim system and are intended to facilitate the provision of more timely decisions to Postal Service customers’ claims. For example, customers are permitted to file claims sooner in some circumstances, thereby allowing decisions to be made closer to the mailing date. In addition, either the sender or the addressee, whoever is in possession of the original mailing receipt, will be permitted to file a claim for the complete loss of a numbered Insured Mail, Registered Mail™, COD, or Express Mail® article. Under past rules, only the sender was permitted to submit such claims. The revisions do not change the procedures for unnumbered Insured Mail articles (insured for \$50 or less). As before, only the sender will be allowed to file a claim for the complete loss of an unnumbered Insured Mail article.

The revisions also provide further clarification of what is acceptable evidence of value, codifying current policies into the DMM. Claims for damage require that the article, packaging, and mailing container must be presented by the addressee to the Postal Service for inspection regardless of whether the sender or addressee files the claim.

The new revisions will also:

(1) Clarify situations under which indemnity will not be paid, ensuring that current policies are codified in the DMM.

(2) Clarify the time limit in which a customer may forward an appeal to the Consumer Advocate at Headquarters.

(3) Provide that the original sales receipt from a Postal Service retail terminal listing the mailing receipt number and insurance amount is acceptable evidence of insurance when the original mailing receipt is not available.

(4) Clarify that a mailer of a collect on delivery (COD) article may not stipulate “Cash Only.”

(5) Provide that all appeals must be sent directly to Claims Appeals at the St. Louis Accounting Service Center.

(6) Provide that local adjudication of unnumbered Insured Mail articles will end with the implementation of the Customer Claims Response System (CCRS).

Discussion of Comments

A summary of the comments and our analysis of each follows:

1. S010.2.2. The commenter raised two issues regarding the changes in the time for filing a claim for a lost or damaged COD article. First, the

commenter stated that the requirement for waiting 45 days before filing a claim for a lost COD article is excessive compared to the time frame for mail receiving other special services.

The Postal Service does not believe the proposed rule should be changed. Since handling procedures differ depending on the special service provided, it is inappropriate to establish uniform limits for filing claims. A COD article may be held at a delivery unit for up to 30 days before being returned to the sender if unclaimed by the addressee (*see* DMM, D042.1.7.f). It should also be noted, the Postal Service proposal reduced the current waiting period for filing a claim for a lost COD article from 60 days to 45 days. As for other classes of mail or service, the new time frames took into consideration that the holding period is 5 days for Express Mail and 15 days for Insured Mail items or Registered Mail items.

Secondly, the commenter objected to the new requirement that a customer must file a claim no later than 45 days from the mailing date when the contents of an article are damaged or missing from the container. The commenter states that if the COD article were not delivered until the 45th day after mailing, the sender could not file a damage claim because the 45 days would have already passed.

Although the likelihood of the commenter's hypothetical occurring is remote, the Postal Service believes there is merit in the concern raised.

Accordingly, the Postal Service will revise the proposed rule to allow customers to submit damage claims no later than 60 days from the mailing date.

2. S010.2.5.a. The commenter states that the requirement for the original postmarked mailing receipt is inappropriate in that not all receipts will be postmarked.

The Postal Service agrees that it erred in that Express Mail and point of service (POS) retail terminal imprinted receipts do not require a postmark. Therefore, the Postal Service withdraws this proposed rule.

The commenter also states that the requirement for the original receipt is inappropriate in the case of Registered Mail or Express Mail service when the Postal Service has a copy of the mailing receipt, and can validate the claim because the mailer has provided the article number and date of mailing either from a photocopy or from other records.

The Postal Service does not believe the rules should be amended to accommodate this suggestion. The requirement for the original receipt is to ensure that the proper party is

indemnified. It is the customer's responsibility to provide the proof of insurance evidenced by an original mailing receipt. Moreover, under existing procedures, mailers utilizing these services are also permitted to submit the mailing wrapper as evidence of insurance.

3. S010.2.6.b. The commenter states that the addition of the phrase, "For items valued up to \$100," appears to be a major change. The Postal Service maintains this revision does not represent a change in policy but merely codifies current policy. Acceptance of a customer's statement of value, in lieu of actual evidence of value, creates an opportunity for abuse, particularly when permitted for higher-value items.

The commenter also suggests that Postal Service retail clerks should inform mailers what evidence will be needed to support claims. Mailers needing such information have access to policies concerning indemnity claims through the DMM, which is readily available on the Postal Service's Web site. They can also seek such information from Postal Service clerks or other Postal Service personnel.

The commenter also asserts that eliminating reimbursement of the cost of labor from handmade items is too broad. The Postal Service offers coverage for the value of goods, based on the established value in the marketplace, whether or not those goods are handmade. However, if the item mailed is not commonly sold (*e.g.*, a hobby, craft, or similar handmade item), there is no established value. In that case, the Postal Service provides compensation for the costs of the materials used, but not for the time used in making it. The Postal Service will amend the proposed rule to clarify this policy.

4. S010.2.6.h. The commenter requests clarification of this proposed rule referring to a printout of a transaction that is made on the Internet. This comment pertains to the proposal for the provision of evidence of value for goods obtained through Internet transactions. These transactions are typically conducted through a Web-based payment network that offers payment services through a stored value account, commonly used to buy or sell items at online auctions.

For transactions involving the use of a credit card online or payment by check, a copy of a credit card statement or canceled check could serve as evidence of value. The Postal Service will amend the proposed rule to clarify this policy.

5. S010.2.14.r. The commenter states that this section appears to require the use of Registered Mail for obtaining

insurance on negotiable items, currency, or bullion, which would be a change in current policy.

Although the Postal Service generally recommends that customers send these items as Registered Mail items, it did not intend to eliminate the option of mailing them as Insured Mail items. Accordingly, in order to avoid confusion, the Postal Service will withdraw this proposed change to the DMM.

6. S010.2.14.ae. The commenter objects to the proposed regulation that event or transportation tickets, received after the event, are not insured when there is a provable loss because of the delay and the article was mailed using Express Mail service. With Express Mail's guaranteed delivery time, if the article is not delivered by that time, and a provable loss results from the delay in delivery, then, the commenter argues, the loss should be covered by Postal Service insurance.

The commenter raised a valid concern and the final rule incorporates an exception for Express Mail service.

7. S010.2.14.af. The commenter objects to this revision regarding nonpayable claims for software installed onto computers that have been lost or damaged. The commenter states that if one paid to have software loaded on the lost or damaged computer, then the insurance should cover the cost of having the same software installed on a replacement computer. In addition, if software, recorded on compact disc or diskette(s), enclosed with the computer when shipped, is also lost or damaged, it should be covered by the insurance purchased.

The Postal Service does not believe a change in the rule is warranted. Software loaded onto personal computers is licensed for use to the purchaser. Whether on compact disc or diskette(s), the software provides the purchaser the ability to reinstall the software on a computer. Software is generally designed to self load when the appropriate drive is selected with limited prompting or assistance from an individual. Also, a replacement personal computer typically will include replacement software. Software on a medium, such as compact discs or diskettes, recognized as a means to load the software onto a computer, would be covered for loss or damage dependent upon the amount of insurance coverage purchased at the time of mailing.

8. S010.2.14.ag. The commenter observes that this proposed rule does not comply with the provisions stated in S921.1.5, Fee and Postage, in that it states that if the mailer does not receive the personal check that was mailed by

the delivery Post Office, it will be the mailer's responsibility to obtain a replacement check from the addressee. The fees for COD service include insurance against failure to receive a postal money order or the recipient's check.

The Postal Service agrees that the proposed rule is in conflict with S921.1.5, and, therefore, the proposed rule is withdrawn.

9. S010.2.14.ai. The commenter states that the concept of personal time should be clarified.

The commenter previously raised this issue in item 3 and it was addressed by the Postal Service above.

10. S913.2.7. The commenter raises the same issue as identified in item 2 regarding the requirement that all mailing receipts have a postmark (round date).

The Postal Service does not believe the proposed rule should be changed. This revision relates to Insured Mail receipts, PS Form 3813, *Receipt for Domestic Insured Parcel*, or PS Form 3813-P, *Insured Mail Receipt*. There is an area on each of these receipts annotated either "Postmark of Mailing Office," or "Postmark Here," that clearly indicates that a postmark (round date) or point of service (POS) retail terminal imprint, which includes a date, is required. Because these Postal Service

mailing receipts are readily available in retail lobbies, a postmark or POS retail terminal imprint is required in order to provide validation that the special service was actually purchased.

Based on the reasons discussed above, the Postal Service hereby amends the following standards of the DMM, incorporated by reference into the *Code of Federal Regulations*. See 39 CFR part 111.

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, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

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

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

A claim may be filed by:

[Reletter current items a, b, c, and d as new items b, c, d, and e. Add new item a to read as follows:]

a. Only the sender, for the complete loss of an unnumbered Insured Mail article.

[Revise new item b to read as follows:]

b. Either the sender or addressee, who is in possession of the original mailing receipt, for the complete loss of a numbered Insured Mail, Registered Mail, COD, or Express Mail® article.

* * * * *

2.2 When to File

[Revise 2.2 to read as follows:]

A customer must file a claim immediately but no later than 60 days from the mailing date when the contents of an article are damaged or missing from the mailing container. For a lost article, a customer must file a claim within the time limits in the chart below.

Mail type or service	When to file (from mailing date)	
	No sooner than	No later than
Bulk Insured	21 days	180 days
COD	45 days	180 days
Express Mail	7 days	90 days
Express Mail COD	45 days	90 days
Insured Mail	21 days	180 days
Registered Mail	15 days	180 days
Registered Mail COD	45 days	180 days

Exceptions: Claims for loss of insured and COD articles (including insured articles sent to APO and FPO addresses) originating at or addressed to Post Offices outside the contiguous 48 states may be filed only at the following times:

- a. After 45 days if article sent First-Class Mail service, space available mail (SAM), or parcel airlift (PAL) services.
- b. After 45 days if article sent COD.
- c. After 75 days if article sent by surface.

2.3 Where to File

A claim may be filed:

* * * * *

[Insert item c to read as follows:]

c. On the Web at <http://www.usps.com>.

2.4 How to File

[Revise 2.4 to read as follows:]

A customer may file a claim by presenting evidence of insurance, evidence of value, proof of damage, and for unnumbered Insured Mail claims, proof of loss or damage. (Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail claims.) If the article was mailed Express Mail COD, the sender must provide both the original COD and Express Mail receipts. The customer must complete the applicable spaces on Form 1000.

2.5 Evidence of Insurance

[Revise introductory text to read as follows:]

For a claim involving Insured Mail, Registered Mail, COD, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

* * * * *

[Insert new item d to read as follows:]

d. The original sales receipt from the USPS® listing the mailing receipt number and insurance amount, if the original mailing receipt is not available. Reproduced copies of the USPS sales receipt are not acceptable.

2.6 Evidence of Value

The customer must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. (Other evidence may be requested to

help determine an accurate value.)
Examples of acceptable evidence are:

* * * * *

[Revise item b to read as follows:]

b. For items valued up to \$100, the customer's own statement describing the lost or damaged article and including the date and place of purchase, the amount paid, and whether the item was new or used (only if a sales receipt or invoice is not available). If the article mailed is a hobby, craft, or similar handmade item, the statement must include the cost of the materials used in making the item. The statement must describe the article in sufficient detail to determine whether the value claimed is accurate.

* * * * *

[Add new item g to read as follows:]

g. A copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid.

[Add new item h to read as follows:]

h. For Internet transactions conducted through a Web-based payment network that offers payment services through a stored value account, a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and assurance that the transaction status is completed. The printout must clearly identify the Web-based payment network provider through which the Internet transaction was conducted.

2.7 Missing Contents

[Revise 2.7 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must present the container and packaging to the USPS with the claim. Failure to do so will result in denial of the claim.

2.8 Damage

[Revise 2.8 to read as follows:]

If the addressee files the claim, the addressee must present the article with the packaging and mailing container to the USPS for inspection. If the sender files the claim, the St. Louis ASC will notify the addressee by letter to present the article, packaging, and container to the USPS for inspection. Failure to do so will result in denial of the claim.

2.9 Proof of Loss

[Revise 2.9 to read as follows:]

To file a claim, the sender must provide proof of loss for unnumbered Insured Mail. Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail

claims. For proof of loss, the addressee must provide a letter or statement, dated at least 21 days after the date that the unnumbered Insured Mail article was mailed, reporting that the addressee did not receive the article. The statement or a copy of it must be attached to the claim.

2.10 Duplicate Claim

[Revise 2.10 to read as follows:]

A customer must file any duplicate claim no sooner than 30 days and no later than 60 days from the date the original claim was filed.

[Delete the table.]

* * * * *

2.14 Nonpayable Claims

[Revise introductory text to read as follows:]

Indemnity is not paid for Insured Mail, Registered Mail, COD, or Express Mail services in these situations:

* * * * *

[Add items ac through ah to read as follows:]

ac. Mailer refuses to accept delivery of the parcel on return.

ad. Mail not bearing the complete names and addresses of the sender and addressee, or that is undeliverable as addressed to either the addressee or sender.

ae. Event or transportation tickets (e.g., concert, theater, sport, airline, bus, train, etc.) received after the event date. Such items are insured for loss, but not for delay or receipt after the event date for which they were purchased unless sent by Express Mail service and the loss is attributable solely to the failure to meet the guaranteed delivery standard under the terms and conditions for the Express Mail offering selected.

af. Software installed onto computers that have been lost or damaged.

ag. Damaged articles not claimed within 30 days.

ah. Personal time used to make hobby, craft, or similar handmade items.

* * * * *

3.0 PAYMENT

* * * * *

3.3 Dual Claim

[Revise 3.3 to read as follows:]

If the sender and the addressee both claim insurance and cannot agree on which one should receive the payment, any payment due is made to the sender unless the claim has already been paid to the addressee upon presentation of the original mailing receipt.

* * * * *

4.0 ADJUDICATION

4.1 Initial

[Revise 4.1 to read as follows:]

The St. Louis Accounting Service Center (ASC) adjudicates and pays or disallows all domestic claims except those appealed under 4.3.

4.2 Appeal

[Revise 4.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. The customer must send the appeal directly to Claims Appeals (see G043 for address).

4.3 Final USPS Decision

[Revise 4.3 to read as follows:]

If the manager of Claims Appeals at the St. Louis ASC sustains the denial of a claim, the customer may submit an additional appeal within 60 days for final review and decision to the Consumer Advocate, USPS Headquarters, who may waive the standards in S010 in favor of the customer.

[Delete 5.0. Sampling process will be discontinued with the implementation of CCRS.]

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

2.7 Receipt

[Revise 2.7 to read as follows:]

For each Insured Mail article mailed, the mailer receives a USPS sales receipt and the appropriate postmarked (i.e., round date) Insured Mail form as follows:

a. Form 3813 when the insurance coverage is \$50 or less.

b. Form 3813-P when the insurance coverage is more than \$50.

* * * * *

S920 Convenience

S921 Collect on Delivery (COD) Mail

1.0 BASIC INFORMATION

[Insert text after first sentence to read as follows:]

* * * * * The recipient has the option to pay the COD charges using either cash or personal check. Only one form of

payment may be used for a single mailpiece. * * *

* * * * *

3.0 MAILING

* * * * *

3.4 Indelible Ink, Mailer Errors

[Revise 3.4 to read as follows:]

The particulars required on the COD form must be handwritten with ink, typewritten, or computer-printed. The USPS is not responsible for errors that a mailer makes in stating the charges to be collected. The mailer cannot stipulate "Cash Only" on the COD form.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03-22047 Filed 8-29-03; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI83-01-7292a, FRL-7526-9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003.

DATES: This rule is effective on November 3, 2003, unless EPA receives adverse written comments by October 2, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen

D'Agostino at (312) 886-1767 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767; dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

- I. General Information.
- II. What Has Michigan Submitted?
- III. What Action is EPA Taking?
- IV. Is This Action Final, or May I Submit Comments?
- V. Statutory and Executive Order Reviews.

I. General Information.

A. How Can I Get Copies of This Document and Other Related Information ?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the

Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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. 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. E-mail. Comments may be sent by electronic mail (e-mail) to nash.carlton@epa.gov. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection 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 Has Michigan Submitted?

On April 25, 2003, the MDEQ submitted a revision to Michigan's definition of volatile organic compound. Michigan's revised definition of the term volatile organic compound is "any compound of carbon or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which have been determined by the United States Environmental Protection Agency to have negligible photochemical reactivity: * * *." The definition goes on to list the exempt compounds. When test methods measure exempt compounds, *i.e.* any of those contained in the list of excluded compounds, Michigan's definition allows for their exclusion providing that two specific criteria are met: (1) The exempt compounds must be accurately quantified and (2) MDNR must approve the exclusion.

This submittal replaces the revision to Michigan's definition of VOC that MDNR submitted on August 20, 1998, and supplemented on November 3, 1998. EPA proposed to disapprove this previous submittal on June 10, 1999 (64 FR 31168), because it was not consistent with the federal definition of VOC contained in 40 CFR 51.100(s) or EPA policy guidance documents.

III. What Action Is EPA Taking?

EPA is approving the April 25, 2003, revision to Michigan's definition of VOC. Michigan's revised definition, including the compounds listed, is consistent with the federal definition of VOC contained in 40 CFR 51.100(s), and EPA policy guidance documents, including: "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" (Bluebook) (notice of availability published in the **Federal Register** on May 25, 1988); EPA's policy memorandum dated June 8, 1989, from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled "Definition of VOC: Rationale;" EPA's policy memorandum dated April 17, 1987, from G.T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of VOC;" and EPA's policy memorandum dated April 17, 1987, from G.T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of Volatile Organic Compounds (VOC's)." EPA's approval of the new definition of VOC will revise Michigan's SIP for ozone.

IV. Is This Action Final, or May I Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by October 2, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on November 3, 2003.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211,

“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: June 18, 2003.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart X—Michigan

■ 2. Section 52.1170 is amended by adding paragraph (c)(119) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(119) The Michigan Department of Environmental Quality submitted a revision to Michigan’s State Implementation Plan for ozone on April 25, 2003. This submittal contained a revised definition of volatile organic compound.

(i) Incorporation by reference.

(A) R 336.1122 Definitions; V, effective March 13, 2003.

[FR Doc. 03–22155 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73–1–7298a; FRL–7541–5]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation’s (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge’s state operating permit into the Minnesota PM SIP. The request is approvable because it meets the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective November 3, 2003, unless EPA receives adverse comment by October 2, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328. panos.christos@epa.gov.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. General Information.
- II. EPA Action and Review.
 1. What action is EPA taking today?
 2. Why is EPA taking this action?
- III. Background on Minnesota Submittal.
 1. What is the background for this action?
 2. What information did Minnesota submit, and what were its requests?
 3. What is a "Title I Condition?"
- IV. Final Rulemaking Action.
- V. Administrative Requirements.

I. General Information.

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action

under "Region 5 Air Docket MN73". The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulations.gov* Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MN73" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked "late." EPA is not required to consider these late comments.

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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to nash.carlton@epa.gov. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MN73" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *Regulations.gov* at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII

file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MN73" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection 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. EPA Action and Review

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota PM SIP certain portions of Minnesota Air Emission Permit No. 12300353-002, issued to Lafarge Corporation—Red Rock Terminal on

May 7, 2002. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I condition: SIP for PM10 NAAQS."

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP. The revised permit includes the addition of a pneumatic vacuum pump and a new cement silo. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby continuing to provide for attainment and maintenance of the PM National Ambient Air Quality Standards (NAAQS) and satisfying the applicable PM requirements of the Act.

The pneumatic vacuum pump, which was in place and already controlled by a baghouse, had inadvertently been omitted from the Red Rock Road permit approved into the SIP by EPA in 1999. After consulting EPA, MPCA was advised that a major amendment to the permit was not needed to include this existing unit and that the pneumatic vacuum pump unit should be added into the permit during the next major amendment. Therefore, MPCA included the emission unit and baghouse in the 2002 permit amendment.

The 2002 permit includes a major amendment authorizing the additional emission point associated with a new cement silo. The silo emissions are to be controlled by a baghouse located on the top of the silo. Although actual emissions of PM from the facility would most likely decrease, the installation of the new unit did change the modeling parameters for the facility, thereby requiring a revision to the SIP.

III. Background on Minnesota Submittal

1. What Is the Background for This Action?

Lafarge's Red Rock Road facility is located at 1363 Red Rock Road in Saint Paul, Ramsey County, Minnesota. On July 22, 1998, MPCA submitted to EPA a SIP revision for Ramsey County, Minnesota, for the control of PM emissions from certain sources located along Red Rock Road. Included in this submittal was a state operating permit for Lafarge Corporation (Air Emission Permit No. 12300353-001 issued by MPCA on April 14, 1998), which includes and identifies the Title I SIP conditions for the Red Rock Road facility. The EPA took final action approving the Lafarge Red Rock Road permit into the PM SIP on August 13, 1999 (64 FR 44131).

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on July 18, 2002, consists of a revised state operating permit issued to the Lafarge Red Rock Road facility. The state has requested that EPA approve the following: the inclusion into the Minnesota PM SIP of only the portions of the revised Lafarge—Red Rock Terminal permit cited as "Title I condition: SIP for PM10 NAAQS."

3. What Is a "Title I Condition?"

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *". The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as "Title I condition: SIP for PM10 NAAQS," therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the

Lafarge Red Rock Road facility and included in the SIP submittal need to be revised in the future.

IV. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the Lafarge Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Lafarge's state operating permit cited as "Title I condition: SIP for PM10 NAAQS."

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective November 3, 2003 without further notice unless we receive relevant adverse comments by October 2, 2003. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 3, 2003.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: May 16, 2003.

Norman Neidergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

■ 2. Section 52.1220 is amended by adding paragraph (c)(64) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(64) On July 18, 2002, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) SIP for the Lafarge Corporation (Lafarge) Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is

approving into the PM SIP only those portions of the Lafarge Red Rock Road facility state operating permit cited as "Title I condition: SIP for PM10 NAAQS."

(i) Incorporation by reference.

(A) AIR EMISSION PERMIT NO. 12300353-002, issued by the Minnesota Pollution Control Agency (MPCA) to Lafarge Corporation—Red Rock Terminal on May 7, 2002, Title I conditions only.

[FR Doc. 03-22157 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79-1a; FRL-7543-6]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a site-specific revision to the Minnesota sulfur dioxide (SO₂) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO₂ SIP and remove the Xcel Administrative Order from the state SO₂ SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. The requests are approvable because they satisfy the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This "direct final" rule is effective November 3, 2003, unless EPA receives written adverse comment by October 2, 2003. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection

Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section. A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT:

Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.
panos.christos@epa.gov.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

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 1. What is the background for this action?
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 3. What is a "Title I Condition"?
- IV. Final Rulemaking Action.
- V. Statutory and Executive Order Reviews.

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MN79". The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of

materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the [regulations.gov](http://www.regulations.gov) web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket "MN79" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to nash.carlton@epa.gov. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MN79" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MN79" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection 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. EPA Action and Review

1. What Action Is EPA Taking Today

In this action, EPA is approving into the Minnesota SO₂ SIP certain portions of the Title V permit for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I Condition: State Implementation Plan for SO₂." In this same action, EPA is removing the Xcel Administrative Order from the state SO₂ SIP, and the Ashbach Administrative Order from the state PM SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action for Xcel because the state's request does not

change any of the emission limitations currently in the SO₂ SIP or their accompanying supportive documents, such as the SO₂ air dispersion modeling. The revision to the SO₂ SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO₂ requirements of the Act. The only change to the SO₂ SIP is the enforceable document for Xcel, from the Administrative Order to the Title V permit.

EPA is taking action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP because, as described below, the Administrative Order for this facility is no longer necessary since the company has permanently ceased operations at the Saint Paul asphalt plant.

III. Background on Minnesota Submittal

1. What Is the Background for This Action?

Xcel Energy Inver Hills Generating Plant

Xcel's Inver Hills Generating Plant is located in Inver Grove Heights, Dakota County, Minnesota, in the Pine Bend SO₂ maintenance area. Monitored violations of the primary SO₂ NAAQS from 1975 through 1977 led EPA to designate Air Quality Control Region (AQCR) 131 as a primary SO₂ nonattainment area on March 3, 1978 (43 FR 8962). AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. In response to Part D requirements of the Clean Air Act, MPCA submitted a final SO₂ plan on August 4, 1980. EPA approved the Minnesota Part D SO₂ SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

Subsequent monitored violations of the SO₂ NAAQS prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan was further delayed by the passage of the 1990 Amendments to the Act. The plan for the Pine Bend area of Dakota County of AQCR 131, which included an Administrative Order for Northern States Power-Inver Hills Station, was approved by EPA on September 9, 1994 (59 FR 46553). EPA approved Amendments Two and Three to the administrative order for Northern States

Power-Inver Hills Station on June 13, 1995 (60 FR 31088), and October 13, 1998 (63 FR 54585), respectively.

The state submitted a request to redesignate the Twin Cities and Pine Bend areas of AQCR 131 (excluding the Saint Paul Park area), to attainment of the SO₂ NAAQS on September 7, 1994. EPA approved the redesignation request on May 31, 1995 (60 FR 28339).

Ashbach Construction Company

Ashbach was located in Saint Paul, Ramsey County, Minnesota. A portion of the Saint Paul area was designated nonattainment of the PM NAAQS upon enactment of the 1990 Amendments to the Act. The State submitted SIP revisions satisfying the attainment demonstration requirements of the Act in 1991 and 1992. The enforceable element of the State's submittals were administrative orders for nine facilities in the Saint Paul area. An Administrative Order for Ashbach was included in these submittals. EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the Saint Paul PM nonattainment area. The facility ceased operations at the end of the 1996 asphalt producing season and was permanently shut down in 1997.

On June 20, 2002, MPCA requested that EPA redesignate the Saint Paul PM nonattainment area to attainment. EPA took final action on July 26, 2002 at 67 FR 48787, redesignating the Saint Paul PM nonattainment area to attainment of the PM NAAQS.

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on February 6, 2000, consists of a Title V permit issued to Xcel. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO₂ SIP only the portions of the Xcel Inver Hills Generating Plant Title V permit cited as "Title I Condition: State Implementation Plan for SO₂.";

(2) The removal from the Minnesota SO₂ SIP of the Administrative Order for Xcel previously approved into the SIP; and,

(3) The removal from the Minnesota PM SIP of the Administrative Order for Ashbach previously approved into the SIP.

3. What Is a "Title I Condition"?

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable

because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's operating permitting program, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent and requires all state permits, not only Title V permits, to contain all applicable requirements. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * * ." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as "Title I Condition: State Implementation Plan for SO₂," therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from EPA to MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to Xcel and included in the SIP submittal need to be revised in the future.

IV. Final Rulemaking Action

EPA is approving the SIP revision for Xcel's Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Xcel's Title V permit cited as "Title I Condition: State Implementation Plan for SO₂." In this same action, EPA is removing from the state SO₂ SIP the Xcel Inver Hills Generating Plant Administrative Order which had first been approved into the SO₂ SIP on September 9, 1994 and amended on June 13, 1995 and October

13, 1998. In addition, EPA is removing from the state PM SIP the Ashbach Administrative Order which had previously been approved into the PM SIP on February 15, 1994.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective November 3, 2003 without further notice unless we receive relevant adverse written comments by October 2, 2003. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 3, 2003.

V. Statutory and Executive Orders Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship

between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because 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, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. § 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive

order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 23, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

- 2. Section 52.1220 is amended by:
 - a. Removing and reserving paragraphs (c)(29)(i)(A) and (c)(35)(i)(B).
 - b. Revising paragraph (c)(41)(i)(A).

- c. Removing and reserving paragraph (c)(41)(i)(C).
- d. Adding paragraph (c)(63).

The revision and addition read as follows:

§ 52.1220 Identification of plan.

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* * * * *
(c) * * *
(41) * * *
(i) * * *
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(A) Amendments, all effective December 21, 1994, to Administrative Orders approved in paragraph (c)(29) of this section for Commercial Asphalt, Inc.; Great Lakes Coal and Dock Company; Harvest States Cooperatives; LaFarge Corporation; Metropolitan Council; North Star Steel Company; Rochester Public Utilities; J. L. Shiely Company.

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(63) On August 9, 2002, the State of Minnesota submitted a revision to the Minnesota sulfur dioxide (SO₂) State Implementation Plan (SIP) for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SO₂ SIP those portions of the Xcel Title V operating permit cited as "Title I Condition: State Implementation Plan for SO₂".

(i) Incorporation by reference.
 (A) AIR EMISSION PERMIT NO. 03700015-001, issued by the Minnesota Pollution Control Agency to Northern States Power Company Inver Hills Generating Plant on July 25, 2000, Title I conditions only.

[FR Doc. 03-22153 Filed 8-29-03; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7550-3]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule

to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize South Carolina's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on November 3, 2003, unless EPA receives adverse written comment by October 2, 2003. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303-3104; (404) 562-8448. You can view and copy South Carolina's applications from 9 a.m. to 4 p.m. at the following addresses: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896-4174; and EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562-8190.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303-3104; (404) 562-8448.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

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

of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Carolina's applications to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Carolina Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Carolina has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Carolina, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Carolina has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which South Carolina is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not

expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has South Carolina Previously Been Authorized for?

South Carolina initially received Final authorization on November 8, 1985, effective November 22, 1985 (50 FR 46437) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on September 8, 1988, effective November 7, 1988 (53 FR 34758), February 10, 1993, effective April 12, 1993 (58 FR 7865), November 29, 1994, effective January 30, 1995 (59 FR 60901), April 26, 1996, effective June 25, 1996 (61 FR 18502), October 4, 2000, effective December 4, 2000 (65 FR 59135) and August 21, 2001, effective October 22, 2001 (66 FR 43798).

G. What Changes Are We Authorizing With Today's Action?

On November 15, 2000 and December 20, 2001, South Carolina submitted final complete program revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that South Carolina's hazardous waste program revisions satisfy all of the requirements

necessary to qualify for Final authorization. Therefore, we grant South Carolina Final authorization for the following program changes:

Federal requirements	Federal Register	Analogous state authority ¹
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, Checklist 160, RCRA Cluster VIII, HSWA Provision.	62 FR 37694–37699, July 14, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.39(c).
Emergency Revision of the Carbamate Land Disposal Restrictions, Checklist 161, RCRA Cluster VIII, HSWA Provision.	62 FR 45568, August 28, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.4040(g). SCHWM R.61–79.268.48(a)/Table.
Clarification of Standards for Hazardous Waste LDR Treatment Variances, Checklist 162, RCRA Cluster VIII, HSWA Provision.	62 FR 64504–64509, December 5, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.44(h) into SCHWM R.61–79.268.44(h)(1). SCHWM R.61–79.268.44(h)(2) intro. SCHWM R.61–79.268.44(h)(2)(i). SCHWM R.61–79.268.44(h)(2)(ii). SCHWM R.61–79.268.44(h)(3). SCHWM R.61–79.268.44(m). SCHWM R.61–79.268.44(p).
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163, RCRA Cluster VIII, HSWA Provision.	62 FR 64636–64671, December 8, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.264.15(b)(4). SCHWM R.61–79.264.73(b)(6). SCHWM R.61–79.264.1030(b)(3). SCHWM R.61–79.264.1030(c). SCHWM R.61–79.264.1030(e). SCHWM R.61–79.264.1031. SCHWM R.61–79.264.1033(a)(2)(i). SCHWM R.61–79.264.1033(a)(2)(ii). SCHWM R.61–79.264.1033(a)(2)(iii). SCHWM R.61–79.264.1033(a)(2)(iv). SCHWM R.61–79.264.1050(b)(3). SCHWM R.61–79.264.1050(c). SCHWM R.61–79.264.1050(f). SCHWM R.61–79.264.1060(a). SCHWM R.61–79.264.1060(b)(1). SCHWM R.61–79.264.1060(b)(2). SCHWM R.61–79.264.1060(b)(3). SCHWM R.61–79.264.1060(b)(4). SCHWM R.61–79.264.1062(b)(2). SCHWM R.61–79.264.1062(b)(3). SCHWM R.61–79.264.1064(g)(6). SCHWM R.61–79.264.1064(m). SCHWM R.61–79.264.1080(b)(1). SCHWM R.61–79.264.1080(c). SCHWM R.61–79.264.1082(b). SCHWM R.61–79.264.1082(c)(2)(ix)(A). SCHWM R.61–79.264.1082(c)(2)(ix)(B). SCHWM R.61–79.264.1082(c)(3). SCHWM R.61–79.264.1082(c)(4)(ii). SCHWM R.61–79.264.1083(a)(2). SCHWM R.61–79.264.1083(b)(1). SCHWM R.61–79.264.1084(c)(2)(iii). SCHWM R.61–79.264.1084(c)(2)(iii)(B). SCHWM R.61–79.264.1084(c)(2)(iii)(B)(1). SCHWM R.61–79.264.1084(c)(2)(iii)(B)(2). SCHWM R.61–79.264.1084(e)(4). SCHWM R.61–79.264.1084(f)(3)(i)(D)(4). SCHWM R.61–79.264.1084(f)(3)(iii). SCHWM R.61–79.264.1084(f)(4). SCHWM R.61–79.264.1084(j)(2)(iii). SCHWM R.61–79.264.1085(b)(2). SCHWM R.61–79.264.1085(d)(1)(iii). SCHWM R.61–79.264.1085(d)(2)(i)(B). SCHWM R.61–79.264.1085(e)(2)(iii). SCHWM R.61–79.264.1086(c)(2). SCHWM R.61–79.264.1086(c)(4)(i). SCHWM R.61–79.264.1086(d)(2). SCHWM R.61–79.264.1086(d)(4)(i). SCHWM R.61–79.264.1086(g).

Federal requirements	Federal Register	Analogous state authority ¹
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163 cont., RCRA Cluster VIII, HSWA Provision.	62 FR 64636-64671, December 8, 1997.	SCHWM R.61-79.264.1087(c)(3)(ii) SCHWM R.61-79.264.1087(c)(7) SCHWM R.61-79.264.1089(a) SCHWM R.61-79.264.1089(b)(1)(ii)(B) SCHWM R.61-79.264.1089(f)(1) SCHWM R.61-79.264.1089(j) SCHWM R.61-79.264.1089(j)(1) SCHWM R.61-79.264.1089(j)(2) SCHWM R.61-79.265.15(b)(4) SCHWM R.61-79.265.73(b)(6) SCHWM R.61-79.265.1030(b)(3) SCHWM R.61-79.265.1030(d) SCHWM R.61-79.265.1033(a)(2)(i) SCHWM R.61-79.265.1033(a)(2)(ii) SCHWM R.61-79.265.1033(a)(2)(iii) SCHWM R.61-79.265.1033(a)(2)(iv) SCHWM R.61-79.265.1033(f)(2)(iv)(B) SCHWM R.61-79.265.1050(b)(3) SCHWM R.61-79.265.1050(e) SCHWM R.61-79.265.1060(a) SCHWM R.61-79.265.1060(b)(1) SCHWM R.61-79.265.1060(b)(2) SCHWM R.61-79.265.1060(b)(3) SCHWM R.61-79.265.1060(b)(4) SCHWM R.61-79.265.1062(b)(2) SCHWM R.61-79.265.1062(b)(3) SCHWM R.61-79.265.1064(g)(6) SCHWM R.61-79.265.1064(m) SCHWM R.61-79.265.1080(b)(1) SCHWM R.61-79.265.1080(c) SCHWM R.61-79.265.1081 SCHWM R.61-79.265.1082(a) SCHWM R.61-79.265.1082(a)(1) SCHWM R.61-79.265.1082(a)(2) SCHWM R.61-79.265.1082(a)(2)(i) SCHWM R.61-79.265.1082(a)(2)(ii) SCHWM R.61-79.265.1082(a)(2)(iii) SCHWM R.61-79.265.1082(a)(2)(iv) SCHWM R.61-79.265.1082(b) SCHWM R.61-79.265.1082(b)(1) SCHWM R.61-79.265.1082(b)(2) SCHWM R.61-79.265.1082(b)(2)(i) SCHWM R.61-79.265.1082(b)(2)(ii) SCHWM R.61-79.265.1082(b)(2)(iii) SCHWM R.61-79.265.1082(c) SCHWM R.61-79.265.1082(d) SCHWM R.61-79.265.1083(b) SCHWM R.61-79.265.1083(c)(2)(i) SCHWM R.61-79.265.1083(c)(2)(ix)(A) SCHWM R.61-79.265.1083(c)(2)(ix)(B) SCHWM R.61-79.265.1083(c)(3)
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163 cont., RCRA Cluster VIII, HSWA Provision.	62 FR 64636-64671, December 8, 1997.	SCHWM R.61-79.265.1083(c)(4)(ii) SCHWM R.61-79.265.1084(a)(2) SCHWM R.61-79.265.1084(a)(3)(ii)(B) SCHWM R.61-79.265.1084(a)(3)(iii) SCHWM R.61-79.265.1084(a)(3)(iii)(A) SCHWM R.61-79.265.1084(a)(3)(iii)(F) SCHWM R.61-79.265.1084(a)(3)(iii)(G) SCHWM R.61-79.265.1084(a)(3)(iii)(G)(1) SCHWM R.61-79.265.1084(a)(3)(iv) SCHWM R.61-79.265.1084(a)(3)(iv)(A) SCHWM R.61-79.265.1084(a)(3)(iv)(B) SCHWM R.61-79.265.1084(a)(3)(iv)(B)(1) SCHWM R.61-79.265.1084(a)(3)(iv)(B)(2) SCHWM R.61-79.265.1084(a)(3)(v) SCHWM R.61-79.265.1084(a)(4)(iv) SCHWM R.61-79.265.1084(b)(1) SCHWM R.61-79.265.1084(b)(3)(ii)(B) SCHWM R.61-79.265.1084(b)(3)(iii) SCHWM R.61-79.265.1084(b)(3)(iii)(F) SCHWM R.61-79.265.1084(b)(3)(iii)(G) SCHWM R.61-79.265.1084(b)(3)(iv) SCHWM R.61-79.265.1084(b)(3)(v) SCHWM R.61-79.265.1084(b)(8)(iii)

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<p>Kraft Mill Steam Stripper, Condensate Exclusion, Checklist 164, RCRA Cluster VIII non-HSWA Provision.</p> <p>Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Waste, Checklist 167 A, RCRA Cluster VIII, HSWA Provision.</p>	<p>63 FR 18504–18751, April 15, 1998.</p> <p>63 FR 28556–28753, May 26, 1998.</p>	<p>SCHWM R.61–79.265.1084(b)(9)(iv)</p> <p>SCHWM R.61–79.265.1084(d)(5)(ii)</p> <p>SCHWM R.61–79.265.1085(c)(2)(iii)</p> <p>SCHWM R.61–79.265.1085(c)(2)(iii)(B)</p> <p>SCHWM R.61–79.265.1085(c)(2)(iii)(B)(1)</p> <p>SCHWM R.61–79.265.1085(c)(2)(iii)(B)(2)</p> <p>SCHWM R.61–79.265.1085(e)(4)</p> <p>SCHWM R.61–79.265.1085(f)(3)(i)(D)(4)</p> <p>SCHWM R.61–79.265.1085(f)(4)</p> <p>SCHWM R.61–79.265.1085(j)(2)(iii)</p> <p>SCHWM R.61–79.265.1086(b)(2)</p> <p>SCHWM R.61–79.265.1086(d)(1)(iii)</p> <p>SCHWM R.61–79.265.1086(d)(2)(i)(B)</p> <p>SCHWM R.61–79.265.1086(e)(2)(iii)</p> <p>SCHWM R.61–79.265.1087(c)(4)(i)</p> <p>SCHWM R.61–79.265.1087(d)(4)(i)</p> <p>SCHWM R.61–79.265.1087(g)</p> <p>SCHWM R.61–79.265.1088(c)(3)(ii)</p> <p>SCHWM R.61–79.265.1088(c)(7)</p> <p>SCHWM R.61–79.265.1090(a)</p> <p>SCHWM R.61–79.265.1090(b)(1)(ii)(B)</p> <p>SCHWM R.61–79.265.1090(f)(1)</p> <p>SCHWM R.61–79.265.1090(j)</p> <p>SCHWM R.61–79.265.1090(j)(1)</p> <p>SCHWM R.61–79.265.1090(j)(2)</p> <p>SCHWM R.61–79.265 Appendix VI</p> <p>SCHWM R.61–79.270.14(b)(5)</p> <p>SCHWMA § 44–56–30</p> <p>SCHWM R.61–79.261.4(a)(15)</p> <p>SCHWMA § 44–56–30</p> <p>SCHWMA § 44–56–130</p> <p>SCHWM R.61–79.268.2(i)</p> <p>SCHWM R.61–79.268.3(d)</p> <p>SCHWM R.61–79.268.34(a)</p> <p>SCHWM R.61–79.268.34(b)</p> <p>SCHWM R.61–79.268.34(c)</p> <p>SCHWM R.61–79.268.34(d)</p> <p>SCHWM R.61–79.268.34(d)(1)</p> <p>SCHWM R.61–79.268.34(d)(2)</p> <p>SCHWM R.61–79.268.34(d)(3)</p> <p>SCHWM R.61–79.268.34(d)(4)</p> <p>SCHWM R.61–79.268.34(d)(e)</p> <p>SCHWM R.61–79.268.40(e)</p> <p>SCHWM R.61–79.268.40(h)</p> <p>SCHWM R.61–79.268.40/Table “Treatment Standards for Hazardous Waste”</p>
<p>Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, Checklist 167 B, RCRA Cluster VIII, HSWA Provision.</p>	<p>63 FR 28556–28753, May 26, 1998.</p>	<p>SCHWM R.61–79.268.40/Table UTS</p> <p>SCHWMA § 44–56–30</p> <p>SCHWMA § 44–56–130</p> <p>SCHWM R.61–79.268.2(k)</p> <p>SCHWM R.61–79.268.7(a)(1)</p> <p>SCHWM R.61–79.268.7(a)(2)</p> <p>SCHWM R.61–79.268.7(a)(2)(i)</p> <p>SCHWM R.61–79.268.7(a)(2)(ii)</p> <p>SCHWM R.61–79.268.7(a)(3) intro</p> <p>SCHWM R.61–79.268.7(a)(3)(ii)</p> <p>SCHWM R.61–79.268.7(a)(4)</p> <p>SCHWM R.61–79.268.7(a)(4)/Table</p> <p>SCHWM R.61–79.268.7(a)(5)</p> <p>SCHWM R.61–79.268.7(a)(6)</p> <p>SCHWM R.61–79.268.7(b)(1)</p> <p>SCHWM R.61–79.268.7(b)(2)</p> <p>SCHWM R.61–79.268.7(b)(3)</p> <p>SCHWM R.61–79.268.7(b)(4) intro</p> <p>SCHWM R.61–79.268.7(e) intro</p> <p>SCHWM R.61–79.268.7(e)(1)</p> <p>SCHWM R.61–79.268.7(e)(2)</p> <p>SCHWM R.61–79.268.44(h)(3) intro</p> <p>SCHWM R.61–79.268.44(h)(3)(i)</p> <p>SCHWM R.61–79.268.44(h)(3)(i)(A)</p> <p>SCHWM R.61–79.268.44(h)(3)(i)(B)</p>

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Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, Checklist 167 cont., RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWM R.61–79.268.44(h)(3)(ii) SCHWM R.61–79.268.44(h)(4) SCHWM R.61–79.268.44(h)(5) SCHWM R.61–79.268.49(a) SCHWM R.61–79.268.49(b) SCHWM R.61–79.268.49(c) intro SCHWM R.61–79.268.49(c)(1) intro SCHWM R.61–79.268.49(c)(1)(A) SCHWM R.61–79.268.49(c)(1)(B) SCHWM R.61–79.268.49(c)(1)(C) SCHWM R.61–79.268.49(c)(2) SCHWM R.61–79.268.49(c)(3) intro SCHWM R.61–79.268.49(c)(3)(A) SCHWM R.61–79.268.49(c)(3)(B) SCHWM R.61–79.268.49(d) SCHWM R.61–79.268.49(e) intro SCHWM R.61–79.268.49(e)(1) SCHWM R.61–79.268.49(e)(2) intro SCHWM R.61–79.268.49(e)(2)(A) SCHWM R.61–79.268.49(e)(2)(B)
Land Disposal Restrictions Phase IV—Corrections, Checklist 167 C, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.4(a)(2)(ii) SCHWM R.61–79.268.4(a)(2)(iii) SCHWM R.61–79.268.4(a)(7) SCHWM R.61–79.268.4(b)(3)/Table SCHWM R.61–79.268.4(b)(4)(iv) SCHWM R.61–79.268.4(b)(4)(v) SCHWM R.61–79.268.4(b)(5) SCHWM R.61–79.268.4(b)(6) SCHWM R.61–79.268.40(e) SCHWM R.61–79.268.40/Table “Treatment Standard for Hazardous Wastes” SCHWM R.61–79.268.42(a) SCHWM R.61–79.268.45(a) intro SCHWM R.61–79.268.45(d)(3) SCHWM R.61–79.268.45(d)(4) SCHWM R.61–79.268.48(a)/Table UTS SCHWM R.61–79.268.45(d)(3) SCHWM R.61–79.268 Appendix VII, Table 1 SCHWM R.61–79.268 Appendix VII, Table 2 SCHWM R.61–79.268 Appendix VIII
Mineral Processing Secondary Materials Exclusion, Checklist 167 C, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.2(c)(3) SCHWM R.61–79.261.2(c)(4)/Table SCHWM R.61–79.261.2(e)(1)(iii) SCHWM R.61–79.261.4(a)(16) intro SCHWM R.61–79.261.4(a)(16)(i) SCHWM R.61–79.261.4(a)(16)(ii) SCHWM R.61–79.261.4(a)(16)(iii) SCHWM R.61–79.261.4(a)(16)(iv) SCHWM R.61–79.261.4(a)(16)(iv)(A) SCHWM R.61–79.261.4(a)(16)(iv)(B) SCHWM R.61–79.261.4(a)(16)(iv)(C) SCHWM R.61–79.261.4(a)(16)(v) SCHWM R.61–79.261.4(a)(16)(vi)
Bevill Exclusion Revisions and Clarifications, Checklist 167E, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.3(a)(2)(i) SCHWM R.61–79.261.3(a)(2)(iii) SCHWM R.61–79.261.4(b)(7) intro SCHWM R.61–79.261.4(b)(7)(i) SCHWM R.61–79.261.4(b)(7)(ii) SCHWM R.61–79.261.4(b)(7)(ii)(A)–(T) SCHWM R.61–79.261.4(b)(7)(iii) SCHWM R.61–79.261.4(b)(7)(iii)(A) SCHWM R.61–79.261.4(b)(7)(iii)(B)

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Exclusion of Recycled Wood Preserving Wastewaters, Checklist 167F, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.4(a)(9)(iii) SCHWM R.61–79.261.4(a)(9)(iii)(A) SCHWM R.61–79.261.4(a)(9)(iii)(B) SCHWM R.61–79.261.4(a)(9)(iii)(C) SCHWM R.61–79.261.4(a)(9)(iii)(D) SCHWM R.61–79.261.4(a)(9)(iii)(E)
Hazardous Waste Combustors; Revised Standards, Checklist 168, RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–33829, June 19, 1998.	SCHWMA § 44–56–30 SCHWM R.61–79.261.4(a)(16) SCHWM R.61–79.261.38(a) intro SCHWM R.61–79.261.38(b) intro SCHWM R.61–79.261.38/Table 1 SCHWM R.61–79.261.38(c) intro SCHWM R.61–79.261.38(c)(1) SCHWM R.61–79.261.38(c)(1)(i) intro SCHWM R.61–79.261.38(c)(1)(i)(A) SCHWM R.61–79.261.38(c)(1)(i)(B)
Hazardous Waste Combustors; Revised Standards, Checklist 168 cont., RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–33829, June 19, 1998.	SCHWM R.61–79.261.38(c)(1)(i)(C) SCHWM R.61–79.261.38(c)(1)(ii) intro SCHWM R.61–79.261.38(c)(2) intro SCHWM R.61–79.261.38(c)(2)(i) SCHWM R.61–79.261.38(c)(2)(ii) intro SCHWM R.61–79.261.38(c)(2)(ii)(A) SCHWM R.61–79.261.38(c)(2)(ii)(B) SCHWM R.61–79.261.38(c)(2)(iii) SCHWM R.61–79.261.38(c)(3) intro SCHWM R.61–79.261.38(c)(4) intro SCHWM R.61–79.261.38(c)(4)(i) intro SCHWM R.61–79.261.38(c)(4)(ii) SCHWM R.61–79.261.38(c)(5) intro SCHWM R.61–79.261.38(c)(5)(i) intro SCHWM R.61–79.261.38(c)(5)(ii) SCHWM R.61–79.261.38(c)(6) intro SCHWM R.61–79.261.38(c)(7) intro SCHWM R.61–79.261.38(c)(7)(i) intro SCHWM R.61–79.261.38(c)(7)(ii) intro SCHWM R.61–79.261.38(c)(7)(iii) SCHWM R.61–79.261.38(c)(8) intro SCHWM R.61–79.261.38(c)(8)(i) intro SCHWM R.61–79.261.38(c)(8)(ii) SCHWM R.61–79.261.38(c)(8)(iii) intro SCHWM R.61–79.261.38(c)(8)(iii)(A) SCHWM R.61–79.261.38(c)(8)(iii)(B) SCHWM R.61–79.261.38(c)(8)(iv) SCHWM R.61–79.261.38(c)(8)(v) SCHWM R.61–79.261.38(c)(8)(vi) SCHWM R.61–79.261.38(c)(8)(vii) SCHWM R.61–79.261.38(c)(8)(viii) intro SCHWM R.61–79.261.38(c)(8)(viii)(A) SCHWM R.61–79.261.38(c)(8)(viii)(B) SCHWM R.61–79.261.38(c)(8)(ix) SCHWM R.61–79.261.38(c)(9) SCHWM R.61–79.261.38(c)(10) intro SCHWM R.61–79.261.38(c)(10)(i) intro SCHWM R.61–79.261.38(c)(10)(ii) SCHWM R.61–79.261.38(c)(10)(iii) SCHWM R.61–79.261.38(c)(10)(iv) SCHWM R.61–79.261.38(c)(10)(v) SCHWM R.61–79.261.38(c)(10)(vi) SCHWM R.61–79.261.38(c)(10)(vii) SCHWM R.61–79.261.38(c)(10)(viii) intro SCHWM R.61–79.261.38(c)(10)(viii)(A) SCHWM R.61–79.261.38(c)(10)(ix) intro SCHWM R.61–79.261.38(c)(11) SCHWM R.61–79.261.38(c)(12) intro
Hazardous Waste Combustors; Revised Standards, Checklist 168 continued. RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–22829, June 19, 1998.	SCHWM R.61–79.261.38(c)(13) SCHWM R.61–79.270.42(j) intro SCHWM R.61–79.270.42(j)(1) SCHWM R.61–79.270.42(j)(2) SCHWM R.61–79.270.42 Appendix I SCHWM R.61–79.270.72(b)(8)

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Petroleum Refining Wastes, Checklist 169, RCRA Cluster IX, HSWA/non-HSWA Provision.	63 FR 42110–42189, August 6, 1998 as amended at 63 FR 54356–54357, October 9, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.3(a)(2)(iv)(C) SCHWM R.61–79.261.3(c)(2)(ii)(B) SCHWM R.61–79.261.3(c)(2)(ii)(E) SCHWM R.61–79.261.4(a)(12)(i) SCHWM R.61–79.261.4(a)(12)(ii) SCHWM R.61–79.261.4(a)(18) SCHWM R.61–79.261.4(a)(18)(i) SCHWM R.61–79.261.4(a)(18)(ii) SCHWM R.61–79.261.4(a)(19) SCHWM R.61–79.261.6(a)(3)(v)(C) SCHWM R.61–79.261.6(a)(3)(vi) SCHWM R.61–79.261.31(a) SCHWM R.61–79.261.42 SCHWM R.61–79.261 Appendix VII SCHWM R.61–79.266.100(b)(3) SCHWM R.61–79.268.35(a) SCHWM R.61–79.268.35(b) intro SCHWM R.61–79.268.35(b)(1) SCHWM R.61–79.268.35(b)(2) SCHWM R.61–79.268.35(b)(3) SCHWM R.61–79.268.35(b)(4) SCHWM R.61–79.268.35(b)(5) SCHWM R.61–79.268.25(c) SCHWM R.61–79.268.40/Table
Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment, Checklist 170, RCRA Cluster IV, HSWA.	63 FR 46332–46334, August 31, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40(i)
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production. Checklist 171, RCRA Cluster IX, HSWA.	63 FR 47410–47418, September 4, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40(i) SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.48(a)/Table
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, Checklist 172, RCRA Cluster IV, HSWA Provision.	63 FR 48124–48127, September 9, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.34(b)–(f)
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K0888); Final Rule, Checklist 173, RCRA Cluster IX, HSWA Provision.	63 FR 51254–51267, September 24, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40/Table
Post-Closure Permit Requirement and Closure Process, Checklist 174, RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 56710–56735, October 22, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–40 SCHWMA § 44–56–50 SCHWMA § 44–56–60 SCHWMA § 44–56–130 SCHWM R.61–79.264.90(e) SCHWM R.61–79.264.90(f) intro SCHWM R.61–79.264.90(f) SCHWM R.61–79.264.90(f)(1) SCHWM R.61–79.264.90(f)(2) SCHWM R.61–79.264.110(c) SCHWM R.61–79.264.110(c)(1) SCHWM R.61–79.264.110(c)(2) SCHWM R.61–79.264.112(b)(8) SCHWM R.61–79.264.112(c)(2)(iv) SCHWM R.61–79.264.118(b)(4) SCHWM R.61–79.264.118(d)(2)(iv) SCHWM R.61–79.264.140(d) SCHWM R.61–79.264.140(d)(1) SCHWM R.61–79.264.140(d)(2)
Post-Closure Permit Requirement and Closure Process, Checklist 174 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 56710–56735, October 22, 1998.	SCHWM R.61–79.264.90(f) SCHWM R.61–79.264.90(f)(1) SCHWM R.61–79.264.90(f)(2) SCHWM R.61–79.264.110(c) SCHWM R.61–79.264.112(b)(8) SCHWM R.61–79.264.112(c)(1)(iv) SCHWM R.61–79.264.118(c)(4) SCHWM R.61–79.264.118(c)(5) SCHWM R.61–79.264.118(d)(1)(iii) SCHWM R.61–79.265.140(d)(2) SCHWM R.61–79.270.14(a) SCHWM R.61–79.264.28(a)

Federal requirements	Federal Register	Analogous state authority ¹
HWIR-Media, Checklist 175, RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–60 SCHWM 61–79.260.10 “CAMU” SCHWM R.61–79.260.10 “facility” SCHWM R.61–79.260.10 “miscellaneous unit” SCHWM R.61–79.260.10 “remediation waste” SCHWM R.61–79.260.10 “remediation waste management site” SCHWM R.61–79.260.10 “staging pile” SCHWM R.61–79.261.4(g) intro SCHWM R.61–79.261.4(g)(1) SCHWM R.61–79.261.4(g)(2) intro SCHWM R.61–79.261.4(g)(2)(i) SCHWM R.61–79.261.4(g)(2)(ii) SCHWM R.61–79.261.4(g)(2)(iii) SCHWM R.61–79.264.1(j) intro SCHWM R.61–79.264.1(j)(1) SCHWM R.61–79.264.1(j)(2) SCHWM R.61–79.264.1(j)(3) intro SCHWM R.61–79.264.1(j)(3)(i) SCHWM R.61–79.264.1(j)(3)(ii) SCHWM R.61–79.264.1(j)(4) SCHWM R.61–79.264.1(j)(5) SCHWM R.61–79.264.1(j)(6) SCHWM R.61–79.264.1(j)(7) SCHWM R.61–79.264.1(j)(8) SCHWM R.61–79.264.1(j)(9) SCHWM R.61–79.264.1(j)(10) SCHWM R.61–79.264.1(j)(11) SCHWM R.61–79.264.1(j)(12) SCHWM R.61–79.264.1(j)(13) SCHWM R.61–79.264.73(b)(17) SCHWM R.61–79.264.101(d) SCHWM R.61–79.264.552(a) intro SCHWM R.61–79.264.552(a)(1) SCHWM R.61–79.264.552(a)(2) SCHWM R.61–79.264.553(a) SCHWM R.61–79.264.554 intro SCHWM R.61–79.264.554(a) SCHWM R.61–79.264.554(b) SCHWM R.61–79.264.554(c) intro SCHWM R.61–79.264.554(c)(1) SCHWM R.61–79.264.554(c)(2) SCHWM R.61–79.264.554(c)(3) SCHWM R.61–79.264.55(d) intro SCHWM R.61–79.264.554(d)(1) intro
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.264.554(d)(1)(i) SCHWM R.61–79.264.554(d)(1)(ii) SCHWM R.61–79.264.554(d)(1)(iii) SCHWM R.61–79.264.554(d)(2) SCHWM R.61–79.264.554(d)(2)(ii) SCHWM R.61–79.264.554(d)(2)(iii) SCHWM R.61–79.264.554(d)(2)(iv) SCHWM R.61–79.264.554(d)(2)(v) SCHWM R.61–79.264.554(d)(2)(vi) SCHWM R.61–79.264.554(e) intro SCHWM R.61–79.264.554(e)(1) SCHWM R.61–79.264.554(e)(1)(i) SCHWM R.61–79.264.554(e)(1)(ii) SCHWM R.61–79.264.554(e)(2) SCHWM R.61–79.264.554(f) intro SCHWM R.61–79.264.554(f)(1) SCHWM R.61–79.264.554(f)(2) SCHWM R.61–79.264.554(f)(3) SCHWM R.61–79.264.554(g) SCHWM R.61–79.264.554(h) SCHWM R.61–79.264.554(i) intro SCHWM R.61–79.264.554(i)(1) SCHWM R.61–79.264.554(i)(1)(i) SCHWM R.61–79.264.554(i)(1)(ii) SCHWM R.61–79.264.554(i)(2) SCHWM R.61–79.264.554(j) intro SCHWM R.61–79.264.554(j)(1) SCHWM R.61–79.264.554(j)(1)(i)

Federal requirements	Federal Register	Analogous state authority ¹
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.264.554(j)(1)(ii) SCHWM R.61–79.264.554(j)(1)(iii) SCHWM R.61–79.264.554(j)(2) SCHWM R.61–79.264.554(j)(3) SCHWM R.61–79.264.554(k) intro SCHWM R.61–79.264.554(k)(1) SCHWM R.61–79.264.554(k)(2) SCHWM R.61–79.264.554(l) intro SCHWM R.61–79.264.554(l)(1) SCHWM R.61–79.264.554(l)(1)(i) SCHWM R.61–79.264.554(l)(1)(ii) SCHWM R.61–79.264.554(l)(2) SCHWM R.61–79.264.554(l)(3) SCHWM R.61–79.264.554(l)(4) SCHWM R.61–79.264.554(m) SCHWM R.61–79.265.1(b) SCHWM R.61–79.268.2(c) SCHWM R.61–79.268.50(g) SCHWM R.61–79.270.2 SCHWM R.61–79.270.11(d)(1) SCHWM R.61–79.270.11(d)(2) SCHWM R.61–79.270.42 Appendix 1 SCHWM R.61–79.270.80(b) SCHWM R.61–79.270.80(c) SCHWM R.61–79.270.80(d) intro SCHWM R.61–79.270.80(d)(1) SCHWM R.61–79.270.80(d)(2) SCHWM R.61–79.270.80(e) SCHWM R.61–79.270.80(f) SCHWM R.61–79.270.85(a) intro SCHWM R.61–79.270.85(a)(1) SCHWM R.61–79.270.85(a)(2) SCHWM R.61–79.270.85(b) SCHWM R.61–79.270.85(c) SCHWM R.61–79.270.90 SCHWM R.61–79.270.95 SCHWM R.61–79.270.100 SCHWM R.61–79.270.105 SCHWM R.61–79.270.110intro SCHWM R.61–79.270.110(a) SCHWM R.61–79.270.110(b) SCHWM R.61–79.270.110(c) SCHWM R.61–79.270.110(d) SCHWM R.61–79.270.110(e) intro SCHWM R.61–79.270.110(e)(1) SCHWM R.61–79.270.110(e)(2) SCHWM R.61–79.270.110(e)(3) SCHWM R.61–79.270.110(f) intro SCHWM R.61–79.270.110(f)(1) SCHWM R.61–79.270.110(f)(2) SCHWM R.61–79.270.110(f)(3) SCHWM R.61–79.270.110(g) SCHWM R.61–79.270.110(h) SCHWM R.61–79.270.110(i) SCHWM R.61–79.270.115 SCHWM R.61–79.270.120 SCHWM R.61–79.270.125 SCHWM R.61–79.270.130(a) SCHWM R.61–79.270.130(b) SCHWM R.61–79.270.135intro SCHWM R.61–79.270.135(a) SCHWM R.61–79.270.135(b) intro SCHWM R.61–79.270.135(b)(1) SCHWM R.61–79.270.135(b)(2) SCHWM R.61–79.270.135(b)(3) SCHWM R.61–79.270.135(b)(4) SCHWM R.61–79.270.135(c) SCHWM R.61–79.270.140 intro SCHWM R.61–79.270.140(a) SCHWM R.61–79.270.140(b) intro SCHWM R.61–79.270.140(b)(4)

Federal requirements	Federal Register	Analogous state authority ¹
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.270.140(b)(1) SCHWM R.61–79.270.140(b)(2) SCHWM R.61–79.270.140(b)(3) SCHWM R.61–79.270.140(c) SCHWM R.61–79.270.145(a) intro SCHWM R.61–79.270.145(a)(1) SCHWM R.61–79.270.145(a)(2) SCHWM R.61–79.270.145(a)(3) SCHWM R.61–79.270.145(a)(4) SCHWM R.61–79.270.145(b) SCHWM R.61–79.270.145(c) intro SCHWM R.61–79.270.145(c)(1) SCHWM R.61–79.270.145(c)(2) SCHWM R.61–79.270.145(c)(3) SCHWM R.61–79.270.145(c)(4) SCHWM R.61–79.270.145(c)(5) SCHWM R.61–79.270.145(c)(6) SCHWM R.61–79.270.145(c)(7) SCHWM R.61–79.270.145(c)(8) SCHWM R.61–79.270.145(c)(9) SCHWM R.61–79.270.145(d) intro SCHWM R.61–79.270.145(d)(1) SCHWM R.61–79.270.145(d)(2) SCHWM R.61–79.270.145(d)(3) SCHWM R.61–79.270.150(a) SCHWM R.61–79.270.150(b) SCHWM R.61–79.270.150(c) SCHWM R.61–79.270.150(d) SCHWM R.61–79.270.150(e) SCHWM R.61–79.270.150(f) SCHWM R.61–79.270.150(f)(1) SCHWM R.61–79.270.150(f)(2) SCHWM R.61–79.270.150(f)(3) SCHWM R.61–79.270.150(f)(4) SCHWM R.61–79.270.150(f)(5) SCHWM R.61–79.270.150(f)(6) SCHWM R.61–79.270.150(f)(7) SCHWM R.61–79.270.150(g) SCHWM R.61–79.270.155(a) SCHWM R.61–79.270.155(a)(1) SCHWM R.61–79.270.155(a)(2) SCHWM R.61–79.270.155(a)(3) SCHWM R.61–79.270.155(b) SCHWM R.61–79.270.160 SCHWM R.61–79.270.160(a) SCHWM R.61–79.270.160(b) SCHWM R.61–79.270.160(c)
HWIR-Media, Checklist 75 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.270.165 SCHWM R.61–79.270.170 SCHWM R.61–79.270.175(a) intro SCHWM R.61–79.270.175(a)(1) SCHWM R.61–79.270.175(a)(2) SCHWM R.61–79.270.175(a)(3) SCHWM R.61–79.270.175(a)(4) SCHWM R.61–79.270.175(a)(5) SCHWM R.61–79.270.175(a)(6) SCHWM R.61–79.270.175(a)(7) SCHWM R.61–79.270.175(a)(8) SCHWM R.61–79.270.175(b) SCHWM R.61–79.270.175(c) SCHWM R.61–79.270.180(a) SCHWM R.61–79.270.180(b) SCHWM R.61–79.270.185 SCHWM R.61–79.270.190(a) SCHWM R.61–79.270.195 SCHWM R.61–79.270.200 SCHWM R.61–79.270.205 SCHWM R.61–79.270.210 intro SCHWM R.61–79.270.210(a) SCHWM R.61–79.270.210(b) SCHWM R.61–79.270.215(a) SCHWM R.61–79.270.215(b) SCHWM R.61–79.270.215(c)

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Organic Air Emissions Standards: Clarification and Technical Amendments, Checklist 177, RCRA Cluster IX, HSWA Provision.	64 FR 3382, January 21, 1999.	SCHWM R.61-79.270.215(d) SCHWM R.61-79.270.220(a) SCHWM R.61-79.270.220(b) SCHWM R.61-79.270.225 SCHWM R.61-79.270.230(a) SCHWM R.61-79.270.230(b) SCHWM R.61-79.270.230(c) SCHWM R.61-79.270.230(d) intro SCHWM R.61-79.270.230(d)(1) SCHWM R.61-79.270.230(d)(2) SCHWM R.61-79.270.230(d)(3) SCHWM R.61-79.270.230(d)(4) SCHWM R.61-79.270.230(e) SCHWM R.61-79.270.230(e)(1) SCHWM R.61-79.270.230(e)(2) SCHWMA § 44-56-30 SCHWMA § 44-56-130 SCHWMA R.61-79.262.34(a)(1)(i) SCHWM R.61-79.262.34(a)(1)(ii) SCHWM R.61-79.264.1031 SCHWM R.61-79.264.1080(b)(5) SCHWM R.61-79.264.1083(a)(1)(i)
Organic Air Emissions Standards: Clarification and Technical Amendments, Checklist 177 cont., RCRA Cluster, IX, HSWA Provision.	64 FR 3382, January 21, 1999.	SCHWM R.61-79.264.1083(a)(1)(ii) SCHWM R.61-79.264.1083(b)(1)(i) SCHWM R.61-79.264.1083(b)(1)(ii) SCHWM R.61-79.264.1084(h)(3) intro SCHWM R.61-79.264.1084(h)(3)(i) SCHWM R.61-79.264.1084(h)(3)(ii) SCHWM R.61-79.264.1086(e)(6) SCHWM R.61-79.265.1080(b)(5) SCHWM R.61-79.265.1084(a)(1)(i) SCHWM R.61-79.265.1084(a)(1)(ii) SCHWM R.61-79.265.1084(a)(3)(ii)(B) SCHWM R.61-79.265.1084(a)(3)(ii)(D) SCHWM R.61-79.265.1084(a)(3)(iii) SCHWM R.61-79.265.1084(b)(1)(i) SCHWM R.61-79.265.1084(b)(1)(ii) SCHWM R.61-79.265.1084(b)(3)(ii)(B) SCHWM R.61-79.265.1084(b)(3)(ii)(D) SCHWM R.61-79.265.1084(b)(3)(iii) SCHWM R.61-79.265.1085(h)(3) SCHWM R.61-79.265.1085(h)(3)(i) SCHWM R.61-79.265.1085(h)(3)(ii) SCHWM R.61-79.265.1087(e)(6)
Petroleum Refining Process Wastes Leachate Exemption, Checklist 178, RCRA Cluster IX, HSWA Provision.	64 FR 6806, February 11, 1999.	SCHWMA § 44-56-30 SCHWM R.61-79.261.4(b)(15) intro SCHWM R.61-79.261.4(b)(15)(i) SCHWM R.61-79.261.4(b)(15)(ii) SCHWM R.61-79.261.4(b)(15)(iii) SCHWM R.61-79.261.4(b)(15)(iv) SCHWM R.61-79.261.4(b)(15)(v)
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, Checklist 179, RCRA Cluster IX, HSWA/non-HSWA Provision.	64 FR 25408-25417, May 11, 1999.	SCHWMA § 44-45-30 SCHWMA § 44-56-130 SCHWM R.61-79.261.2(c)(3) SCHWM R.61-79.261.2(c)(4)/Table SCHWM R.61-79.261.2(e)(1)(iii) SCHWM R.61-79.261.4(a)(16) SCHWM R.61-79.261.4(a)(17) intro SCHWM R.61-79.261.4(b)(7)(iii) SCHWM R.61-79.261.4(b)(7)(iii)(A) SCHWM R.61-79.262.34(d)(4) SCHWM R.61-79.268.2(h) SCHWM R.61-79.268.2(k) SCHWM R.61-79.268.7(a)(4)/Table SCHWM R.61-79.268.7(b)(3)(ii)/Table SCHWM R.61-79.268.7(b)(4)(iv) SCHWM R.61-79.268.9(d)(2) intro SCHWM R.61-79.268.9(d)(2)(i) SCHWM R.61-79.268.40(i) first

Federal requirements	Federal Register	Analogous state authority ¹
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, Checklist 179 cont., RCRA Cluster IX, HSWA/non-HSWA Provision.	64 FR 25408–25417, May 11, 1999.	SCHWM R.61–79.268.40(i) second SCHWM R.61–79.268.40(j) SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.48(a)/Table SCHWM R.61–79.268.49(c)(3) intro SCHWM R.61–79.268.49(c)(3)(A) SCHWM R.61–79.268.49(c)(3)(B)
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, Checklist 180, RCRA Cluster IX, non-HSWA Provision.	64 FR 26315–26327, May 14, 1999.	SCHWMA § 44–56–30 SCHWMA § 44–56–40 SCHWMA § 44–56–50 SCHWMA § 44–56–130 SCHWM R.61–79.260.11(a)(11) SCHWM R.61–79.260.11(a)(16)
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, Checklist 181, RCRA Cluster X, non-HSWA Provision.	64 FR 36466–36490, July 6, 1999.	SCHWMA § 44–56–30 SCHWM R.61–79.260.10 SCHWM R.61–79.261.9(b) SCHWM R.61–79.261.9(c) SCHWM R.61–79.261.9(d) SCHWM R.61–79.264.1(g)(11)(ii) SCHWM R.61–79.264.1(g)(11)(iii) SCHWM R.61–79.264.1(g)(11)(iv) SCHWM R.61–79.265.1(c)(14)(ii) SCHWM R.61–79.265.1(c)(14)(iii) SCHWM R.61–79.265.1(c)(14)(iv) SCHWM R.61–79.268.1(f)(2) SCHWM R.61–79.268.1(f)(3) SCHWM R.61–79.268.1(f)(4) SCHWM R.61–79.270.1(c)(2)(viii)(B) SCHWM R.61–79.270.1(c)(2)(viii)(C) SCHWM R.61–79.270.1(c)(2)(viii)(D) SCHWM R.61–79.273.1(a)(2) SCHWM R.61–79.273.1(a)(3) SCHWM R.61–79.273.1(a)(4) SCHWM R.61–79.273.2(a)(1) SCHWM R.61–79.273.2(b)(2) SCHWM R.61–79.273.2(b)(3) SCHWM R.61–79.273.3(a) SCHWM R.61–79.273.4(a) SCHWM R.61–79.273.5(a) SCHWM R.61–79.273.5(b) SCHWM R.61–79.273.5(c) SCHWM R.61–79.273.6 SCHWM R.61–79.273.7 SCHWM R.61–79.273.8(a)
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, Checklist 181, RCRA Cluster IX, non-HSWA Provision.	64 FR 36466–36490, July 6, 1999.	SCHWM R.61–79.273.8(a)(1) SCHWM R.61–79.273.8(a)(2) SCHWM R.61–79.273.8(b) SCHWM R.61–79.273.9 SCHWM R.61–79.273.10 SCHWM R.61–79.273.13(d) SCHWM R.61–79.273.13(d)(1) SCHWM R.61–79.273.13(d)(2) SCHWM R.61–79.273.14(e) SCHWM R.61–79.273.30 SCHWM R.61–79.273.32(b)(4) SCHWM R.61–79.273.32(b)(5) SCHWM R.61–79.273.32(d) SCHWM R.61–79.273.33(d)(1) SCHWM R.61–79.273.33(d)(2) SCHWM R.61–79.273.34(e) SCHWM R.61–79.273.50 SCHWM R.61–79.273.60(a) SCHWM R.61–79.273.81(a)
Land Disposal Restrictions Phase IV—Technical Corrections, Checklist 183, RCRA Cluster X, non-HSWA Provision.	64 FR 56469–56472, October 20, 1999.	SCHWMA § 44–56–30 SCHWM R.61–79.261.32 SCHWM R.61–79.262.34(a)(4) SCHWM R.61–79.268.32(a)(3)(iii) SCHWM R.61–79.268.40(j) SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.49(c)(1)(A) SCHWM R.61–79.268.49(c)(1)(B)

Federal requirements	Federal Register	Analogous state authority ¹
Accumulation Time for Waste Water Treatment Sludges, Checklist 184, RCRA Cluster X, non-HSWA Provision.	64 FR 12378–12398, March 8, 2000.	SCHWMA § 44–56–30 SCHWMA § 44–56–50 SCHWM R.61–79.262.34(a)(4) SCHWM R.61–79.262.34(g) intro SCHWM R.61–79.262.34(g)(1) SCHWM R.61–79.262.34(g)(2) SCHWM R.61–79.262.34(g)(3) SCHWM R.61–79.262.34(g)(4) intro SCHWM R.61–79.262.34(g)(4)(i) intro SCHWM R.61–79.262.34(g)(4)(i)(A) SCHWM R.61–79.262.34(g)(4)(i)(B) SCHWM R.61–79.262.34(g)(4)(i)(C) intro SCHWM R.61–79.262.34(g)(4)(i)(C)(1) & (2) SCHWM R.61–79.262.34(g)(4)(ii) SCHWM R.61–79.262.34(g)(4)(iv) SCHWM R.61–79.262.34(g)(4)(v) SCHWM R.61–79.262.34(h) SCHWM R.61–79.262.34(i)
Organobromide Production Wastes Vacatur, Checklist 185, RCRA Cluster X, HSWA Provision.	64 FR 14472–14475, March 17, 2000.	SCHWMA § 44–56–30 SCHWM R.61–79.261.32/Table SCHWM R.61–79.261.33(f)/Table SCHWM R.61–79.261 Appendix VII SCHWM R.61–79.261 Appendix VIII SCHWM R.61–79.268.33 SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.48(a)/Table
Petroleum Refining Process Wastes Clarification, Checklist 187, RCRA Cluster X, HSWA Provision.	64 FR 36365–36367, June 8, 2000.	SCHWMA § 44–56–30 SCHWM R.61–79.261.31(a)/table SCHWM R.61–79.268 Appendix VII

¹ The South Carolina provisions are from the South Carolina Hazardous Waste Management Regulations, August 20, 2000 (RCRA 8 and 9) and October 26, 2001 (RCRA 10), unless otherwise stated.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

South Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Carolina is not yet authorized.

J. How Does Today’s Action Affect Indian Country (18 U.S.C. 115) in South Carolina?

South Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Catawba Indian Nation. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying South Carolina’s Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State’s statutes and regulations that comprise the State’s authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart PP for this authorization of South Carolina’s program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any

unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 3, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03-22312 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99-363; FCC 00-99]

Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a minor correction to Part 76 of the Commission's rules pertaining to retransmission consent issues which were published in the **Federal Register** at 65 FR 15559, March 23, 2000 regarding carriage of television broadcast signals by multichannel video programming distributors ("MVPDs").

DATES: Effective September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth Lewis, Media Bureau, (202) 418-2622.

SUPPLEMENTARY INFORMATION: The First Report and Order, FCC 00-99, adopted March 14, 2000; released March 16, 2000, approved a final rule governing the negotiation of agreements for the retransmission of television broadcast stations by MVPDs, established standards for implementing a good faith negotiation requirement of broadcasters to MVPDs, and provided clarification regarding the prohibition against exclusive retransmission consent contracts. In this document we make a non-substantive rule change to correct an error in the publication of § 76.65 of the Commission's rules.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be clarified.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Accordingly, 47 CFR Part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE.

■ 1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. In § 76.65, revise paragraph (c) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

* * * * *

(c) Any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or § 76.64(l) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

* * * * *

[FR Doc. 03-22201 Filed 8-29-03; 8:45 am]

BILLING CODE 6712-01-P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case No. 2002-G506; GSAR Change 6]

RIN 3090-AH25

General Services Administration Acquisition Regulation; Identification of Products That Have Environmental Attributes

AGENCIES: General Services Administration (GSA), Office of Acquisition Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising the clause concerning identification of energy-efficient office equipment and supplies containing recovered materials or other environmental attributes for consistency with the Federal Acquisition Regulation (FAR) and issuance of Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, and Executive Order 13123, Greening the Government Through Efficient Energy Management.

DATES: *Effective Date:* September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4225, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Auletta, GSA Acquisition Policy Division, at (202) 208-7279. Please cite GSAR case 2002-G506.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 538.273(a)(3) is revised to reflect the new clause title for GSAR clause 552.238-72, "Identification of Products that have Environmental Attributes." The clause has been revised to update environmental definitions and to reflect language consistent with the FAR and with Executive Orders 13101 and 13123. GSA published a proposed rule, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes, in the *Federal Register* at 65 FR 44508, July 18, 2000. One respondent submitted comments in response to the proposed rule. GSA considered the comments in developing the final rule by revising the clause 552.238-72 to make editorial changes for consistency and clarification with respect to the definition of "energy-efficient product." The clause was also revised to clarify the requirement to identify products designated by the Environmental Protection Agency (EPA) in their Comprehensive Procurement Guidelines (CPGs) that meet EPA purchasing recommendations for recovered and post-consumer material content. These specifically designated products should be identified separate from the umbrella category of products containing recovered materials. The rule includes information on attaching icons to product offerings in GSA *Advantage!* to indicate specific environmental attributes.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities

within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* These environmental attributes are salient characteristics of the products offered and, therefore, are well known to vendors who market to Government customers required or encouraged to purchase products with specific environmental attributes. Therefore, the identification of such attributes in the offer and other marketing materials such as brochures, catalogs, websites, and GSA *Advantage!* does not constitute a significant economic impact.

D. Paperwork Reduction Act

The revised clause at 552.238-72, Identification of Products that have Environmental Attributes, contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). However, the revisions to the clause made by this rule do not affect the information collection requirement approved previously by the Office of Management and Budget (OMB) and assigned OMB Control Number 3090-0262.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Dated: August 26, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

■ Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 2. Amend section 538.273 by revising paragraph (a)(3) to read as follows:

538.273 Contract clauses.

(a) * * *

(3) 552.238-72, Identification of Products that have Environmental Attributes.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.212-72 by revising the date of the clause; and in paragraph (b) by revising entry 552.238-72 to read as follows:

552.212-72 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Sept 2003)

* * * * *

(b) * * *

552.238-72 Identification of Products that have Environmental Attributes
 ■ 4. Revise section 552.238-72 to read as follows:

552.238-72 Identification of products that have environmental attributes.

As prescribed in 538.273(a)(3), insert the following clause:

Identification of Products That Have Environmental Attributes (Sept. 2003)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (*see* FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.*, publications and electronic formats).

(b) *Definitions.* As used in this clause—
Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c)(1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA *Advantage!* submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that is translated into respective icons in GSA *Advantage!*.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency-sponsored program (e.g., the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research,

study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

[FR Doc. 03-22239 Filed 8-29-03; 8:45 am]

BILLING CODE 6820-BR-P

DEPARTMENT OF ENERGY

48 CFR Parts 923 and 970

RIN 1991-AB59

Acquisition Regulation: Motor Vehicle Fleet Fuel Efficiency

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its acquisition regulation to implement Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*. Specifically, the Department is addressing the requirements relating to Procurement of Environmentally Preferable Motor Vehicle Products and Government-Owned Contractor Operated Vehicles, as they relate to the Department's acquisition program, including its management contracts with motor vehicle fleet responsibilities.

EFFECTIVE DATE: October 2, 2003.

FOR FURTHER INFORMATION CONTACT:

Richard Langston at (202) 586-8247 or richard.langston@pr.doe.gov.

SUPPLEMENTARY INFORMATION

I. Background

II. Section-by-Section Analysis

III. Procedural Requirements

A. Review Under Executive Order 12866

B. Review Under Executive Order 12988

C. Review Under the Regulatory Flexibility Act

D. Review Under the Paperwork Reduction Act

E. Review Under the National Environmental Policy Act

F. Review Under Executive Order 13132

G. Review Under the Unfunded Mandates Reform Act of 1995

H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Congressional Review

J. Review Under Executive Order 13211

K. Review Under the Treasury and General Government Appropriations Act, 2001

L. Approval by the Office of the Secretary of Energy

I. Background

The purpose of this rulemaking is to implement the goals and requirements of Executive Order 13149, dated April

21, 2000 (65 FR 24593), entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*.

The purpose of the Executive Order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program including its management contracts with motor vehicle fleet responsibilities are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the Federal Government motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. In addition, section 403 of the Executive Order encourages the acquisition by Federal agencies of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Section 403.a emphasizes the current restriction on the use of other than re-refined motor vehicle lubricating oils (found in section 507 of Executive Order 13101, and implemented by 48 CFR (FAR) 23.404) by restating that restriction as a prohibition on the acquisition of virgin petroleum motor vehicle lubricating oils. That restriction and the requirements of Sections 403.b and 403.c are addressed by the Department's Affirmative Procurement Program. An Affirmative Procurement Program is required of Federal agencies by 48 CFR (FAR) 23.404, Agency affirmative procurement programs, and is implemented in DOE by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. The Department's Affirmative Procurement Program extends to its management contractors pursuant to 48 CFR (DEAR) 970.2304, Use of recovered/recycled materials. Section 505 of the Executive Order requires agencies to ensure that the goals and requirements of the Executive Order are incorporated into management contracts which involve management of Federal fleet motor vehicles. Finally, Section 506 of the Executive Order exempts military tactical, law enforcement and emergency vehicles from the requirements of the Executive Order.

The clause specified by this rule is a mandatory clause for use in management and operating contracts involving motor vehicle fleet operations.

Contracting officers are strongly encouraged to add the clause at the next fee negotiation following the effective date of this rule. The clause should be included in new management and operating contracts.

II. Section-by-Section Analysis

The Department of Energy amends the regulation as follows:

1. A new subpart 923.7, Contracting For Environmentally Preferable and Energy-Efficient Products and Services, is added. It contains § 923.703, Policy.

2. A new § 970.2307, Contracting for environmentally preferable and energy-efficient products and services, is added. It includes Subsections 970.2307-1, Motor vehicle fleet operations, and 970.2307-2, Contract clause.

3. A new clause, DOE Motor Vehicle Fleet Fuel Efficiency, is added as § 970.5223-5.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and, (6) addresses other important issues affecting clarity and general

draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this procurement rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

There are no new information collection or record keeping requirements associated with this action.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the rule establishes internal procedures and a DEAR contract clause and is considered to be strictly procedural (categorical exclusion A6); therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications.

Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

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

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Congressional Review

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have

a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, *note*, provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in these guidelines.

L. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 923 and 970

Government procurement.

Issued in Washington, DC, on August 26, 2003.

Stephen D. Mournighan,

Acting Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as follows.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for part 923 continues to read:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 2. Subpart 923.7 is added to read as follows:

Subpart 923.7—Contracting for Environmentally Preferable and Energy-efficient Products and Services

§ 923.703 Policy.

Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*, provides that the Federal Government exercise leadership in the reduction of petroleum consumption through improvements in its motor fleet fuel efficiency and increases in its use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. Procurement personnel involved in the acquisition of motor vehicles, including lease, and motor vehicle products should familiarize themselves with these requirements and assist their fleet management personnel in acquiring vehicles and products which comply with the requirements of the Executive Order and the Department's compliance strategy. In addition, section 403 of the Executive Order provides for the acquisition of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, recycled engine coolants, and bio-based motor vehicle products. Use of these products is addressed by the Department's Affirmative Procurement Program required by 48 CFR (FAR) 23.404, Agency affirmative procurement programs, as implemented by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. Environmentally preferable motor vehicle products are among the items designated in the Comprehensive Procurement Guidelines, which lists products with recovered content that Federal agencies and their contractors are to buy. That list is published by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, and regulations published at 40 CFR part 247.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

■ 4. Sections 970.2307, 970.2307–1, and 970.2307–2 are added to read as follows:

§ 970.2307 Contracting for Environmentally Preferable and Energy-efficient Products and Services.

§ 970.2307–1 Motor vehicle fleet operations.

Executive Order 13149 provides that the Federal motor vehicle fleet will serve as an example and provide a leadership role in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. Part 2 of the Order establishes goals for Federal Government fleet efficiency and requires the development of strategies to accomplish the goals. Section 403 of the Order provides that environmentally preferable motor vehicle products, including biobased motor vehicle products, will be used in the maintenance of Federal fleet motor vehicles when these products are reasonably available and meet vehicle manufacturers' recommended performance standards. Environmentally preferable motor vehicle products are among the products contained in the Comprehensive Procurement Guidelines list of products with recycled content to be procured pursuant to the clause at 48 CFR 970.5223–2. Section 505 of Executive Order 13149 requires that the goals and requirements of the Order be included in all management contracts which include Federal motor vehicle fleet operations. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

§ 970.2307–2 Contract clause.

Include the clause at 970.5223–5, DOE Motor Vehicle Fleet Fuel Efficiency, in all management contracts providing for Contractor management of the motor vehicle fleet.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

■ 5. Section 970.5223–5 is added to read as follows:

§ 970.5223–5 DOE motor vehicle fleet fuel efficiency.

As prescribed in 48 CFR 970.2307–2, insert the following clause in contracts providing for Contractor management of the motor vehicle fleet.

DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY**(Oct 2003)**

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of *Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency*, and implementing guidance contained in the document entitled *U.S. Department of Energy Compliance Strategy for Executive Order 13149* (April 2001) and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 030421095–3202–02; I.D. 111902C]

RIN 0648–AQ61

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI). Issuance of regulations, and Letters of Authorization under these regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of

Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's missile launch activities as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from October 2, 2003 through October 2, 2008.

ADDRESSES: A copy of the Navy application which contains a list of the references used in this document may be obtained by writing to Kaja A. Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, and documents are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Acting Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:**Background**

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a

negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

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.

Under section 18(A), the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [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 [Level B harassment].

Summary of Request

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue annual LOAs to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (see 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 20, 2003.

According to the NAWS' application, these missile launch operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized)

vehicles from SNI's Alpha Launch Complex (ALC) and smaller supersonic and subsonic missiles and targets from either ALC or the Building 807 Launch Site (Building 807). Launches at this annual level would be approximately double the recent activities at SNI. The NAWCWD conducted a total of 19 launches (including one dual launch) between August 15, 2001 and July 18, 2002 (14 Vandal launches and 5 other missiles and targets) under an IHA.

The purpose of these launches is to support activities associated with operations on the NAWCWD's Point Mugu Sea Range. The Sea Range is used by the U.S. and Allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets to verify that they are suitable for use as operational targets. While SNI is under the land management responsibility of NAWS, planned missile and other target launches are conducted by the NAWCWD. A detailed description of the operations is contained in the NAWS application (NAWS, 2002) which is available upon request (*see ADDRESSES*).

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, NAWS has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa²-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa. Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz is de-emphasized and approximates the human ear's response to sounds

below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, the Navy believes that A-weighting is better than unweighted pressure levels because the pinniped's highest in-air hearing sensitivity is at higher frequencies than that of humans. In this document, whenever possible sound levels have been provided with A-weighting.

Description of the Specified Activity

In general, launch vehicles are the Vandal and a variety of other supersonic and subsonic missiles and targets. Most other vehicles used would be similar in size and weight or slightly smaller and would have characteristics similar to the Vandal. NAWS has also requested that its incidental take authorization include coverage for up to three launches annually by vehicles that are larger than the Vandal (but under 50,000 lbs (23,000 kilograms (kg)) in weight). Potential impacts to pinnipeds by launch vehicles of that size are unanalyzed and must be assessed before NMFS can issue an authorization to take pinnipeds incidentally to that activity. Any proposed modification of these regulations to include these larger launch vehicle activities would be published in the **Federal Register** with opportunity for public comment.

Vandal Target Missiles

The Vandal (designated MQM-8G) target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 m (25.2 ft) in length with a mass at launch of 3,674 kg (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. At launch, the Vandal is accelerated for several seconds by a solid propellant rocket booster to a speed sufficient for the ram-jet engine to start. After several seconds of thrust, the booster is discarded, falls into the water of the Sea Range, and the Vandal continues along its flight path at supersonic speed under ramjet power.

The Vandal and most other targets are launched from the ALC on the west-central part of SNI, a land-based launch site. The ALC is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from ALC may vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft). However, to date, most Vandal launches during NAWS first IHA monitoring program had low angles (8 degrees) crossing the SNI beaches at an altitude of about 1,300 ft (396 m)(Lawson, 2002). Four Vandals however, had high angle (42 degrees) profiles, crossing SNI beaches at an altitude of about 9,600 ft (2,926 ft)(Lawson, 2002).

Vandal launches produce strong noise levels. Sound measurements collected during two Vandal launches in 1997 and 1999 indicated received A-weighted SPLs ranged from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa²-sec) at 945 m (3,100 ft) to 136 dB (re μ 20 Pa) (SEL of 131 dB re 20 micro-Pa²-sec) at 370 m (1,215 ft) (Burgess and Greene, 1998; Greene, 1999). The most intense sounds occurred during the first 0.4 to 4.1 seconds after launch (Greene, 1999; Greene and Malme, 2002). However, what is important for this action is not the noise level near the launch site but the noise level over the pinniped haulouts on the SNI beaches. This issue will be discussed later in this document.

Supersonic and Subsonic Targets and Other Missiles

The Navy also plans to launch other subsonic and supersonic vehicles to simulate various types of threat missiles and aircraft. These are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM-34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM-74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Additional types of small vehicles that may be launched include the Exocet and Tomahawk missiles, and the Rolling Airframe Missile (RAM).

All of these smaller targets are launched from either the ALC or from Building 807. Building 807 is approximately 10 m (30 ft) above sea

level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller vehicles, launch trajectories from Building 807 may range from 6 to 45 degrees and cross over the nearest beach at altitudes from 15 to 190 m (50 to 625 ft).

Sound measurements were collected from the launch of a BQM-34 at the Point Mugu Naval Air Station (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa²-sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa²-sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999). The measured Terrior Orion SPL ranged from 89 to 138 dB and the SEL from 93 to 138 dB, although the SPL/SEL of 138 dB appears to be anomalously high (Lawson, 2002). The SPL/SELs for the AGS launches ranged from 95 to 150 dB (93 to 137 dB SEL) and the RAM launch SPL was 126 dB (131 dB SEL). These measurements were all flat-weighted, meaning that A-weighted SPL/SELs values were several decibels lower.

General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal and other vehicle launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On May 9, 2003 (68 FR 24905), NMFS published a notice of proposed rulemaking on the Navy's application for an incidental take authorization and requested comments, information and suggestions concerning the request. During the 45-day public comment period, NMFS received comments from several members of the public and the Marine Mammal Commission (Commission). The letters from individuals did not raise significant issues on the proposed rule, and only expressed concern over missile launches based on an article in the

media, so a response is not necessary. The Commission supports NMFS' intent to implement incidental take regulations for the Navy's activities on SNI provided that the mitigation and monitoring activities described in the NAWS petition for regulations are incorporated into the proposal.

Comment 1: The Commission requests clarification in the final rule document regarding the statement that mitigation measures would be followed when "operationally practicable."

Response: The NAWS request noted that mitigation measures would be followed whenever operationally practicable, provided that doing so would not compromise operational safety requirements or mission goals. For example, the Navy will avoid night launches whenever the parameters of the test or training do not require a night launch. However, if a night launch is required by the parameters of the test, the Navy will need to launch at night. Last year, for example, the Navy raised the elevation on one launch from what was originally proposed and the objectives were still met. The problem is that the mitigation requirements cannot be unconditional; some tests may require night launching or launching in quick succession and some launches may require low azimuths, etc.

Comment 2: The Commission asks how the proposed mitigation measures satisfy the requirement of section 101(a)(5)(ii)(I) of the MMPA that the activity will result in the least practicable adverse impact on the subject species or stocks and their habitat.

Response: In order for NMFS to implement effective mitigation, it must determine that such measures would be practical. The practical mitigation measures identified by the NAWCD are provided later in this document (see Mitigation) and in more detail in the Final Environmental Assessment on the Navy Request for a Letter of Authorization (Final EA). These measures have been in place under previous and current IHAs for this activity. No comments were received during the public comment periods for this and previous authorizations that suggested additional practical mitigation measures, and NMFS is unaware of additional measures that could be imposed.

Comment 3: The Commission notes that NMFS is attempting to modify the statutory definition of Level B harassment to be only activities which pose "biologically significant disturbance" (i.e., "a disturbance of a behavior pattern that has the potential to have an effect on the reproduction or

survival of the animal or species"). As the Commission has pointed out in several previous letters, the Commission believes that the proposed NMFS modification is contrary to the existing statutory definition of harassment.

Response: NMFS addressed the Commission's concern most recently in the notice of issuance of an IHA for Vandal launches from SNI (67 FR 56271, September 3, 2002). In addition, the scientific basis for determining the appropriate isopleths (lines of equal pressure) for the onset of marine mammal harassment can be found in the preamble to the proposed rule (68 FR 24905, May 9, 2003) and this document. For this action, NMFS agrees with the applicant that California sea lions and northern elephant seals will sometimes be harassed by launch sounds with SEL's of 100 dBA (re 20 micro-Pa²-sec) or higher and Pacific harbor seals will sometimes be similarly harassed at an SEL of 90 dBA or higher. Pinnipeds inside those isopleths at the time of the missile launch are presumed to be harassed, whether or not an actual disturbance is noted. However, NMFS does not consider reactions such as a pinniped assuming an alert posture by raising its head or exhibiting other minor body movements to be level B harassment, because these kinds of behaviors are not disruptions of a biologically important behavior pattern. In contrast, sounds that cause some or all of the animals to move along the beach or leave a haul-out beach for the water would be harassment because there is a disruption of haulout activities. This is consistent with the MMPA definition of Level B harassment. NMFS is interested in receiving any scientific information indicating that pinnipeds are harassed at lower noise levels.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant

seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity regularly in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in NAWS (2002), Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). General information on harbor seals and other marine mammal species found in Central California waters can be found in Caretta *et al.* (2001, 2002), which are available at the following URL: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html. Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically

important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Sounds generated by the launches of Vandal and similar target missiles and smaller subsonic targets and missiles (BQM-34 or BQM-74 type), as they depart sites on SNI towards operational areas in the Point Mugu Sea Range, have the potential to result in the incidental harassment of seals and sea lions. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. However, the extremely rapid departure of the Vandal and other targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). In addition, because launches are conducted relatively infrequently (i.e., approximately 40 launch events over the course of a year), neither physiological stress nor hearing related injuries are likely for pinnipeds exposed to more than a single launch event.

Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of incidental harassment of seals and sea lions. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on monitoring studies conducted under the IHAs for this activity on SNI in 2001 and 2002, and on other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*,

1993), anticipated impacts can be predicted. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms, or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM-34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches.

Given the variability of pinniped responses to acoustic disturbance, as supported by recent IHA monitoring (Lawson *et al.*, 2002), the Navy (NAWS, 2002) assumes that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa²-sec) or higher for California sea lions and northern elephant seals and 90 dBA for Pacific harbor seals.

A conservative estimate of the SEL at which TTS may be elicited in harbor seals, California sea lions and northern elephant seals has been determined to be 145 dB (re 20 micro-Pa²-sec) and 165 dB (re 20 micro-Pa²-sec), respectively (Lawson *et al.*, 1998). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by vehicles launched from SNI, suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100-dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria for pinnipeds out to a distance of 4,263 m (13,986 ft) from the ALC. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100-dBA contour for Vandal launches. For BQM-34 launches from ALC, the Navy assumes that the 100-dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM-34, the 100-dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM-74 and Exocet missiles, the Navy predicts that the 100-dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100-dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Some animals may flee to the water. Since recorded observations of the responses of pinnipeds to Vandal launches along with post-launch surveys at the SNI haulouts have not shown injury, mortality, or extended biological disturbance, the Navy anticipates and NMFS concurs that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Since the launches are relatively infrequent, and of brief duration, it is unlikely that the pinnipeds near the launch site will become habituated to launch sounds. Pinnipeds that haul out on beaches at the western end of SNI for extended periods, or that return to haul-out sites regularly over the course of the year, may be exposed to sounds of more than a single launch, and may be "harassed" more than once each year. However, given the infrequency and

brevity of these events, it is unlikely that much, if any, habituation to target missile launch activities will occur.

In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. These occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected To Be Taken by Harassment

NAWS provisionally estimates that the following numbers of pinnipeds may be subject to Level B harassment annually: 1,403 northern elephant seals, 457 harbor seals, and 1,637 California sea lions. To determine the number of takings by harassment annually, one would need to multiply those numbers by the number of launches conducted annually. The animals affected may be the same animals or may be different animals, depending upon the level of site fidelity of the species. Based on the results of recent monitoring of the haulouts, the estimated number of potential harassment takes would be significantly less than estimated under the two recent IHAs.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI

Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles

from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within 2 hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will attempt to limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will attempt not to launch vehicles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will attempt to avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will attempt to limit launch activities during the night.

Monitoring

As part of its application, NAWS provided a monitoring plan, similar to that adopted for the 2001/2002 and 2002/2003 IHAs (*see* 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy will conduct the following monitoring during the first year under an LOA and regulations.

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring will be via autonomous video cameras.

During the day of each missile launch, the observer will place three digital video cameras overlooking chosen haul out sites. Each camera will be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy will obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data will be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. To the extent possible, acoustic recording locations will correspond with the sites where video monitoring is taking place. The collection of acoustic data will provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the

acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

An interim technical report must be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information will be available to be included for any launches during the 60-day period immediately preceding submission of the interim report to NMFS. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event will be reported to NMFS immediately.

The proposed 2003–04 launch monitoring activities will constitute the third year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. The impacts of launch activities on pinnipeds ashore were monitored under the 2001–2003 IHAs. Additional monitoring will take place under an LOA in 2003–2004. Following submission in 2004 of the interim report on the monitoring under that LOA, the Navy and NMFS will discuss the scope of future launch monitoring work on SNI. Some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2003–2004), and it may not be necessary to continue all aspects of the monitoring work after the first year. Any modifications to the monitoring program will be documented through publication in the **Federal Register**.

In addition to annual LOA reports, NMFS is requiring NAWS to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of these regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA.

Determinations

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed regulations, NMFS has determined that it will authorize the taking, by Level B harassment, of small

numbers of marine mammals incidental to missile launch operations on SNI. The total taking of marine mammals by Level B harassment from vehicle launch operations on SNI over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in temporary modifications in behavior by three species of pinnipeds. No take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely. NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

National Environmental Policy Act (NEPA)

NMFS has prepared an EA and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (*see ADDRESSES*).

ESA

No species listed under the ESA is expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. It should be noted however that an experimental population of sea otters may be affected by this action. Under Public Law 99–625, this experimental population of sea otters is treated as a proposed species for purposes of section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the U.S. Fish and Wildlife Service under section 7 when the action is likely to jeopardize the continued existence of the species. The information available does not indicate that sea otters are likely to be jeopardized by this action. Therefore, a conference is not required.

CZMA Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing

monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary (CINMS). Also, all Navy Sea Range test and training activities are consistent with CINMS regulations (15 CFR 920.70).

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648-0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see ADDRESSES*).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 25, 2003.

Rebecca Lent.

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Subpart N is added to read as follows:

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

Sec.

- 216.151 Specified activity, geographical region, and incidental take levels.
- 216.152 Effective dates.
- 216.153 Permissible methods of taking; mitigation.
- 216.154 Prohibitions.
- 216.155 Requirements for monitoring and reporting.
- 216.156 Letter of Authorization.
- 216.157 Renewal of the Letter of Authorization.
- 216.158 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified

in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§ 216.152 Effective dates.

Regulations in this subpart are effective from October 2, 2003 through October 2, 2008.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take those marine mammal species specified in § 216.151(b) by Level B harassment, in the course of conducting target missile launch activities within the area described in § 216.151(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity specified in § 216.151 must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch

activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under § 216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980-4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

- (a) The taking of a marine mammal that is other than unintentional.
- (b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.
- (c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified immediately of any changes or deletions to any portions of the proposed monitoring plan submitted in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site observer(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an

observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by observers described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

- (A) Numbers and sexes of each age class in focal subgroups;
- (B) Description and timing of launch activities or other disruptive event(s);
- (C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;
- (D) Description of reactions;
- (E) Minimum distances between interacting and reacting pinnipeds;
- (F) Study location;
- (G) Local time;
- (H) Substratum type;
- (I) Substratum slope;
- (J) Weather condition;
- (K) Horizontal visibility; and
- (L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under

§ 216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

- (i) Timing and nature of launch operations;
- (ii) Summary of pinniped behavioral observations;
- (iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under § 216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.156 for the activity specified in § 216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03-22185 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 082203D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Atlantic bluefin tuna retention limit adjustment.

SUMMARY: This action adjusts the Atlantic bluefin tuna (BFT) General category daily retention limit to allow for maximum utilization of the General category adjusted September time-period subquota. NMFS increases the daily retention limit to two large medium or giant BFT through September 30, 2003. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of the General category quota.

DATES: Effective September 1, 2003 through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2003 BFT Quota Specifications and General category effort controls were proposed on July 10, 2003 (68 FR 41103).

Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the September time-period is appropriate and necessary to maximize use of the full, adjusted September subquota. Based on current and historical General category landings rates in the June through August time-period, it is highly unlikely that the June through August subquota will be filled in the remaining fishing days. At current catch rates and a daily retention limit of one BFT per vessel, it is also unlikely that the adjusted September subquota will be attained in the September time-period. Therefore, NMFS adjusts the General category daily retention limit through September 30 to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization by General category participants of the subquota for the September time-period (specified under 50 CFR 635.27(a)), (which has been adjusted by the quota carryover from the June through August time-period subquota), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9305 for updates

on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Catch rates for the 2003 BFT season have been extremely low and, at the current rate of landings, it is highly unlikely that the available quota will be harvested by September 30, 2003. Delaying this action would further exacerbate this problem. Large amounts of unharvested quota will have negative social and economic impacts to U.S. fishermen that depend upon catching the available quota within the time periods designated in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-22339 Filed 8-27-03; 2:54 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284-2323-02; I.D. 082503B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a closure of a commercial fishery.

SUMMARY: NMFS announces that the summer flounder commercial quota available to Massachusetts has been

harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2003, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, September 2, 2003, through 2400 hours, December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Jason Blackburn, Fishery Management Specialist, (978) 281-9326, e-mail jason.blackburn@noaa.gov

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2003 calendar year was set equal to 13,980,028 lb (6,341,235 kg) (68 FR 60, January 2, 2003). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in an initial commercial quota of 953,502 lb (432,501 kg). The 2003 allocation was adjusted downward due to an overage of the 2002 quota of 42,498 lb (19,277 kg) as of October 31, 2002. The resulting adjusted 2003 commercial quota for Massachusetts is 911,004 lb (413,229 kg). The 2003 allocation was further reduced to 907,274 lb (411,537 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available

information, that Massachusetts has harvested its quota for 2003.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 2, 2003, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2003 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 2, 2003, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-22337 Filed 8-27-03; 2:53 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286-3036-02; I.D. 082603A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2003, through 1200 hrs, A.l.t., September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 630 is 3,517 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B), the Administrator, Alaska Region, NMFS, (Regional Administrator) hereby reduces the C season pollock TAC by 387 mt, the amount of the harvest previously taken in excess of the A and B season pollock allowances in Statistical Area 630 and split equally between the C and D seasons. The revised C season allowance of pollock TAC in Statistical Area 630 is therefore 3,130 mt (3,517 mt minus 387 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the revised C season allowance of the pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,080 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the C season TAC in Statistical Area 630, and

therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03-22338 Filed 8-27-03; 2:53 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066-3192-02; I.D. 022103D]

RIN 0648-AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulatory changes to implement the partial approval of Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). As partially approved, this amendment eliminates all reference to the requirements for 100-percent retention and utilization of rock sole and yellowfin sole in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to amend regulations to maintain consistency with the the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective on October 2, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained

from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or by calling (907) 586-7228.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, NMFS, Alaska Region, 907-586-8743 or jeff.hartman@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Purpose and Need for Amendment 75

The Sustainable Fisheries Act of 1996 (Public Law 104-297) effected numerous amendments to the Magnuson-Stevens Act, including the addition of a new National Standard 9. This standard requires that conservation and management measures, to the extent practicable, (A) minimize bycatch and, to the extent bycatch cannot be avoided, (B) minimize the mortality of such bycatch. In response to National Standard 9 the Council adopted a regulatory program in 1997 to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendment 49 to the FMP. The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. Under Amendment 49, the IR/IU program expanded on January 1, 2003, to include all rock sole and yellowfin sole in the BSAI (flatfish IR/IU).

As the effective date of flatfish IR/IU approached, industry representatives testified to the Council that some sectors of the BSAI trawl fleet would not be able to accommodate full retention and utilization of rocksole and yellowfin sole due to insufficient markets and/or processing constraints and costs. Thus, flatfish IR/IU would force vessel owners to choose to no longer participate in the BSAI fisheries. In response, the Council initiated an analysis to assess these concerns and whether alternative management programs could be implemented by January 1, 2003, to reduce discard rates while still providing for historical participation in the BSAI fisheries.

In October 2002, the Council concluded that while several alternative proposals under consideration showed

merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted a preferred alternative for Amendment 75 to the FMP to delay implementing the 100-percent retention requirements for rock sole and yellowfin sole until June 1, 2004. The intent of this action was to provide the Council and industry with additional time to develop alternative regulatory proposals to reduce discard amounts.

The Council submitted Amendment 75 for review by the Secretary of Commerce and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003 (68 FR 9630). Comments on this proposed Amendment were invited through April 29, 2003. The proposed rule was published on March 28, 2003 (68 FR 15144), and was followed by a notice of additional supplementary information on April 18, 2003 (68 FR 19182), to summarize additional information on the Initial Regulatory Flexibility Analysis (IRFA). Comments on the proposed rule and supplementary information were invited through May 12, 2003. NMFS received 4 letters by the end of the comment periods on the proposed amendment and its implementing rule, all requesting an indefinite delay or removal of the flatfish IR/IU requirement for the BSAI groundfish fisheries. These comments are summarized and responded to in the Response to Comments section, below.

A summary of the analysis on Amendment 75, including the Council's preferred alternative, was provided in the proposed rule (68 FR 15144, March 28, 2003) and the Notice of Availability of Supplemental Information (68 FR 19182 April 18, 2003). On May 29, 2003, the Secretary of Commerce partially approved the Council's preferred alternative for Amendment 75. In doing so, the Secretary continued the IR/IU program for pollock and Pacific cod, but delayed indefinitely the flatfish IR/IU program by removing reference to this program from the FMP. Full approval of the Council's preferred alternative would have been inconsistent with the Administrative Procedure Act, which requires that the administrative record for an action include an explanation of the rational connection between the analysis and decision. The administrative record for Amendment 75 shows that if flatfish IR/IU regulations were to be implemented after the 18-month delay date of June 2004, they would result in significant adverse economic impacts on some participants in the groundfish fisheries.

However, the record for this action does not show how overall benefits outweigh the costs. Approval of Amendment 75 also would have resulted in significant adverse economic impacts that are inconsistent with the problem statement for Amendment 75, National Standard 7 and National Standard 9. Thus, partial approval of Amendment 75 was necessary to provide sufficient opportunity for the Council to either develop a record for Amendment 75 or develop other options for refining the IR/IU program, without the immediate imposition of full retention of IR/IU flatfish species in the BSAI.

Elements of the Final Rule

This final rule would remove regulatory requirements for retention and utilization of rock sole and yellowfin sole in the BSAI. No other regulatory actions are contained in this final rule.

Changes from the Proposed Rule to the Final Rule

This final rule differs from the proposed rule in that it does not include a delay in the implementation of the IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI. Instead, regulatory provisions for flatfish IR/IU are removed. This change is necessary to conform regulations to the partial approval of Amendment 75.

Response to Comments

The proposed rule to implement Amendment 75 was published on March 28, 2003 (68 FR 15144), with comments invited through May 12, 2003. NMFS received 4 comment letters on the proposed rule, all of which address the adverse economic implications of the BSAI flatfish IR/IU program.

Comment: NMFS should rescind the flatfish IR/IU program in the BSAI, or put it on indefinite hold, because a delay until June 2004 will not provide sufficient time to implement alternative strategies to reduce discards of these species. Furthermore, significant progress already has been made voluntarily to reduce discards since 1997. The non-American Fisheries Act trawl catcher processor fleet alone has reduced yellowfin sole and rock sole discards by over 40 percent during the past 5 years.

Response: As explained above, the Secretary has determined that the proposed delay of the flatfish IR/IU program was inconsistent with the Administrative Procedure Act and National Standards 7 and 9. Thus, the existing provisions for flatfish IR/IU in

the BSAI were removed from the FMP and its implementing regulations.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) that described the economic impact of the proposed rule, if adopted, would have on small entities. A summary of the IRFA was included in the Notice of Availability of Supplementary Information (68 FR 19182, April 18, 2003). The IRFA identified small and large entities that could be affected by the proposed rule and associated alternatives in the analysis. In Alternative 1 (the status quo) the imposition of a 100 percent IR/IU flatfish retention standard for rock sole and yellowfin sole in the BSAI would decrease revenues of small vessels while having little impact on larger vessels. This reduction in revenues could cause some of the smaller sized head and gut trawl catcher/processor vessels to exit fisheries in which these species are caught. Alternative 2, which would have allowed some discards of flatfish species, was anticipated to have some economic and operational impacts on small entities, but also was deemed to be impossible to enforce. Alternative 3 would have delayed imposition of IR/IU flatfish rules for up to 3 years, with the expectation that some form of fishing cooperative system would ease the economic burden of IR/IU flatfish rules in the BSAI. Alternative 4 would have exempted selected fisheries from IR/IU flatfish regulations based upon historical flatfish discard rates, but this would not mitigate the immediate burden on small head and gut catcher/processor vessels. The Council's preferred alternative was a modification of Alternative 3 that proposed a delay of IR/IU flatfish regulations for 18 months to temporarily ease the economic burden of flatfish IR/IU but ultimately would impose the full economic burden, unless other mitigating regulatory actions were to be implemented before the date that IR/IU flatfish rules would be implemented. No comments were submitted in response to the IRFA.

NMFS prepared a final regulatory flexibility analysis (FRFA) for the partial approval of Amendment 75 that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble

to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No public comments were received that related to the IRFA on this rule. Although 4 comments were received on the general economic impacts of the IR/IU program, these comments were not specific to the analyses contained in the IRFA. For a summary of the comments received, refer to the section above titled "Comments and Responses."

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and in the notice of additional supplementary information and is not repeated here. The final rule has been modified from the proposed rule and the FRFA includes an analysis of the approved alternative that would permanently mitigate the impacts of flatfish IR/IU upon small entities by removing all reference to flatfish IR/IU in the BSAI FMP and implementing regulations. The number of small entities to which the rule will apply has not been affected by these changes.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

A description of projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

Environmental impacts of the alternatives, including the Council's preferred Alternative and the Approved alternative, are expected to be insignificant based on the information and assessments are contained in Chapter 2 of the EA/RIR/FRFA. The Council's preferred alternative, and alternatives 1 through 4, would not have fully mitigated the adverse economic effects of IR/IU rules for flatfish on small entities because neither the Council nor the Secretary could guarantee that mitigating actions would have relieved the costs of full retention of IR/IU flatfish species by June 2004. The partial approval action of May 2003, will allow the benefits of the economic activity associated with these fisheries to accrue to vessel operators, crew and fishing communities, until the Council chooses to implement new IR/IU policies. Furthermore, the partial approval action will provide Council, industry, and the managing agencies time to develop measures that may meet bycatch reduction needs, while allowing the industry to continue to provide fishery benefits to the nation. A copy of this analysis is available from NMFS (see ADDRESSES).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is

required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This paragraph serves as the small entity compliance guide. Small entities are not required to take any additional actions to comply with this action. This action does not require any additional compliance from small entities. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: <http://www.fakr.noaa.gov/>

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 26, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulation Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

§ 679.27 [Amended]

■ 2. In § 679.27, paragraphs (b)(3) and (b)(4) are removed and paragraph (b)(5) is redesignated as (b)(3).

[FR Doc. 03-22342 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 68, No. 169

Tuesday, September 2, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-31-AD]

RIN 2120-AA64

Airworthiness Directives; Anjou Aeronautique Safety Belts and Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Anjou Aeronautique (ANJOU) (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems that are installed in aircraft. This proposed AD would require you to inspect safety belts and restraint systems for defects and service life limits, and, if necessary, repair safety belts and restraint systems that have not reached service life limits; and replace safety belts and restraint systems that have reached service life limits. This proposed AD is the result of field reports of inadvertent unbuckling of the ANJOU seat belts and two safety recommendations to take AD action. The actions specified by this proposed AD are intended to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 10, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-31-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday

through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003-CE-31-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4146; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

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

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

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003-CE-31-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA issued Special Airworthiness Information Bulletin (SAIB) Number CE-02-44, dated September 4, 2002, for SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes, concerning ANJOU seat belts. At that time, FAA did not make a determination of an unsafe condition and take AD action.

Later, FAA issued SAIB Number CE-03-06, dated November 7, 2002, for SOCATA Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes, concerning ANJOU seat belts. Again, FAA then did not make a determination of an unsafe condition and take AD action.

Continued field reports were received of inadvertent unbuckling of the ANJOU seat belts. Two safety recommendations were made to take FAA AD action (NPRM) to propose to require replacement of certain safety belts and restraint systems.

In light of the field reports and safety recommendations, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 7, 2003 (68 FR 11015). The NPRM proposed to require you to replace certain safety belts and restraint systems.

Comments received on the NPRM suggest that FAA withdraw the proposal and that FAA consider issuing a new NPRM to propose that you:

- Inspect certain ANJOU safety belts and restraint systems that are installed in airplanes for defects and service life limits;

- Repair defective safety belts and restraint systems that have not reached service life limits; and
- Replace safety belts and restraint systems that have reached service life limits.

We agree, and therefore, are withdrawing that NPRM.

What Are the Consequences if the Condition Is Not corrected?

These defective safety belts and restraint systems could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

Is There Service Information That Applies to This Subject?

ANJOU has issued this service information:

- Service Bulletin No. 343-25-02, Issue 1, dated October 23, 2001; and
- Service Bulletin No. 343-1-25-01, Issue 1, dated October 23, 2001.

What Are the Provisions of This Service Information?

The service bulletins include procedures for:

- Inspecting the buckles of the safety belts and restraint systems for defects;

- Replacing defective buckle springs; and
- Replacing safety belts and restraint systems when the service life limit is reached.

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

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate ANJOU safety belts and restraint systems, types 343 and 343-1;
- The ANJOU safety belts and restraint systems, types 343 and 343-1, should be immediately inspected for correct installation and eventually replaced; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

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

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

Cost Impact

How Many Aircraft Would This Proposed AD Impact?

We estimate that at least 617 aircraft in the U.S. registry could have the affected ANJOU safety belts and restraint systems installed. Some aircraft have more than one unit installed.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed inspection and repair:

Labor cost	Parts cost	Total cost per 6 safety belts and restraint systems
1 workhour per 6 safety belts and restraint systems × \$65 per hour = \$65	No cost	\$65.

The number of installed safety belts and restraint systems may vary by individual aircraft configuration. Therefore, we have no way of determining the replacement cost for this proposed AD.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 50 hours time-in-service or 4 calendar months after the effective date of this AD, whichever occurs first.

Why Is The Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

Defective safety belts and restraint systems are a direct result of use of the safety belts and restraint systems. However, defective safety belts and restraint systems are not necessarily a result of repetitive airplane operation. For example, defective safety belts and restraint systems could occur on an affected airplane within a short period of airplane operation while you could

operate another affected airplane for a considerable amount of time without experiencing defective safety belts and restraint systems. Therefore, to assure that any defective safety belt and restraint system is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are utilizing a compliance time based upon both hours TIS and calendar time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Anjou Aeronautique (Formerly TRW REPA S.A., Formerly L'Aiglon): Docket No. 2003-CE-31-AD

(a) This AD affects Anjou Aeronautique safety belts and restraint systems specified in paragraph (a)(1) that are installed on, but not limited to, the aircraft specified in paragraph (a)(2) that are certificated in any category:

(1) *Anjou Aeronautique safety belts and restraint systems:* Part Numbers/Types 343, 343-1, 343AM, 343B, 343BM, 343C, 343CM, 343D, and 343M.

(2) *Affected aircraft:* The following is a list of aircraft that may incorporate the affected Anjou Aeronautique safety belts and restraint systems:

(i) Eurocopter France Models AS332C, AS332L, AS332L1, AS332L2, and AS350B2 helicopters; and

(ii) SOCATA—Groupe Aerospatiale TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes.

(b) *Who must comply with this AD?*

Anyone who wishes to operate an aircraft equipped with one of the affected safety belts and restraint systems must comply with this AD.

(c) *What problem does this AD address?*

The actions specified by this AD are intended to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

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

Actions	Compliance	Procedures
(1) Inspect the installed Anjou Aeronautique/TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343-1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M) for: (i) defective buckle latch; and (ii) exceeded service life.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD or 4 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished. Repetitively inspect thereafter at every 12 calendar months until the affected safety belt and restraint system is replaced as specified by paragraph (d)(3) of this AD.	<i>For types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:</i> In accordance with Anjou Aeronautique Service Bulletin No. 343-25-02, Issue 1, dated October 23, 2001. <i>For type 343-1:</i> In accordance with Anjou Aeronautique Service Bulletin No. 343-1-23-01, Issue 1, dated October 23, 2001.
(2) If any defective buckle latch or safety belt and restraint systems with exceeded service-life is found during any inspection required by paragraph (d)(1) of this AD: (i) For any defective buckle latch, replace defective parts with new parts. (ii) For any safety belt and restraint system that has exceeded its service life, replace with a non-Anjou Aeronautique/TRW Repa S.A./L'Aiglon FAA-approved safety belt and restraint system. The service life limit for the Anjou Aeronautique/TRW Repa S.A./L'Aiglon is 60 calendar months after the date of manufacture.	Prior to further flight after any inspection required by paragraph (d)(1) of this AD.	<i>For Types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:</i> In accordance with Anjou Aeronautique Service Bulletin No. 343-1-25-02, Issue 1, dated October 23, 2001. <i>For type 343-1:</i> In accordance with Anjou Aeronautique Service Bulletin No. 343-1-23-01, Issue 1, dated October 23, 2001.
(3) Replace any installed Anjou Aeronautique/TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343-1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M). Replacement of all safety belts and restraint systems eliminates the need for the repetitive inspections of paragraph (d)(1) of this AD.	Prior to exceeding the service life limit of 60 calendar months after the date of manufacture or 4 calendar months after the effective date of this AD, whichever occurs later.	Not Applicable.
(4) Do not install any Anjou Aeronautique/TRW Repa S.A./L'Aiglon types 343, 343-1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.	As of the effective date of this AD.	Not Applicable.

Note: All inertia-reel type safety belts and restraint systems or fixed rear safety belts and restraint systems from another manufacturer are not affected by this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329-4146; facsimile: (816) 329-4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 25, 2003.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22257 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2003–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C Airplanes**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all SOCATA—Groupe AEROSPATIALE (SOCATA) Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. The proposed AD would have required you to replace certain safety belts and restraint systems. Comments received on the NPRM suggest that FAA withdraw the proposal and that FAA consider issuing a new NPRM to propose that you do similar actions on any aircraft that incorporates the affected seatbelts, not just the SOCATA airplanes. We agree and are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:**Discussion***What Action Has FAA Taken to Date?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 7, 2003 (68 FR 11015). The NPRM

proposed to require you to replace certain safety belts and restraint systems.

Was the Public Invited To Comment?

The FAA invited interested persons to participate in the making of this amendment. We received 23 comments from 3 commenters on the proposed AD. The majority of the comments reflect the public's desire to have FAA withdraw the proposal and recommend that FAA consider issuing an NPRM to:

- Inspect certain safety belts and restraint systems that are installed in airplanes for defects and service life limits;
- Repair defective safety belts and restraint systems that have not reached service life limits; and
- Replace safety belts and restraint systems that have reached service life limits.

The commenters request that these actions apply to any aircraft that incorporates the affected seatbelts, not just the SOCATA airplanes.

The FAA's Analysis and Final Determination*Is There Additional Information Related to This Subject?*

The following information applies to the subject of this AD Action:

- The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French ADs Number 2002–104(AB), Revision 2; and Number 2002–105(AB) Revision 2;
- The above French ADs are equipment-related ADs and apply to all aircraft equipped with certain Anjou Aeronautique (ANJOU) (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems; and
- Aircraft that are equipped with the Anjou safety belts and restraint systems include small airplanes, transport airplanes, and helicopters.

What Is FAA's Final Determination on This Issue?

Based on this information, we have determined that we should withdraw the NPRM and initiate a separate AD action (NPRM) for certain ANJOU safety belts and restraint systems that are installed in aircraft.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor does it commit us to any future action.

Regulatory Impact*Does This AD Involve a Significant Rule or Regulatory Action?*

Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 2003–CE–05–AD, which was published in the **Federal Register** on March 7, 2003 (68 FR 11015).

Issued in Kansas City, Missouri, on August 25, 2003.

Michael Gallagher,*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–22258 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2003–15846; Airspace Docket No. 03–ASO–12]

Proposed Amendment of Class E Airspace; Jacksonville, NC**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Jacksonville, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Onslow Memorial Hospital, Jacksonville, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before October 2, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003/15846 Airspace Docket No. 03–ASO–12, at the beginning of your comments. You may also submit comments on the Internet at

<http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT:

Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-15846/Airspace Docket No. 03-ASO-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Jacksonville, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Jacksonville, NC [REVISED]

Jacksonville, New River MCAS, NC
(Lat. 34°42'39" N, long. 77°26'21" W)
Albert J. Ellis Airport
(Lat. 34°49'45" N, long. 77°36'44" W)
Onslow Memorial Hospital
Point In Space Coordinates
(Lat. 34°45'36" N, long. 77°22'28" W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, within a 6.4-mile radius of Albert J. Ellis Airport and that airspace within a 6-mile radius of the point in space (lat. 34°45'36" N, long. 77°22'28" W) serving Onslow Memorial Hospital.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 03-21325 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

RIN 2120-AA66

[Docket No. FAA 2003-15562; Airspace Docket No. ASD 03-AGL-10]**Proposed Revision of Federal Airways V-233; Capitol, IL****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Federal Airway 233 (V-233) northeast of the Capitol, IL, area Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC). The FAA is proposing this action due to the relocation of the Capitol VORTAC and to enhance the management of aircraft operations over the Capitol, IL, area.

DATES: Comments must be received on or before October 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590-0001. You must identify docket numbers FAA-2003-15562/Airspace Docket No. 03-AGL-10, at the beginning of your comments.

You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA 2003-15562/Airspace Docket No. 03-AGL-10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's webpage at <http://www.faa.gov> or the Superintendent of Document's webpage at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA is relocating the Capitol VORTAC 3.96 nautical miles to the southwest of its current location. As a

part of that effort, the FAA plans to realign V-233 northeast of the Capitol VORTAC.

The Proposal

The FAA is proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise V-233 in the Capitol, IL, area. Specifically, this action proposes to realign V-233 northeast of the Capitol VORTAC to reflect the radial change due to the relocation of the Capitol VORTAC and to enhance the management of aircraft operations over the Capitol, IL, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V-233 [Revised]

From Capitol, IL; INT Capitol 061°T(062°M) and Roberts, IL, 233° radials; Roberts; Knox, IN; Goshen, IN; Litchfield, MI; Lansing, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

* * * * *

Issued in Washington, DC on August 22, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03-22208 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Chapter I****Meeting of the No Child Left Behind Negotiated Rulemaking Committee**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking committee.

DATES: The Committee's next meeting will be held September 15-19, 2003. The meeting will begin at 8:30 am (CDT) on Monday, September 15 and end at noon (CDT) on Friday, September 19.

ADDRESSES: The meeting will be held at the Gaylord Opryland Resort and Convention Center, 2800 Opryland Drive, Nashville, TN 37214, telephone (615) 883-2211.

FOR FURTHER INFORMATION CONTACT: Barbara James or Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103-1430; telephone (505) 248-7241/6569; fax (505) 248-7242; email

bjames@bia.edu or *ssmith@bia.edu*. We will post additional information as it becomes available on the Office of Indian Education Programs Web site under "Negotiated Rulemaking" at <http://www.oiep.bia.edu>.

SUPPLEMENTARY INFORMATION: For more information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at <http://www.oiep.bia.edu> under "Negotiated Rulemaking".

The items for negotiation include: Student Rights/Geographic Boundaries; Tribally Controlled Schools Act/Grants; Adequate Yearly Progress; and Funding and Distribution of Funds. The Committee will meet in work groups and in full session each day for work group reports, public comments, and logistics. All meetings are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meetings or the work group meetings or to make public comments. Members of the public may also make written comments to the Committee by sending them to the NCLB Negotiated Rulemaking Committee, Project Management Office, P.O. Box 1430, Albuquerque, New Mexico 87103. We will provide copies of the comments to the Committee.

The agenda for the September 15-19, 2003, meeting is as follows:

Agenda for No Child Left Behind Negotiated Rulemaking Committee Meeting September 15-19, 2003, Nashville, Tennessee

Meetings end at 5:30 pm each day (except September 19)
September 15

Opening Remarks—8:30 am
Public Comments (30 minutes)
Introductions, Logistics, and Housekeeping

Approval of summary from Seattle meeting

Review agenda
Plenary Committee considers consensus on proposed rule language

Work Group meetings

September 16
Public comments—8:30—9 am
Work Group meetings

September 17
Public comments—8:30—9 am
Work Group meetings
Plenary Committee considers consensus on proposed rule language

September 18
Public comments—8:30—9 am
Work Group meetings

Plenary Committee considers consensus on proposed rule language
September 19
Public Comments—8:30—9 am
Plenary Committee meeting
Considers consensus on proposed rule language
Set agenda for next meeting
Evaluations
Closing remarks
Closing—noon

Dated: August 26, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03-22228 Filed 8-29-03; 8:45 am]

BILLING CODE 4310-6W-P

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 57****RIN 1219-AB29****Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners**

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

ACTION: Proposed rule; correction.

SUMMARY: This document corrects printing and other errors in the preamble to a proposed rule published in the **Federal Register** of August 14, 2003 (68 FR 48668) regarding diesel particulate matter exposure in underground metal and nonmetal mines.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939, *Nichols.Marvin@dol.gov*, (202) 693-9440 (telephone), or (202) 693-9441 (facsimile).

Correction

In proposed rule FR Doc. 03-20190, beginning on page 48668 in the issue of August 14, 2003, make the following corrections:

1. On page 48669, in the first column, in the fourth paragraph, the date "October 7, 2003" is corrected to read "October 14, 2003."

2. On page 48676, in Chart V-3 at the top of the page, the term "400 µg/m³" in the label of the x-axis is corrected to read "400 µg/m³".

3. On page 48678, at the top of the third column, the word "avoided" is corrected to read "voided".

4. On page 48678, in Chart V-5 beginning in the middle of the page, the

term “ $\mu\text{g}/\text{m}^3$ ” in the label of the y-axis is corrected to read “ $\mu\text{g}/\text{m}^3$ ”.

5. On page 48683, in the title of Table VI-2 at the bottom of the page, the term “ $\mu\text{G}/\text{M}^3$ ” is corrected to read “ $\mu\text{g}/\text{m}^3$ ”.

6. On page 48684, in the second column, in the first paragraph, in the last sentence, the term “200DPM” is corrected to read “200DPM”.

7. On page 48684, in the third column, in the last sentence of the first paragraph, the term “Tables VI-7 and VI-8” is corrected to read “Tables VI-1 and VI-2”.

8. On page 48688, in Table VI-4 at the top of the page, the term “ $\mu\text{G}/\text{M}^3$ ” appearing twice the title is corrected to read “ $\mu\text{g}/\text{m}^3$ ”.

9. On page 48689, in the continuation of Table VI-5, under the column heading “Key results,” the term “exposure 100” in the first sentence is corrected to read “exposure equal to or greater than 100”.

10. On page 48690, in Table VI-7 at the top of the page, in the column labeled “Key Results,” the third entry is corrected to read “After adjustment for other risk factors and potential confounders, using a variety of statistical methods, fine particulate ($\text{PM}_{2.5}$) exposures were significantly associated with cardiopulmonary mortality (and also with lung cancer).”

11. On page 48690, in Table VII-8 beginning in the middle of the page, in the table’s title on this page and in the continuation on page 48691, the term “Table VII.-8” is corrected to read “Table VI-8” and the word “Article” is corrected to read “Articles”; in the column labeled “Description,” in the last sentence of the second entry, the term “ NO^2 ” is corrected to read “ NO_2 ”; and in the column labeled “Key results,” in the third entry, the word “cofounders” is corrected to read “confounders” and the term “ $10 \text{ g}/\text{m}^3$ ” is corrected to read “ $10 \mu\text{g}/\text{m}^3$ ”.

12. On page 48691, in Table VI-8 beginning in the middle of the page, in the table’s title, the term “Table VI-8” is corrected to read “Table VI-9”; in the column labeled “Key results,” the term “polynuclear aromatic engine compounds” in the second entry is corrected to read “polynuclear aromatic compounds”.

13. On page 48692, in the continuation of Table VI-8, the term “Table VI-8” in the title is corrected to read “Table VI-9”; in the column labeled “Description,” in the third entry, the term “ $\text{PM}_{2.5}$ (fine PM) and $\text{PM}_{2.5-10}$ ” is corrected to read “ $\text{PM}_{2.5}$ (fine PM) and $\text{PM}_{2.5-10}$ ”, and in the sixth entry, the term “ $100 \mu\text{g}/\text{m}^3$ or $3 \text{ mg}/\text{m}^3$ ” is corrected to read “ $100 \mu\text{g}/\text{m}^3$ or $3 \text{ mg}/\text{m}^3$ ”; in the column labeled “Key

results,” in the last entry at the bottom of the page, the term “DMP” is corrected to read “DPM” and the term “reactivity/” is corrected to read “reactivity/responsiveness”; and in the column labeled “Agent(s) of toxicity,” in the sixth entry, the term “ SO_2 and NO_2 ” is corrected to read “ SO_2 and NO_2 ”.

14. On page 48693, in the continuation of Table VI-8 at the top of the page, the term “Table VI-8” in the title is corrected to read “Table VI-9”; in the entry in the column labeled “Key results”, the word “Thio” is corrected to read “Thiol”; and the key directly beneath the table is deleted.

15. On page 48693, in Table VI-9 in the middle of the page, the term “Table VI-9” in the title is corrected to read “Table VI-10” and the key directly beneath the table is deleted.

16. On page 48694, in the second column, in the first paragraph, in the legal citation after the first full sentence, the term “647 F.2d 1273” is corrected to read “647 F.2d 1189, 1273”, and in the forth full sentence the term “feasible when Aif through” is corrected to read “feasible “if through”.

17. On page 48694, in the second column, in the second paragraph, the term “647 F.2d 1164” is corrected to read “647 F.2d 1189, 1266 (D.C. Cir. 1981)”.

18. On page 48705, in the “Summary of Costs and Benefits” section in the first column, in the second paragraph, the first sentence is corrected to read “The proposed rule would result in a net cost of \$4,539 per year.”; in the third sentence, the term “cost savings of \$86” is corrected to read “cost of \$25”; and the fifth sentence is corrected to read “The cost or cost savings (negative cost) per mine for mines in these three size classes would be $-\$34$, $\$58$ and $\$58$, respectively.”

19. On page 48705, in the second column, under the section-by-section discussion of the proposed rule, in the first paragraph, in the third sentence, the term “ $308_{\text{TC}} \mu\text{g}/\text{m}^3$ ” is corrected to read “ $308_{\text{EC}} \mu\text{g}/\text{m}^3$ ”.

20. On page 48714, in the third column, the term “AMSHA” in the second sentence of the first paragraph is corrected to read “MSHA”.

21. On page 48719, in the alphabetical list of references, the reference listed as “Holgate, *et al.*, 2002.” in the second column is corrected to read “Holgate, Stephen T., *et al.*, “Health Effects of Acute Exposure to Air Pollution, Part I: Healthy and Asthmatic Subjects Exposed to Diesel Exhaust”, Health Effects Institute Research Report No. 112 (Partial Preprint Version), December 2002.”, and the references listed as

“Patton and Lopez, 2002.” and “Polosa, *et al.*, 2003 (Italian).” are deleted.

Dated: August 26, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03-22320 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-43-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI83-01-7292b, FRL-7526-8]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Michigan’s definition of volatile organic compound (VOC). EPA’s approval will revise Michigan’s State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003. In the Final Rules section of this **Federal Register**, EPA is approving the state’s SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action on this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before October 2, 2003.

ADDRESSES: Send written comments to:

Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section.

You may inspect copies of the documents relevant to this action during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. 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 rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to nash.carlton@epa.gov. Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov,

EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection 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.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 18, 2003.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 03-22156 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73-1-7298b; FRL-7541-6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's state operating permit into the Minnesota PM SIP. The request is approvable because it meets the requirements of the Clean Air Act. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed 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 on this action should do so at this time.

DATES: Written comments must be received on or before October 2, 2003.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,

(312) 353-8328,
panos.christos@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

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comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

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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 official public regional rulemaking file. 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 file and available for public

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D. What Should I Consider As I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Dated: May 16, 2003.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 03-22158 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79-1b; FRL-7543-7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site-specific revision to the Minnesota

sulfur dioxide (SO₂) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO₂ SIP and remove the Xcel Administrative Order from the state SO₂ SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. The requests are approvable because they meet the requirements of the Clean Air Act. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed 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 on this action should do so at this time.

DATES: Written comments must be received on or before October 2, 2003.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, nash.carlton@epa.gov.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328, panos.christos@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct

Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Dated: May 23, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 03-22154 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7550-2]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by October 2, 2003.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303-3104; (404) 562-8448. You can examine

copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region 4 Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562-8190; or South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896-4174.

FOR FURTHER INFORMATION CONTACT:

Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, at the above address and phone number.

SUPPLEMENTARY INFORMATION:

For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: August 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03-22311 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 27, 87, and 97

[ET Docket No. 00-258 and WT Docket No. 02-8; FCC 03-134]

Federal Government 3G Relocation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to make spectrum available for Federal Government operations that will be displaced from the band 1710-1850 MHz as a result of making the 1710-1755 MHz segment available to support the introduction of new non-Federal Government advanced wireless services (AWS), including third generation wireless (3G) systems. The implementation of these proposals would substantially clear the band 1710-1755 MHz of Federal Government operations that would have otherwise impeded the development of new nationwide AWS services.

DATES: Written comments are due November 3, 2003, and reply comments are due December 1, 2003.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418-2450, TTY (202) 418-2989, e-mail: Tom.Mooring@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Notice of Proposed Rule Making*, ET Docket 00–258 and WT Docket No. 02–8, FCC 03–134, adopted June 13, 2003, and released July 7, 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: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 3, 2003, and reply comments on or before December 1, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). 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 include 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. 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 appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. 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, Vistrionix, 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.

Summary Fourth Notice of Proposed Rulemaking

The Band 2025–2110 MHz

1. The Commission proposes to revise footnote US346 to permit the U.S. Department of Defense (DOD) to operate tracking, telemetry, and commanding (TT&C) transmit earth stations at the 11 existing sites requested by the National Telecommunications and Information Administration (NTIA) on a co-equal, primary basis with Television Broadcast Auxiliary Service (BAS), the Local Television Transmission Service (LTTTS), and the Cable Television Relay Service (CARS) (together these three services will be referred to as BAS in this document) operations in the band 2025–2110 MHz. The band 2025–2110 MHz is the principal band for TT&C Earth-to-space transmissions (uplinks) outside of the United States and the proposed action would allow the military services to have access to it, thereby better harmonizing U.S. space operations with the rest of the world. The Commission makes this proposal so that the band 1710–1755 MHz can be substantively cleared of Federal operations, thereby assisting in the introduction of new AWS, including 3G. Specifically, the proposal would give DOD the option of moving any or all of its TT&C uplinks at 11 specific sites up in frequency from 1761–1842 MHz to 2025–2110 MHz in order to clear spectrum in a geographic area for military fixed and mobile systems, including those that must be relocated out of the band 1710–1755 MHz. If specific frequencies within the band 2025–2110 MHz are successfully coordinated, then that earth station would operate on a co-equal, primary

basis with BAS. The Commission states that this action would provide a reasonable opportunity for clearing the band 1710–1755 MHz for new nationwide AWS uses and that permitting DOD earth stations access to the band 2025–2110 MHz would also provide greater use of the band 2025–2110 MHz without a significant impact on incumbent operations.

2. DOD transmit earth stations are used to control satellites in both geostationary and non-geostationary orbits (NGSOs). Further, DOD TT&C earth stations use extremely large antennas and high transmitter output powers to produce highly focused and very powerful mainbeams and could have large coordination areas. Thus, these transmit earth stations could potentially cause interference to BAS operations. Accordingly, the Commission finds that coordination will be necessary between DOD earth stations operating in the band 2025–2110 MHz and 2 GHz BAS operations. In this regard, the Commission will maintain its longstanding policy that first-licensed facilities have the right of protection from later-licensed facilities operating in the same frequency band. The Commission states that—with coordination—DOD earth stations at an additional 11 sites may also successfully share frequencies in this band with the incumbent BAS operations based on a variety of factors that can facilitate sharing of this spectrum. These include terrain shielding and the facts that some of the antennas may be pointed out to sea, that each TT&C channel is generally used only for relatively short periods of time, that a TT&C channel is expected to impact only one BAS channel, that earth stations controlling GSO satellites may point at such high elevation angles as to have a minimal impact on BAS operations, etc. The Commission solicits comment on the specific factors that would permit proposed spectrum sharing.

3. Ordinarily in a Federal/non-Federal Government shared band, DOD would follow NTIA's procedures in securing coordination; that is, NTIA would approve the change in frequency for the earth stations and submit the frequency change to the Commission through the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Commission engineers would then provide input to ensure that incumbent non-Federal Government operations would be protected. However, in this case, the Commission does not believe that the ordinary processes in Federal/non-Federal Government shared bands can be used without some

modifications. For example, frequency coordination of the 2 GHz BAS band has long been entrusted to private coordinators, such as SBE. The Commission also notes that the band 1990–2110 MHz supports a mix of mobile TV pickup (TVPU) stations and fixed links and that BAS stations are currently transitioning to narrower channels in the band 2025–2110 MHz, to accommodate new services in the 1990–2025 MHz segment. In addition, because each local TV market may transition to a new BAS channel plan at different times, local frequency coordinators may be in the best position to assess requests that affect local operating conditions. Thus, the Commission proposes to require that, prior to submitting applications for the authorization of the 11 earth stations to the Commission through the FAS, DOD frequency coordinators and technical representatives work with the local frequency coordinator (in most cases, this would be SBE) and the affected BAS licensees to ensure that the DOD operations not cause interference to incumbent non-Federal Government operations. Further, the Commission proposes that operation of these earth stations in the band 2025–2110 MHz not be authorized in the absence of successful coordination between the affected parties. The Commission expects that it may be necessary to jointly establish with NTIA other non-standard coordination procedures during the course of this proceeding. The Commission seeks comment on coordination procedures that can be implemented which will ensure that both fixed and mobile BAS stations are adequately protected and accommodate the introduction of Federal earth stations in this band. The Commission acknowledges that the short separation distances identified above present coordination challenges. The Commission seeks comment on how these challenges can be addressed. The Commission recognizes that its Rules do not currently include coordination rules that protect the normal operating areas of TVPU stations, but it is hopeful that coordination between the parties is achievable for the 11 DOD transmit earth stations without adversely affecting TVPU operations, particularly reception at fixed sites, including receive-only sites and at venues where sports or news events routinely occur. While the Commission does not believe that non-Federal Government operations are likely to cause interference to Federal Government operations, it will require that once a DOD earth station has been coordinated, new BAS stations

within these 11 areas coordinate their systems with the local DOD facility.

4. The Commission does not make this proposal without concerns. Notably, it is concerned about the impact on future BAS growth in areas near the 11 TT&C uplink earth stations, especially in light of the ongoing digital television (DTV) transition. The Commission solicits comment on its proposal and on methods that could be employed to ensure future BAS growth. After coordination, local BAS users should be able to work around Federal operations in the coordinated area. Specifically, the Commission notes that new BAS stations can be added in areas near the 11 earth stations, if they are located near incumbent BAS stations, which will be protected as a result of the coordination process. Nonetheless, the Commission solicits comment on whether other frequency bands are more appropriate for the 11 TT&C uplink earth stations.

5. The Commission also observes that the adjacent frequency bands (1990–2025 MHz and 2110–2155 MHz) have been reallocated to the fixed and mobile services and addresses a concern that interference could be caused to these future services due to the placement of the 11 TT&C earth stations in the band 2025–2110 MHz. In particular, interference could be caused by out-of-band emissions and by receiver overload. In addressing out-of-band emission interference, the Commission notes that the unwanted emission standards for Federal Government earth stations operating above 960 MHz are specified as follows:

For all systems operating in this frequency range the emissions radiated outside of the necessary bandwidth shall roll-off at a rate equal to or greater than 40 dB/decade (12 dB/octave) from the attenuation level at the limit of necessary bandwidth. The emissions power shall roll-off to a level of at least 60 dB below the transmissions Maximum Peak SPD [Spectral Power Density] or less. The requirements in this standard specify the upper bounds on unwanted emissions from space and earth stations associated with the space services.

TT&C uplink channels in the band 1761–1842 MHz have a necessary bandwidth of 4 MHz and the Commission anticipates that new TT&C channels in the band 2025–2110 MHz will be approximately the same bandwidth. NTIA indicates that currently the signal level two-megahertz away from a TT&C center frequency is normally attenuated 20–25 dB below the maximum peak SPD. TT&C uplink transmitter output power is expected to range from 100 watts to 10 kW. The Commission solicits comment on how

such high power levels coupled with the noted attenuation characteristics would impact BAS operations in the band 2025–2110 MHz.

6. The Commission requests comment on whether the limits specified above will be sufficient to protect the mobile and fixed receivers that will operate on spectrum above and below the band 2025–2110 MHz, or whether additional requirements, *e.g.*, specific limits on emissions generated outside the band 2025–2110 MHz, will be necessary. The Commission notes that emissions produced by the TT&C transmitters are expected to be greater than those that will be produced by future digital BAS transmitters that will operate in the band 2025–2110 MHz. The Commission therefore seeks comment on whether the Federal Government's unwanted emission standard is sufficient to protect out-of-band operations, or whether TT&C earth station emission limitations outside the band 2025–2110 MHz should be further limited. The Commission observes that limiting emissions outside the band 2025–2110 MHz could be accomplished by reducing power, by increasing the attenuation roll-off rate and the maximum roll-off, and by not using spectrum immediately adjacent to the band edges, *i.e.*, by providing for guard bands. The Commission requests comment on whether such measures should be taken, and specifically whether TT&C transmitter emissions outside the band 2025–2110 MHz should be limited to those of a digital BAS transmitter with a bandwidth of 12 MHz and an output power of 13 dBW, centered 6.5 MHz from the band edge and meeting the emission mask in § 74.637(a)(2).

7. With regard to the potential for receiver overload interference, the Commission notes that TT&C transmitters are expected to operate with transmitter output power levels ranging from 100 watts to 10 kW. This raises concerns about the potential for overload of fixed and/or mobile receivers operating near TT&C stations receiving on spectrum above and below the band 2025–2110 MHz. The Commission thus seeks comment on whether, based on the geographic location of TT&C transmitters, interference of this type could occur. If such interference is likely, the Commission seeks comment on what limits on TT&C transmitters (*e.g.*, reduced power levels, avoidance of the upper and lower edges of the band 2025–2110 MHz) might reduce the likelihood of overload interference to adjacent band mobile and fixed receivers. Similarly, the Commission

seeks comment on measures that need to be taken by fixed and mobile receivers to protect against this type of interference.

8. The Commission also proposes to permit DOD to operate stations in the fixed and mobile except aeronautical mobile services on a secondary basis in the band 2025–2110 MHz at the six sites identified by NTIA in the southwestern United States. NTIA states that because these operations (such as tactical radio relay systems) are usually in remote areas, it would appear to be feasible for DOD to operate on a coordinated basis in this band. The Commission agrees with NTIA that it appears feasible for DOD to operate stations in the fixed and land mobile services on a secondary basis at six sites in the southwestern United States and to also operate stations in the maritime service in the Pacific Missile Test Range/Pt. Mugu on a secondary basis without hindering BAS fixed and mobile operations. The Commission requests comment on this tentative finding and proposes to adopt a United States footnote.

9. The Commission requests comment on all of the above proposals for the band 2025–2110 MHz. The Commission is particularly interested in commenters' suggestions regarding how best to share the band 2025–2110 MHz between incumbent uses and the proposed extremely high powered transmitting earth stations. In addition, if commenters believe any of the 11 proposed earth station locations to be particularly problematic with regard to protecting BAS receive sites, it requests specific suggestions and detailed engineering analysis showing how such situations can be resolved.

The Band 2360–2400 MHz

10. Consistent with the 2002 *Viability Assessment*, the Commission proposes to allocate the band 2360–2395 MHz for aeronautical mobile purposes on a primary basis for Federal Government use so that aeronautical mobile systems that currently operate in the band 1710–1755 MHz at the 16 protected sites can be relocated by December 2008. This relocation would substantively clear the band 1710–1755 MHz of Federal Government systems so that this spectrum can be used to accommodate AWS, including 3G systems.

11. The Commission also proposes to allocate the band 2390–2395 MHz to the mobile service on a primary basis for non-Federal Government use and to generally limit the use of this allocation and of the existing non-Federal Government mobile service allocation in the band 2385–2390 MHz to aeronautical telemetry use. This action

would provide 10 megahertz of needed spectrum for commercial aeronautical telemetry operations. The Commission observes that aeronautical telemetry bandwidth requirements have significantly increased in recent years as aircraft manufacturers collect increasing amounts of data and video concerning the performance of prototype aircraft. Given the increasing amounts of data being collected in flight tests, and the higher and higher data rates being utilized for such purposes, the Commission tentatively finds that additional spectrum for aeronautical telemetry use is necessary.

12. In addition, the Commission observes that the aircraft manufacturers that make military aircraft are the same as those that make commercial aircraft. Further, Federal and non-Federal Government users have traditionally shared the aeronautical telemetry bands on a co-primary basis, including the band 2385–2390 MHz. Therefore, the Commission considers it beneficial to expand the primary non-Federal Government aeronautical telemetry allocation to include the band 2385–2395 MHz. This action would make the band available to non-Federal Government aeronautical telemetry operations, as well as to Federal Government aeronautical mobile operations. As a consequence of these proposals, the Commission proposes to make a number of specific changes to rules affecting various portions of the band 2360–2400 MHz.

13. As indicated previously, the band 2360–2385 MHz is currently allocated to the mobile service on a primary basis for Federal and non-Federal Government use. The use of these mobile allocations is limited by footnote US276 to aeronautical telemetering and associated telecommand operations for flight testing of manned and unmanned aircraft, missiles, or major components thereof. In order to implement the proposal, the Commission would allocate the band 2385–2395 MHz to the mobile service on a primary basis for Federal Government use and would modify footnote US276 to permit Federal agencies to conduct all types of aeronautical mobile operations, not just aeronautical telemetering and telecommand operations. The Commission also proposes to expand the permissible uses under the Federal Government mobile service allocation in the band 2360–2395 MHz to include land mobile and maritime mobile applications on a secondary basis to aeronautical mobile applications.

14. Except as described, this approach would return the band 2385–2390 MHz to its allocation status prior to its recent

transfer and reallocation. Therefore, the Commission also proposes to allocate the band 2385–2390 MHz to the radiolocation service on a primary basis and to the fixed service on a secondary basis for Federal Government use. NTIA indicates that Federal Government use of the radiolocation allocation in the band 2385–2390 MHz would be limited to the military services and thus, footnote G2 would be revised to reflect this limitation. Consistent with the above proposal to allocate the band 2390–2395 MHz to the aeronautical mobile service on a primary basis for Federal Government use, the Commission proposes to revise footnote G122 so that Federal Government operations in the band 2390–2395 MHz would no longer be shown as being on a non-interference basis to non-Federal Government operations.

15. By footnote G120, NTIA prohibits the development of airborne primary radars in the band 2310–2385 MHz with a peak transmitter power in excess of 250 watts for use in the United States. NTIA has previously applied footnote G120 to the band 2385–2390 MHz. During its work on this proposed rule, Commission staff noticed that the bands 2310–2320 MHz and 2345–2360 MHz are no longer allocated to the Federal radiolocation service on a primary basis. In addition, the Commission has recently proposed to downgrade the Federal radiolocation service allocation from primary to secondary status in the band 2320–2345 MHz because Satellite DARS licensees have commenced operations. Therefore, the Commission proposes, with NTIA's concurrence, to amend footnote G120 by removing the band 2310–2360 MHz and by adding the band 2385–2390 MHz.

16. In order to promote spectrum sharing between Federal and non-Federal Government operations, the Commission proposes to remove the recently added, but still unused, fixed allocation from the band 2385–2390 MHz in the non-Federal Government Table. The Commission also proposes to re-apply the prior footnote US276 limitations on non-Federal Government mobile use of the band 2385–2390 MHz and to also apply the footnote US276 limitations on non-Federal Government mobile use of the band 2390–2395 MHz. These actions would return the band 2385–2390 MHz to use for non-Federal Government flight test stations and would also make available replacement spectrum for non-Federal Government flight test stations that are displaced from the band 2310–2360 MHz, thereby providing 35 megahertz (2360–2395 MHz) of primary spectrum for non-Federal Government aeronautical

telemetry purposes. In consideration of all the proposals for the band 2360–2395 MHz, the Commission proposes to revise footnote US276.

17. Under the proposal, the amateur service would retain its current primary allocation at 2390–2400 MHz, but would be required to share the lower 5 megahertz with new Federal and non-Federal Government operations on a co-primary basis. The Commission indicates that such sharing would not have a significant impact on amateur operations. Under its band plan, the Amateur Radio Relay League (ARRL) has designated the 2390–2396 MHz segment for use by “Fast Scan TV,” which is a form of Amateur Television (ATV). However, there are numerous other bands designated for ATV. Because of equipment availability, most ATV use appears to be in the bands 420–450 MHz and 902–928 MHz. The Commission proposes to amend § 97.303 of its amateur Rules to reflect this spectrum sharing proposal. The Commission solicits comment on whether limits should be imposed on the amateur and/or mobile services in order to enhance spectrum sharing; if limits are necessary, comment is sought on the limits that should be adopted.

18. The Commission observes that non-Federal Government flight test stations in the band 2310–2390 MHz have long been subject to the emission limitations that are specified in § 87.139 of its Rules. The Commission proposes to continue to employ these emission limitations for non-Federal Government flight test stations in the band 2385–2390 MHz. NTIA has established significantly less stringent limits for unwanted emissions from aeronautical telemetry operations in this band than those requested by the Satellite Radio Licensees (25 to 55 dB less stringent than the WCS fixed and mobile limits). Therefore, the Commission requests comment on the appropriate out-of-band emission limits that are necessary to protect Satellite DARS reception from both aeronautical (ground) stations and from aircraft stations.

19. Under the proposal, the band 2385–2390 MHz would be available for aeronautical telemetering and associated telecommand for both Federal and non-Federal Government licensees and thus, footnote US363, which grandfathered various Federal and non-Federal Government sites for aeronautical telemetering and associated telecommand purposes, would no longer be needed. The Commission therefore proposes to delete footnote US363. The proposal would also limit non-Federal Government use of the band 2385–2390 MHz to flight test

stations and thus, footnote NG174, which states that frequencies in the band 2385–2400 MHz are not available for assignment to stations in the aeronautical mobile service in Puerto Rico, would no longer be needed. The Commission also proposes to delete footnote NG174.

20. The Commission proposes to rescind numerous changes to its WCS service rules that were made as part of its action on the transfer and reallocation of the band 2385–2390 MHz. Specifically, the Commission proposes to add the band 2385–2390 MHz back to the frequencies available to flight test stations in § 87.303 of its aviation service rules. It also proposes to rescind the changes made in the 27 *Megahertz Service Rules R&O* for the band 2385–2390 MHz in parts 1, 27, and 87 of its Rules by removing regulations containing this band from § 1.1307 (Environmental Assessments); 27.1(b)(7) (Basis and Purpose); 27.4 (Terms and definitions); 27.5(g) (Frequencies); 27.6(g) (Service areas); 27.11(h) (Initial authorization); 27.12(b) (Eligibility); 27.13(f) (License period); 27.50(f) (Power and antenna height limits); 27.53(i) (Emission limits); and 87.173, note 1 (Frequencies); and by removing part 27, Subpart K (2385–2390 MHz Band). In the Table of Frequency Allocations, the Commission also proposes to revise the entry for the band 2385–2390 MHz by replacing the cross reference to part 27 of its Rules (Miscellaneous Wireless Communications Services) with a cross reference to part 87 of its Rules (Aviation Services) to reflect the re-designation of the band 2385–2390 MHz.

21. Nearly seven years after the Commission made the band 2390–2400 MHz available for unlicensed use, there is still no equipment authorized or anticipated for this band. In order to remove possible sources of harmful interference to primary radiocommunication services in the 2390–2395 MHz segment, the Commission proposes to no longer make the band 2390–2400 MHz available for unlicensed PCS use. Specifically, the Commission proposes to revise part 15 of its Rules by removing the band 2390–2400 MHz from various technical rules that apply to asynchronous devices, *i.e.*, §§ 15.301 (Scope); 15.303(a), (g), and (i) (Definitions); 15.319(a) (General technical requirements); and 15.321(a), (b), and (g) (Specific requirements for asynchronous devices operating in the 2390–2400 MHz band).

Initial Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Notice of Proposed Rule Making (4th NPRM)*. Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the 4th *NPRM* provided in paragraph 66 of the 4th *NPRM*. The Commission will send a copy of the 4th *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the 4th *NPRM* (or summaries thereof), including the IRFA, will be published in the **Federal Register**.³

A. Need for, and Objectives of, the Proposed Rules

23. The Commission proposes to allow DOD to use the band 2025–2110 MHz on a co-equal, primary basis with non-Federal Government operations for DOD earth stations at 11 sites that support DOD space operations. DOD access to the band 2025–2110 MHz may make more spectrum available in the band 1755–1850 MHz for absorbing certain DOD systems displaced from the band 1710–1755 MHz. In addition, the Commission proposes to permit the military services to operate stations in the fixed and mobile services in the band 2025–2110 MHz on a secondary (non-interference) basis at six sites in the southwestern region of the United States.

24. The Commission also proposes to make numerous allocation changes to the band 2360–2400 MHz, the most significant of which would rescind the recent establishment of Wireless Communications Services at 2385–2390 MHz, allow Federal and non-Federal Government flight test stations to operate in the band 2385–2395 MHz, and no longer make the band 2390–2400 MHz available for use by unlicensed Personal Communications Services devices. These allocation changes would permit DOD to relocate all aeronautical mobile systems out of the band 1710–1755 MHz, which is a major objective for facilitating the introduction of AWS. In addition, these allocation changes would provide needed

¹ See 5 U.S.C. 603. 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, 110 Stat. 847 (1996).

² 5 U.S.C. 603(a).

³ *Id.*

replacement spectrum for use by DOD and commercial flight test stations, which may shortly lose access to the 35 megahertz of spectrum at 1525–1535 MHz and 2320–2345 MHz.

B. Legal Basis

25. This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

26. 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.⁴ 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 In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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).⁷

27. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹ “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”¹⁰ As of 1997, there were approximately 87,453 governmental entities in the United

States.¹¹ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 500,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

28. In the band 2025–2110 MHz, the proposals in this 4th NPRM would affect licensees in the Television Broadcast Auxiliary Service (BAS), the Local Television Transmission Service (LTTS), and the Cable Television Relay Service (CARS).

Broadcast Auxiliary Service (BAS) involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). There are approximately 568 TV BAS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals.

29. The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: For TV BAS, The Commission will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than \$12.0 million.¹² According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.¹³ Of this total, 734 firms had annual receipts of \$9,999,999.00 or less and an additional 71 had receipts of \$10 million to \$24,999,999.00.¹⁴ Thus, under this standard, the majority of firms can be considered small.

Cable Antenna Relay Service (CARS) There are nine CARS mobile licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than \$12.5 million.¹⁵ According to

Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.¹⁶ Of this total, 1,180 firms had annual receipts of \$9,999,999.00 or less, and an additional 52 firms had receipts of \$10 million to \$24,999,999.00.¹⁷ Thus, under this standard, the majority of firms can be considered small.

Local Television Transmission Service (LTTS) There are 33 LTTS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The Commission has not yet defined a small business with respect to local television transmission services. For purposes of this IRFA, The Commission will use the SBA’s definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.¹⁸ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.¹⁹ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.²⁰ Thus, under this size standard, the great majority of firms can be considered small.

30. In the band 2360–2390 MHz, the proposals are not expected to impact licensees of flight test stations, except to provide continued access to the band 2385–2390 MHz segment. That is, Federal and non-Federal Government licensees of flight test stations have long shared the band 2360–2390 MHz and our proposals would essentially return the band 2385–2390 MHz to its state prior to reallocation. The additional flexibility given to Federal Government users is not expected to impact licensees of flight test stations because this use would be on a secondary basis.

31. In the band 2390–2400 MHz, the proposals are not expected to greatly impact licensees in the amateur service or manufacturers of unlicensed PCS. Federal and non-Federal Government use of the band 2390–2395 MHz is expected to occur at only a limited number of aeronautical telemetry ranges in remote areas. The Commission reviewed its files and found that no

⁴ 5 U.S.C. 604(a)(3).

⁵ 5 U.S.C. 601(6).

⁶ 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.”

⁷ 15 U.S.C. 632.

⁸ 5 U.S.C. 601(4).

⁹ Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹⁰ 5 U.S.C. 601(5).

¹¹ U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

¹² 13 CFR 121.201, NAICS code 515120.

¹³ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Receipts Size of Firms Subject to Federal Income Tax: 1997,” Table 4, NAICS code 515120 (issued Oct. 2000).

¹⁴ *Id.* The census data do not provide a more precise estimate.

¹⁵ *Id.* at NAICS code 515120.

¹⁶ *Id.* at NAICS code 515120.

¹⁷ *Id.* The census data do not provide a more precise estimate.

¹⁸ 13 CFR 121.201, NAICS code 517212.

¹⁹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 517212 (issued Oct. 2000).

²⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

unlicensed PCS device has been authorized in the band 2390–2400 MHz.

32. The Commission seeks comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. The proposed rules would require that DOD coordinate a request for use of frequencies in the band 2025–2110 MHz prior to submitting an application to the Commission. Commission licensees may choose to conduct studies or incur other expenses during the coordination process. The Commission is unable to estimate the costs involved with the coordination process.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. 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.²¹

35. The Commission has proposed to require that the 11 Federal Government earth stations prior coordinate their frequency use. Such a requirement will ensure that these earth stations operate in a manner that minimizes the potential of causing harmful interference. This action is expected to protect incumbent BAS, LTTS, and CARS systems from service disruptions caused by receiving harmful interference. The Commission seeks comment on significant alternatives commenters believe should be adopted.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

Ordering Clauses

37. Pursuant to Sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336, the *Fourth Notice of Proposed Rulemaking* is hereby adopted.

38. The Commission’s Consumer Information and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fourth Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedures, Radio.

47 CFR Part 2

Radio, Telecommunications.

47 CFR Part 15

Communications equipment.

47 CFR Part 27

Radio.

47 CFR Part 87

Radio.

47 CFR Part 97

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 15, 27, 87, and 97 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 1.1307 is amended by revising the entry for “Wireless Communications Service (part 27)” in paragraph (b)(1) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.

* * * * *
 (b) * * *
 (1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation requirement if:
* * * * *	* * * * *
Wireless Communications Service (Part 27)	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz, and 1670–1675 MHz bands: <i>Non-building-mounted antennas:</i> height above ground level to lowest point of antenna < 10 m and total power of all channels > 2000 W ERP (3280 W EIRP) <i>Building-mounted antennas:</i> total power of all channels > 2000 W ERP (3280 W EIRP) (2) for the 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands Total power of all channels > 1000 W ERP (1640 W EIRP)
* * * * *	* * * * *

²¹ 5 U.S.C. 603(c).

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**PART 2—FREQUENCY ALLOCATIONS
AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

4. Amend § 2.106 as follows:

a. Revise pages 48, 50, and 51 of the Table.

b. In the list of United States footnotes, revise footnotes US276 and US346, remove US363, and add footnote USxxx.

c. In the list of non-Federal Government footnotes, remove footnote NG174.

d. In the list of Federal Government footnotes, revise footnotes G2, G120, and G122.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

5.149 5.341 5.385 5.386 5.387 5.388	1755-1850 FIXED MOBILE	1755-1850	
1930-1970 FIXED MOBILE 5.388A	1850-2025 FIXED MOBILE	1850-2000	Personal Communications (24) Fixed Microwave (101)
MOBILE 5.388A Mobile-satellite (Earth-to-space)			
5.388			
1970-1980 FIXED MOBILE 5.388A			
5.388			
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A		NG177	Satellite Communications (25)
5.388 5.389A 5.389B 5.389F		2000-2020 MOBILE-SATELLITE (Earth-to-space) US380	
2010-2025 FIXED MOBILE 5.388A		NG156	
MOBILE 5.388A MOBILE-SATELLITE (Earth-to-space)		2020-2025 FIXED MOBILE	
5.388 5.389C 5.389D 5.389E 5.390		NG177	
5.388			
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space)	2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION- SATELLITE (Earth-to- space) (space-to-space) SPACE RESEARCH (Earth- to-space) (space-to-space)	2025-2110 FIXED NG23 NG118 MOBILE 5.391	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
5.392	5.391 5.392 US90 US222 US346 US347 USxxx	5.392 US90 US222 US346 US347 USxxx	

<p>MOBILE (line-of-sight only including aeronautical tele-metry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space)</p>	<p>5.392 US303</p>	
<p>2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)</p>	<p>US303 2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)</p>	
<p>2300-2450 FIXED MOBILE Amateur Radiolocation</p>	<p>2300-2305 Amateur</p>	<p>Amateur (97) Note: 2300-2305 MHz became non-Federal Government exclusive spectrum in August 1995</p>
<p>G123 2305-2310</p>	<p>2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur</p>	<p>Wireless Communications (27) Amateur (97)</p>
<p>US338 G123 2310-2360 Fixed Mobile US339 Radiolocation G2</p>	<p>US338 2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING- SATELLITE US327</p>	<p>Wireless Communications (27)</p>
<p>5.150 5.282 5.395</p>	<p>5.396 US338 2320-2345 BROADCASTING- SATELLITE US327 Mobile US276 US328</p>	<p>Satellite Communications (25)</p>
<p>5.150 5.282 5.393 5.394 5.396</p>	<p>5.396 US327 US328 See next page</p>	<p>See next page for 2345-2450 MHz</p>

International Table		United States Table		FCC Rule Part(s)
Region 1	Region 2	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz		See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING- SATELLITE US327 5.396	Wireless Communications (27)
		2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2390 MOBILE US276	Aviation (87)
		2390-2395 MOBILE US276	2390-2395 AMATEUR MOBILE US276	Aviation (87) Amateur (97)
		2395-2400 G122	2395-2400 AMATEUR	Amateur (97)
		2400-2402	2400-2417 AMATEUR	ISM Equipment (18) Amateur (97)
		5.150 G123 2402-2417		
		5.150 G122	5.150 5.282	
		2417-2450 Radiolocation G2	2417-2450 Amateur	
		5.150 G124	5.150 5.282	
		2450-2483.5	2450-2483.5 FIXED MOBILE Radiolocation	ISM Equipment (18) Private Land Mobile (90) TV Auxiliary Broadcasting (74F) Fixed Microwave (101)
2450-2483.5 FIXED MOBILE Radiolocation	2450-2483.5 FIXED MOBILE RADIOLOCATION	5.150 5.394	5.150 US41	
5.150 5.397	5.150 5.394	5.150 US41	5.150 US41	

2345-2655 MHz (UHF)

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United States (US) Footnotes

* * * * *

US276 Except as otherwise provided for herein, use of the bands and 2320–2345 MHz and 2360–2395 MHz by the mobile service is limited to Federal Government aeronautical mobile applications and to non-Federal Government aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following four frequencies are shared on a co-equal basis by Federal and non-Federal Government

stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2332.5 MHz, 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. Other Federal Government mobile uses and other non-Federal Government mobile telemetering uses shall be secondary to the above uses.

* * * * *

US346 Except as provided for below and by footnote US222, Federal Government use of the band 2025–2110 MHz by the space operation service (Earth-to-space), Earth exploration-satellite service (Earth-to-space), and space research service (Earth-to-space) shall not constrain the deployment of the

Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations between non-Federal Government terrestrial receiving stations and Federal Government earth station transmitters, coordination is required. To facilitate compatible operations between non-Federal Government terrestrial transmitting stations and Federal Government spacecraft receivers, the terrestrial transmitters shall not be high-density systems (see Recommendations ITU-R SA.1154 and ITU-R F.1247). Military satellite control stations at the following sites shall operate on a co-equal, primary basis with non-Federal Government operations:

Facility	Coordinates
Naval Satellite Control Network, Prospect Harbor, ME	44° 24'55" N 068°00'50" W
New Hampshire Tracking Station, New Boston AFS, NH	42°56'52" N 071°37'37" W
Eastern Vehicle Check-out Facility & GPS Ground Antenna Monitoring Station, Cape Canaveral, FL	28°29'10" N 080°34'34" W
Buckley AFB, CO	39°42'55" N 104°46'29" W
Colorado Tracking Station, Schriever AFB, CO	38°48'21" N 104°03'43" W
Kirtland AFB, NM	35°03'00" N 106°24'00" W
Camp Parks Communications Annex, Pleasanton, CA	37°44'00" N 121°52'00" W
Naval Satellite Control Network, Laguna Peak, CA	34°06'55" N 119°04'50" W
Vandenberg Tracking Station, Vandenberg AFB, CA	34°49'24" N 120°31'54" W
Hawaii Tracking Station, Kaena Pt, Oahu, HI	21°33'48" N 158°14'54" W
Guam Tracking Stations, Anderson AFB, and Naval CTS, Guam	13°36'48" N 144°51'12" E

* * * * *

USxxx In the band 2025–2110 MHz, the military services may operate stations in the fixed and mobile except aeronautical mobile

services on a secondary and coordinated basis at the following sites:

Site	Coordinates	Radius of operation (km)
Nellis AFB, NV	36°14' N 115°02' W	80
China Lake, CA	35°41' N 117°41' W	50
Ft. Irwin, CA	35°16' N 116°41' W	50
Pacific Missile Test Range/Pt. Mugu, CA	34°07' N 119°30' W	80
Yuma, AZ	32°32' N 113°58' W	80
White Sands Missile Range, NM	33°00' N 106°30' W	80

* * * * *

Federal Government (G) Footnotes

* * * * *

G2 In the bands 216–225 MHz, 420–450 MHz (except as provided by US217), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2390 MHz, 2417–2450 MHz, 2700–2900 MHz, 5650–5925 MHz, and 9000–9200 MHz, the Government radiolocation service is limited to the military services.

* * * * *

G120 Development of airborne primary radars in the band 2360–2390 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

G122 In the bands 2395–2400 MHz, 2402–2417 MHz, and 4940–4990 MHz, Federal Government operations may be authorized on a non-interference basis to authorized non-Federal Government operations, but shall not hinder the

implementation of any non-Federal Government operations.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

5. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 554A.

6. Section 15.301 is revised to read as follows:

§ 15.301 Scope.

This subpart sets out the regulations for unlicensed personal communications services (PCS) devices operating in the 1920–1930 MHz band.

7. Section 15.303 is amended by removing and reserving paragraphs (a) and (i) and by revising paragraph (g) to read as follows:

§ 15.303 Definitions.

* * * * *

(g) *Personal Communications Services (PCS) Devices [Unlicensed]*. Intentional radiators operating in the frequency band 1920–1930 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses.

* * * * *

8. Section 15.319 is amended by revising paragraph (a) to read as follows:

§ 15.319 General technical requirements.

(a) The 1920–1930 MHz band is limited to use by isochronous devices under the requirements of § 15.323.

* * * * *

§ 15.321 [Removed]

9. Section 15.321 is removed.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

10. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337, unless otherwise noted.

§ 27.1 [Amended]

11. In § 27.1 remove paragraph (b)(7).

12. Section 27.4 is amended by revising the definition of “Band Manager” to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Band Manager. The term *Band Manager* refers to a licensee in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, and 1670–1675 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Band Manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

* * * * *

§ 27.5 [Amended]

13. In § 27.5 remove paragraph (g).

§ 27.6 [Amended]

14. In § 27.6 remove paragraph (g).

§ 27.11 [Amended]

15. In § 27.11 remove paragraph (h).

16. Section 27.12 is amended by revising paragraph (b) introductory text to read as follows.

§ 27.12 Eligibility.

* * * * *

(b) *Band Manager licenses.* For the 1392–1395 MHz and 1670–1675 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, applicants applying for an initial license may elect to operate as a Band Manager, subject to the rules governing Guard Band Managers under subpart G, *provided however*, that the following rules do not apply to Band Managers:

* * * * *

§ 27.13 [Amended]

17. In § 27.13 remove paragraph (f).

§ 27.50 [Amended]

18. In § 27.50 remove paragraph (f), and redesignate paragraph (g) as paragraph (f).

§ 27.53 [Amended]

19. Section 27.53 is amended by removing paragraph (j) and by redesignating paragraph (k) as paragraph (j).

Subpart K [Removed]

20. Subpart K is removed.

PART 87—AVIATION SERVICES

21. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

§ 87.173 [Amended]

22. Section 87.173 is amended by revising the entry “2310–2390 MHz” to read “2310–2395 MHz” in paragraph (b).

23. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2395 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of aircraft and missiles, or their major components. The bands 1525–1535 MHz and 2310–2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the Earth’s atmosphere, as well as any incidental orbiting prior to reentry, of manned or unmanned objects undergoing flight tests. In the band 1435–1530 MHz, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5, and 1525.5 MHz. In the band 2360–2390 MHz, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2395 MHz, all other mobile telemetry uses are secondary to the above stated launch vehicle uses.

* * * * *

PART 97—AMATEUR RADIO SERVICE

24. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

25. Section 97.303 is amended by revising paragraph (j)(2)(iii) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *
(2) * * *

(iii) The 2390–2417 MHz segment is allocated to the amateur service on a primary basis.

(A) The 2390–2395 MHz segment is shared with Federal and non-Federal Government mobile services on a co-equal basis. See 47 CFR 2.106, footnote US276.

(B) Amateur stations operating in the 2400–2417 MHz segment must accept harmful interference that may be caused by industrial, scientific and medical equipment.

* * * * *

[FR Doc. 03–22200 Filed 8–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[STB Ex Parte No. 537 (Sub-No. 1)]

Public Participation in Railroad Abandonment Proceedings

AGENCY: Surface Transportation Board.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to amend its regulations concerning the service of a notice of intent to abandon or discontinue rail service by removing an obsolete reference to a labor organization and making technical changes.

DATES: Comments are due October 2, 2003.

ADDRESSES: Send an original and 10 copies of comments referring to “STB Ex Parte No. 537 (Sub-No. 1)” to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The regulations at 49 CFR 1152.20(a)(2) provide that applicants seeking to abandon or discontinue rail service must serve their notices of intent on certain interested parties, including, under section 1152.20(a)(2)(xi), “[t]he headquarters of the Railroad Labor

Executives' Association" (RLEA). It is the Board's understanding that RLEA no longer exists, and it is proposed that section 1150.20(a)(2)(xi) be removed. The regulations, however, still provide labor interests with notice of proposed abandonments or discontinuances, because current section 1150.20(a)(2)(xiii) requires service on "[t]he headquarters of all duly certified labor organizations that represent employees on the affected rail line."¹ This paragraph also contains language that should be moved for clarity: "For the purposes of this subsection 'directly affected states' are those in which any part of the line sought to be abandoned is located." This language would be more appropriate in section 1150.20(a)(2)(ii), and the Board proposes to move the substance of that language to that location. Finally, we propose to redesignate sections 1150.20(a)(2)(xii) and (xiii) as sections 1150.20(a)(2)(xi) and (xii), respectively. The Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, because the rule simply removes an obsolete reference and makes technical changes. The Board seeks comments on all matters raised by this notice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform System of Accounts.

Decided: August 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152, of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC

¹ Similar language for giving notice to labor representatives is found at sections 1121.4(h), 1150.32(e), 1150.35(c)(3), 1150.42(e), 1150.45(c)(3) and 1151.2(a)(6) concerning acquisition or operation of rail lines or feeder line applications.

Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

2. Section 1152.20 is amended by removing paragraph (a)(2)(xi) and redesignating paragraphs (a)(2)(xii) and (xiii) as paragraphs 1150.20(a)(2)(xi) and (xii), respectively.

3. Revise § 1150.20(a)(2)(ii) and newly redesignated § 1150.20(a)(2)(xii) to read as follows:

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) * * *

(2) * * *

(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance (for the purposes of this paragraph (a)(2) "states directly affected" are those in which any part of the line sought to be abandoned is located);

* * * * *

(xii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line.

* * * * *

[FR Doc. 03–22292 Filed 8–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI04

Endangered and Threatened Wildlife and Plants; Proposed Removal of the Scarlet-chested Parakeet and Turquoise Parakeet from the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the scarlet-chested parakeet (*Neophema splendida*) and the turquoise parakeet (*Neophema pulchella*) from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current conservation status of these birds. Our review of the status of these species shows that the wild populations of these species are stable or increasing, trade in wild-caught specimens is strictly limited, and the species are protected through domestic regulation within the range country (Australia) and through additional national and international

treaties and laws. This determination is based on available data indicating that these species have recovered.

DATES: We must receive your written comments on this proposed rule by December 1, 2003 in order to consider them. We must receive your written request for a public hearing by October 17, 2003.

ADDRESSES: Submit comments, information, questions, and hearing requests to the Chief, Division of Scientific Authority; U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750; Arlington, VA 22203; fax, 703–358–2276; E-mail, ScientificAuthority@fws.gov. Comments and materials received will be available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, VA, address. **FOR FURTHER INFORMATION CONTACT:** Dr. Michael D. Kreger, Division of Scientific Authority (See **ADDRESSES** section; phone, 703–358–1708; fax, 703–358–2276; E-mail, ScientificAuthority@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

Scarlet-chested Parakeet

The splendid or scarlet-chested parakeet (*Neophema splendida*) is found from the interior southwest to southeast Australia in arid mixed mallee eucalypt (*Eucalyptus salubris*)—mulga (*Acacia* spp.) woodlands with an understory of *Triodia* spp. hummock grassland (Higgins 1999). Its habitat preference is burnt areas. It is frequently found in open areas (Garnett and Crowley 2000). The species breeds between August and January and lays four to six eggs. It may be nomadic in response to environmental conditions (e.g., rainfall; Collar 1997). Collar (1997) notes that the birds are generally rare, but large numbers have occurred in certain years, which suggests that the populations may increase relatively quickly and the species may not be as rare as thought in the more remote parts of its range. The size of the species' range is stable, but the distribution of the population within the range fluctuates according to environmental conditions such as grazing and fire regimes (Garnett and Crowley 2000).

Turquoise Parakeet

The turquoise parakeet (*Neophema pulchella*) is found in southeastern Australia from southeast Queensland to northern Victoria. It is found in open forest, woodland, and native grasslands, where it is patchily distributed (Collar 1997). It feeds on seeds, fruits, and flowers; breeds from August to

December and lays four to five eggs; and is mostly sedentary, with local dispersals resulting from rainfall which stimulates production of food such as seeds (Collar 1997). The species declined to near extinction from 1880 through the 1920s, possibly because of habitat clearance, drought, or an epidemic, but recovered rapidly after 1930 (Collar 1997; Garnett and Crowley 2000). Numbers appear to be greatest in protected reserves, indicating that surrounding agricultural land may reduce foraging opportunities (Collar 1997). The size of the species' range is stable, and the area of population distribution within the range is increasing (Garnett and Crowley 2000).

Previous Federal Actions

The scarlet-chested parakeet and the turquoise parakeet of the genus *Neophema* are listed under the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*) as endangered throughout their entire ranges. The scarlet-chested parakeet was listed on December 2, 1970 (35 FR 18320). The turquoise parakeet was listed on June 2, 1970 (35 FR 8495). Both species were originally listed under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135, 83 Stat. 275 (1969)) as part of a list of species classified as endangered. This list was absorbed into the current Act. The endangered listing under the Act prohibits imports, exports, and re-exports of the species into or out of the United States as well as interstate and foreign commerce. On July 1, 1975, the scarlet-chested parakeet was placed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 42 FR 10465; February 22, 1977). On June 6, 1981, the turquoise parakeet was also added to CITES Appendix II. Listing in CITES Appendix II allows for regulated commercial trade based on certain findings. Furthermore, because no wild-caught specimens of these two species are in international trade, and they only occur in trade as captive-bred specimens, they were included in the approved list of captive-bred species under the regulations of the Wild Bird Conservation Act of 1992 (WBCA; 16 U.S.C. 4901-4916). Inclusion in this list allows for imports of these species without requiring a WBCA permit.

On September 22, 2000, we announced a review of all endangered and threatened foreign species in the Order Psittaciformes (parrots, parakeets, macaws, cockatoos, and others; also known as psittacine birds) listed under the Act (65 FR 57363). Section 4(c)(2) of the Act requires such a review at least

once every 5 years. The purpose of the review is to ensure that the Lists of Endangered and Threatened Wildlife (50 CFR 17.11) accurately reflect the most current status information for each listed species. We requested comments and the most current scientific or commercial information available on these species, as well as information on other species that may warrant future consideration for listing. If the present classification of species is not consistent with the best scientific and commercial information available at the conclusion of this review, we may propose changes to the list accordingly. One commenter suggested that we review the listing of these species and provided enough scientific information, including information and correspondence with Australian Government officials, to merit review of these species by the Service.

The Australian Government classifies the conservation status of the scarlet-chested parakeet as "Least Concern" and the turquoise parakeet as "Near Threatened." "Least Concern" indicates that the habitat in which the species occurs or the species' population density within the habitat has not declined by more than half of the size that it was a century ago. This is the lowest level of species risk. "Near Threatened" indicates that the habitat within the range and/or the size of the population within the available habitat is probably less than half of what it was a century ago. *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000), a strategic document produced by Environment Australia to recommend actions to government and non-government organizations in establishing national conservation priorities, includes recommendations for these species. The plan, however, is not a regulatory document, and the conservation priority for least concerned and near threatened birds is low (P. Blackwell, Environment Australia, pers. comm. with M. Kreger, DSA, 2002).

Commercial exports of these species from Australia have been prohibited since 1962. The prohibition is covered under Australia's Environment Protection and Biodiversity Act 1999. Although there are recommended actions for protection of both species under *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000), Australia has no recovery plan for either. Both species are, however, protected by State legislation and may not be trapped from the wild for commercial purposes (G. Maynes, Environment Australia, pers. comm. with M. Kreger, DSA, 2002). The 2000 IUCN (International Union for

Conservation of Nature and Natural Resources) Red List of Threatened Species downlisted the scarlet-chested parakeet from vulnerable (facing high risk of extinction in the wild in the medium-term future, but not very high or extremely high) to lower risk/near threatened (taxa that do not qualify as Conservation Dependent, but which are close to qualifying as vulnerable). This status was maintained in the 2002 IUCN Red List of Threatened Species. The turquoise parakeet is not included in the 2002 IUCN Red List of Threatened Species.

Summary of Factors Affecting the Scarlet-Chested Parakeet *Neophema splendida* and the Turquoise Parakeet *Neophema pulchella*

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the List of Endangered and Threatened Wildlife and Plants. These factors and their applicability to populations of the scarlet-chested parakeet and the turquoise parakeet of Australia are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Scarlet-Chested Parakeet

The scarlet-chested parakeet population has increased rapidly in favorable conditions such as increased rainfall (Collar 1997; Garnett and Crowley 2000), but habitat clearance has fragmented roosting and foraging habitat in southern South Australia and northwest Victoria. This species is frequently found in open agricultural areas during years of unusually high nest production likely due to competition among birds for optimal nest sites and foraging areas in forests. Thus, livestock grazing and burn management to clear land for agriculture may reduce habitat availability (Garnett and Crowley 2000). However, most of the species' foraging, roosting, and nesting habitat is outside agricultural areas, and the area over which the species flies is so vast (range exceeds 2,000 km²) that fires would not likely adversely affect a significant portion of the population (Snyder *et al.* 2000). *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000) recommends maintaining low fire frequency and grazing rates throughout the range of the species, particularly in protected reserves in Murray Mallee. It

also recommends determining environmental correlates of patterns of abundance in the Great Victoria Desert. However, these recommendations are voluntary, and because the species is categorized as least concern, it is not a high conservation priority for the Australian Government. Because of the area of occupancy and observed flock sizes, researchers think as many as 10,000 breeding-age birds may exist. This estimate is not reliable because of the lack of research on patterns of abundance and movement of this species; however, even if the population is smaller, there is no reason to suspect a decline (Snyder *et al.*, 2000). According to C. Mobbs, Deputy Director, Wildlife Protection, Environment Australia (faxed letter to aviculturist M. Runnals, 1999), this species is considered common with a stable population in the wild.

Turquoise Parakeet

Much of the turquoise parakeet's habitat available before the 1890s has been cleared for agriculture, preventing the species' recovery in more than half of its former range. However, the population is rapidly increasing, with as many as 20,000 breeding-age birds (Garnett and Crowley 2000). An additional habitat threat is the loss of hollow trees necessary for nesting in forests managed for timber, but the species can be prolific when nestboxes are substituted. Poorly managed burn regimens tend to encourage shrubby vegetation that outcompetes the grassy understory required by parrots for foraging (Garnett and Crowley 2000). *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000) recommends conserving native pasture and promoting its use, maintaining a buffer zone around known nesting areas, and improving fire management to encourage forage diversity. However, these recommendations are voluntary, and because the turquoise parakeet is categorized as near threatened, it is not a high conservation priority for the Australian Government.

Therefore, we find that the populations of these species are stable or increasing despite some habitat loss.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Action Plan for Australian Birds 2000 does not indicate overutilization as a threat to these species (Garnett and Crowley 2000). Both species are strictly protected by Australian State legislation and may not be trapped from the wild for commercial purposes (Environment Protection and Biodiversity Act 1999).

Since 1990, there has been no trade in wild-caught specimens of these species, according to the World Conservation Monitoring Centre (WCMC) and the Service's Law Enforcement Management Information System (LEMIS) databases, probably because these species breed readily in aviculture (Brown *et al.* 1994; Dingle 2000; Vriends 2000). The WCMC database indicates that the only specimens of these species traded internationally between 1990 and 1999 were captive-bred (9,980 scarlet-chested parakeets; 12,001 turquoise parakeets). Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to wild turquoise parakeets or scarlet-chested parakeets.

C. Disease or Predation

No threats from disease or predation have been reported for scarlet-chested parakeets (Garnett and Crowley 2000; Snyder *et al.* 2000). The turquoise parakeet was driven to near extinction in the early 1900s due to introduced herbivores, drought, and possibly an epidemic. However, the numbers are recovering rapidly, and the species is locally common (Collar 1997). The birds are vulnerable to predation by foxes because they nest close to the ground in hollow eucalyptus trees and stumps, but fox predation is not considered a threat to the survival of this species.

Therefore, we have no evidence, at this time, that disease and predation are significant factors affecting scarlet-chested parakeets or turquoise parakeets.

D. The Inadequacy of Existing Regulatory Mechanisms

As noted under Previous Federal Actions above, the Australian Government prohibits the commercial export of these species. Domestic use of these species is regulated by Australian State laws. Internationally, both species are listed in CITES Appendix II, which regulates their international commerce. Appendix-II specimens cannot be traded without a permit from the Management Authority of the exporting country. One consideration for approving or denying an export permit is whether or not the proposed export may be detrimental to the survival of the species in the wild.

The United States has additional domestic measures that regulate the trade of these species. The Lacey Act prohibits the import, export, transport, possession, sale, or purchase of birds or their products in violation of State, Federal, or foreign laws or regulations. If these species are removed from the List of Endangered and Threatened

Wildlife, Endangered Species Act protection would no longer apply. In addition, the Wild Bird Conservation Act of 1992 requires a WBCA import permit for wild-caught specimens of these species.

Because the only international trade in these species is limited to captive-bred specimens and specimens not of Australian origin, because the species are prohibited from commercial export in Australia, and because stricter domestic measures govern the importation of these species in the United States, the existing regulatory mechanisms appear to be sufficient.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The scarlet-chested parakeet may be affected by competition with Bourke's parakeet (*Neopsephotus bourkii*) where permanent water has been provided by humans in semi-arid rangelands (Landsberg *et al.* 1997). Such competition, however, does not appear to be detrimental at a specieswide level. There is no information to indicate any other natural or manmade factors that affect the continued existence of these species.

Summary of Findings

We have carefully assessed the best available biological and conservation status information regarding the past, present, and future threats faced by the scarlet-chested and turquoise parakeets. We find few threats to the species in the wild. Enforcement of existing national and international laws and treaties has minimized the potential impact of trade, and wild populations are stable or increasing, with more than 20,000 breeding-age turquoise parakeets and 10,000 breeding-age scarlet-chested parakeets. In the 2002 IUCN Red List of Threatened Species, the turquoise parakeet is not listed and the scarlet-chested parakeet is included only as lower risk/near threatened. On the basis of this evaluation, we propose to remove *Neophema pulchella* and *Neophema splendida* from the List of Endangered and Threatened Wildlife under the Act.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to remove the scarlet-chested parakeet and the turquoise parakeet from among the species included in the List of Endangered and Threatened Wildlife. Because no critical habitat was ever designated for these species, this rule would not affect 50 CFR 17.95.

If these species are removed from the List of Endangered and Threatened Wildlife, Endangered Species Act

protection would no longer apply. The Endangered Species Act currently prohibits the export, import, and interstate commerce of specimens unless certain biological and legal criteria are met, including a demonstrable benefit to the wild population. However, the protections under the Lacey Act and the Wild Bird Conservation Act (for wild-caught specimens only) would remain unchanged. These species are prohibited from commercial export by the Government of Australia and receive additional domestic protection through the Australian States. Removing these species from the List of Endangered and Threatened Wildlife does not alter or supersede their designations as near threatened (turquoise parakeet) and least concern (scarlet-chested parakeet) by the Government of Australia. In addition, removing them from the List will not increase the level of trade in wild-caught specimens or decrease the level of protection provided by CITES.

Public Comments Solicited

We will accept written comments and information during this comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. In particular, we are seeking comments concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the scarlet-chested parakeet and the turquoise parakeet;
- (2) Additional information concerning the range, distribution, and population size of the scarlet-chested parakeet and the turquoise parakeet;
- (3) Current planned activities in the habitat and their possible impacts on the scarlet-chested parakeet and the turquoise parakeet; and
- (4) Impacts on the species caused by removing them from the List of Endangered and Threatened Wildlife.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any persons commenting may request that we withhold their home addresses, and we will honor these requests to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the Division of Scientific Authority (*see ADDRESSES* section).

You may also request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Division of Scientific Authority (*see ADDRESSES* section).

Peer Review

Under our peer review policy (59 FR 34270; July 1, 1994), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information on this proposed rule. The purpose of such review is to ensure that we base listing decisions on scientifically sound data, assumptions, and analysis. To that end, we will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**.

Clarity of This Regulation

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 the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Dr. Michael D. Kreger, Division of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

We propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. We propose to amend § 17.11(h) by removing the entries for “Parakeet, scarlet-chested (*Neophema splendida*)” and “Parakeet, turquoise (*Neophema pulchella*),” under “BIRDS” from the List of Endangered and Threatened Wildlife.

Dated: August 19, 2003.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–22225 Filed 8–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[ID 082503D]

RIN 0648–AQ98

Fisheries of the Exclusive Economic Zone off Alaska; Individual Fishing Quota Program; Community Purchase

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment would modify the Individual Fishing Quota (IFQ) Program by revising the definition of an eligible quota share holder to allow eligible communities in the Gulf of Alaska (GOA) to purchase and hold sablefish quota share (QS) for lease to and use by community residents.

DATES: Comments on Amendment 66 must be received at the following address by November 3, 2003.

ADDRESSES: Comments on the FMP amendment may be mailed to Sue

Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments may be delivered in person or by courier to the Federal Building, 709 West 9th St., Room 413–1, Juneau, AK, 99801. Comments also may be sent via facsimile to (907) 586–7557, Attn: Lori Durall. Copies of Amendment 66 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action by the Council and NMFS are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT:

Glenn Merrill, (907) 586–7228, or glenn.merrill@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 66 was adopted by the Council in April 2002. If approved by NMFS, this amendment would allow certain remote communities to designate non-profit entities to purchase and hold QS and lease the resulting IFQ to community residents. To be eligible for this community purchase program, a community would have to have of population of less than 1,500 people, no road access to larger communities, and have direct access to marine waters of the GOA. Further, the Council determined which communities would meet these criteria and this list of eligible communities would be specified in the implementing rules. A non-profit entity of an eligible community also would have to meet criteria to receive QS by transfer and would have to submit annual reports. These non-profit entities would be subject to restrictions

on the amount of quota they may hold individually and in the aggregate, on the sale of QS, and the leasing of IFQ.

Amendment 66 would be necessary to allow sablefish QS to be purchased and held by eligible communities because the current FMP limits the transfer of QS, with certain exemptions, to individuals and not corporate entities. The IFQ Program for Pacific halibut is implemented under authority of the North Pacific Halibut Act of 1982 (Halibut Act) instead of the Magnuson-Stevens Act, and the Council does not have a halibut fishery management plan. If this proposed policy change is approved, however, the halibut and sablefish components would be implemented with the same rules. Amendment 66, and its companion regulatory amendment for halibut also is designed to comply with the Magnuson-Stevens Act mandate that Regional Councils must take into account the importance of fishery resources to communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

Public comments are being solicited on the amendment through the end of the comment period (see **DATES**). A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under Magnuson-Stevens Act procedures. All comments received by the end of the comment period whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision on the amendment, comments must be received by the close of business on the last day of the comment period on the amendment; that does not mean postmarked or otherwise transmitted by that date.

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22343 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 169

Tuesday, September 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—7 CFR Part 226 Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Nutrition Service's (FNS) intention to request Office of Management and Budget (OMB) review of the information collection related to the Child and Adult Care Food Program. This notice also invites the general public and other public agencies to comment on the proposed information collection.

DATES: To be assured of consideration, comments must be received by November 3, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie at (703) 305-2590.

SUPPLEMENTARY INFORMATION: *Title:* 7 CFR part 226, Child and Adult Care Food Program.

OMB Number: 0584-0055.

Expiration Date: December 31, 2003.

Type of Request: Extension of a currently approved collection.

Abstract: Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766), authorizes the Department to carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

Estimate of Burden: The reporting burden for this collection of information is estimated at 4,431,068 burden hours. The recordkeeping burden is estimated at 662,784 burden hours.

Affected Public: 2,604,449.

Estimate of Burden:

Annual Reporting Burden:

(1) *Estimated number of respondents:* 2,604,449.

(2) *Estimated number of responses per respondent:* 1.8440.

(3) *Estimated time per response:* 1.084 hours.

Estimated Total Annual Reporting Burden: 4,431,068 hours.

Annual Recordkeeping Burden:

(1) *Estimated total number of Recordkeepings:* 4,802,804.

(2) *Estimated time per Recordkeeping:* .138 hours.

Estimated Total Annual Recordkeeping Burden: 662,784.

Total Annual Reporting and Recording Burden: 5,093,852.

Dated: August 25, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03-22295 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03-031N]

FSIS Public Meeting on Pre-Harvest Food Safety Issues and *Escherichia coli (E. coli) O157:H7*

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on pre-harvest food safety issues and *E. coli O157:H7* on September 9, 2003, in Washington, DC. The meeting will consist of presentations on the research and practical experiences aimed at reducing *E. coli O157:H7* at the livestock production level before livestock reach federally inspected plants. The meeting will also include a brief review of on-farm interventions for pathogens other than *E. coli O157:H7* that have already been adopted by producers.

This meeting is one of a number of public meetings FSIS is conducting to discuss new approaches for strengthening food safety.

DATES: The public meeting is scheduled for September 9, 2003, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue, at 14th Street, Washington, DC 20005. A tentative agenda will be available in the FSIS Docket Room and on the FSIS Web site at <http://www.fsis.usda.gov/>. The official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room at room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700, and will represent public comments. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket 03-031N, Room 102, Cotton Annex, Washington, DC 20250-3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Nathan Bauer at (979) 260-9562.

There will be no pre-registration for this meeting. Persons requiring a sign language interpreter or other special accommodations should contact Sheila Johnson at (202) 690-6498, fax: (202) 690-6500, or e-mail: Sheila.johnson@fsis.usda.gov as soon as possible.

SUPPLEMENTARY INFORMATION: The scientific community continues to work with animal agriculture to investigate methods to reduce food safety risks through the use of specific production practices. Although much has been learned about the ecology of biological, chemical, and physical hazards during animal production, there are as of yet no specific production practices addressing biological hazards that consistently and predictably lead to improvement in food safety. Results are promising in some cases, and investigation of those avenues continues. A key point to recognize is that risk reduction interventions that can be expected will arise from those areas under research or from new areas that are added to the research agenda. It is important, therefore, for producers to be aware of the practices being explored, so that they can have input into the process and raise concerns about (1) areas that are not under investigation but that should be, (2) the economic impact of implementing new practices on the farm, and (3) the impact of food safety hazards on the marketability of their products.

To further pursue initiatives related to production practices, FSIS is holding a public meeting on pre-harvest food safety issues and *E. coli O157:H7*. The meeting has three goals.

The first goal is to determine whether interventions available to producers can form the basis for best management practices to reduce the load of *E. coli O157:H7* in livestock before slaughter. The second goal is to identify promising interventions and determine what steps need to be taken to make the interventions available at the livestock production level. The third goal is to identify which research gaps should be the focus of the research community, including government, academia, and industry.

Based on the input from the conference, and any other information available to the Agency, FSIS will develop materials for producers that address pre-harvest food safety issues and *E. coli O157:H7* and take other actions that appear to advance its food safety goals.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is

important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at <http://www.fsis.usda.gov/oa/update/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on August 27, 2003.

Garry L. McKee,
Administrator.

[FR Doc. 03-22297 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2004 Tariff-Rate Import Quota Year.

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2004 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be \$170.00 per license.

EFFECTIVE DATES: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1021 or telephone at (202) 720-9439 or e-mail at Michael.Hankin@fsa.usda.gov.

SUPPLEMENTARY INFORMATION: The Dairy Import Tariff-Rate Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20-6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2004 calendar year.

Notice

In order to establish a fee appropriate to defray the costs of administering the licensing system, the Department of Agriculture has reviewed the costs estimated to be incurred during the 2003 quota year and will base the fee for the 2004 quota year on those costs. The total cost to the Department of Agriculture of administering the licensing system during 2003 has been determined to be \$433,000 and the estimated number of licenses expected to be issued is 2,560. Of the total cost, \$200,000 represents staff and supervisory costs directly related to administering the licensing system for 2003; \$50,000 represents the total

computer costs to monitor and issue import licenses for 2003; and \$183,000 represents other miscellaneous costs, including travel, postage, publications, forms, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2004 calendar year, in accordance with 7 CFR 6.33, will be \$170.00 per license.

Issued at Washington, DC the 27th day of August, 2003.

Michael Hankin,

Licensing Authority.

[FR Doc. 03-22296 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92-463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, September 15, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: review any new RAC proposals, review new Forest Service Region 5 RAC Web site, finalize Madera County RAC mission, clarify voting procedures, discuss how to get voting members to meeting to vote, how to better advertise for RAC projects from the community and discuss participation in the Regional RAC conference.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, September 15, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877-2218 ext. 3100; e-mail: dmartin05@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review any new RAC proposals, (2) review new

Forest Service Region 5 RAC Web site, (3) finalize Madera County RAC mission, (4) clarify voting procedures, (5) discuss how to get voting members to meeting to vote, (6) how to better advertise for RAC projects from the community and (7) discuss participation in the Regional RAC conference. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 25, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03-22251 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03-A-W]

Designation of Keokuk (IA) To Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration (USDA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Keokuk Grain Inspection Service (Keokuk) to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: August 6, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 2001, **Federal Register** (66 FR 13875), GIPSA announced the designation of Keokuk to provide official inspection services under the Act, effective May 1, 2001, and ending March 31, 2004. Subsequently, Keokuk asked GIPSA to amend their designation to include official weighing services. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under

section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and determined that Keokuk is qualified to provide official weighing services in their currently assigned geographic area.

Effective August 6, 2003, and terminating March 31, 2004 (the end of Keokuk's designation to provide official inspection services), Keokuk's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, as specified in the September 1, 2000, **Federal Register** (65 FR 53263). Official services may be obtained by contacting Keokuk at 319-524-6482.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03-22307 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03-01-SB]

Designation for the Minnesota Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the Minnesota Department of Agriculture (Minnesota) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the geographic areas assigned to

Minnesota to submit an application for designation. Applications were due by April 1, 2003.

There were six applicants for the Minnesota area: Minnesota, North Dakota Grain Inspection Service, Inc. (North Dakota), D. R. Schaal Agency, Inc. (Schaal), and Sioux City Inspection and Weighing Service Company (Sioux City), all currently designated official agencies; Paul B. Bethke, Terry D. Pladson, and Ryan M. Kuhl proposing to do business as Northern Plains Grain Inspection Service, Inc. (Northern Plains), and Kathleen Duea, Kyle Duea, Ben Duea, and Nicole Youel proposing to do business as Southern Minnesota Grain Inspection (Southern Minnesota). Minnesota applied for designation to provide official services in the entire area currently assigned to them. North Dakota and Northern Plains applied for all or part of the area currently assigned to Minnesota. Schaal made application but subsequently withdrew their application. Sioux City applied for all or part of the following Minnesota Counties: Brown, Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Watonwan, and Yellow Medicine. Southern Minnesota Grain Inspection applied for all or part of the area currently assigned to Minnesota, and specified all or part of the following Minnesota Counties: Blue Earth, Cottonwood, Faribault, Jackson, Martin, Murray, Nobles, and Watonwan.

GIPSA asked for comments on the applicants for providing service in the Minnesota area in the May 1, 2003, **Federal Register** (68 FR 23279). Comments were due by May 1, 2003. GIPSA received 203 comments by the due date. Minnesota received four favorable comments, one from current Minnesota employees, one from an elevator manager, and two from managers representing grain elevator trade groups; and one unfavorable comment from a member of the Minnesota House of Representatives. North Dakota received five favorable comments from elevator managers. Northern Plains received 12 favorable comments and one unfavorable comment from grain elevator managers.

Southern Minnesota received a total of 180 favorable comments, seven from grain elevator managers, two from current employees, one from a Minnesota State Senator, one from a Montana grain elevator trade association, one from a banker, one from an accounting firm, one from a crop insurance company, one from a railroad manager, and 165 from members of a grain coop. Sioux City received no comments.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that, effective October 1, 2003, and ending March 31, 2005, Minnesota is better able to provide official services in the geographic area specified in the March 3, 2003, **Federal Register** for which they applied.

Minnesota is designated for 18 months to provide official services in the geographic area for which they applied. Interested persons may obtain official services by calling Minnesota at 612-297-2200.

During the upcoming designation period GIPSA plans to announce a pilot program in Minnesota, which would allow multiple official agencies to provide official inspection and weighing services within the State of Minnesota.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03-22304 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03-01-S]

Designation for the Idaho (ID), Lewiston (ID), Ohio Valley (IN), and Utah Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Idaho Grain Inspection Service, Inc. (Idaho);

Lewiston Grain Inspection Service, Inc. (Lewiston);

Ohio Valley Grain Inspection, Inc. (Ohio Valley); and

Utah Department of Agriculture and Food (Utah).

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by April 1, 2003.

Idaho, Lewiston, Ohio Valley, and Utah were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Idaho, Lewiston, Ohio Valley, and Utah are able to provide official services in the geographic areas specified in the March 3, 2003, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start—end
Idaho	Pocatello, ID, 208-233-8303	10/01/2003-09/30/2006
Lewiston	Lewiston, ID, 208-746-0451	10/01/2003-09/30/2006
Ohio Valley	Evansville, IN, 513-251-6571	10/01/2003-09/30/2006
Utah	Salt Lake City, UT, 801-538-7100	10/01/2003-09/30/2006

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,
Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03-22305 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03-03-A]

Opportunity for Designation in the Champaign (IL), Detroit (MI), Eastern Iowa (IA), Enid (OK), Keokuk (IA), and Michigan (MI) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2004. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing

official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Champaign-Danville Grain Inspection Departments, Inc. (Champaign); Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); and Michigan Grain Inspection Services, Inc. (Michigan).

DATES: Applications and comments must be postmarked or electronically dated on or before October 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Avenue, SW., Washington, DC 20250-3604; FAX 202-690-2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647-S, 1400 Independence

Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202-720-8525, e-mail Janet.M.Hart@usda.gov.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal.

Official agency	Main office	Designation start	Designation end
Champaign	Champaign, IL	6/01/2001	3/31/2004
Detroit	Emmett, MI	5/01/2001	3/31/2004
Eastern Iowa	Davenport, IA	6/01/2001	3/31/2004
Enid	Enid, OK	6/01/2001	3/31/2004
Keokuk	Keokuk, IA	5/01/2001	3/31/2004
Michigan	Marshall, MI	5/01/2001	3/31/2004

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Indiana, is assigned to Champaign.

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

The following grain elevators, all in Illinois, located outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor Grain Company (3 elevators), Farmer City, Dewitt County; and Topflight Grain Company,

Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Champaign's assigned geographic area does not include the following grain elevators inside Champaign's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: Kentland Elevator and Supply, Boswell, Benton County, Indiana; ADM, Dunn, Benton County, Indiana; and ADM, Raub, Benton County, Indiana.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Michigan, is assigned to Michigan.

Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to

Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;

Bounded on the East by the Michigan State line south to State Route 50;

Bounded on the South by State Route 50 west to U.S. Route 127; and

Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: Caldonia Farmers Elevator, St. Johns, Clinton County (located inside Michigan Grain Inspection Services, Inc.'s, area).

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Eastern Iowa.

The southern area:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

Eastern Iowa's assigned geographic area does not include the export port locations inside Eastern Iowa's area which are serviced by GIPSA.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Oklahoma, is assigned to Enid.

Adair, Alfalfa, Atoka, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Keokuk.

Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois.

Davis, Lee, and Van Buren Counties, Iowa.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Michigan and Ohio, is assigned to Michigan.

Bounded on the North by the northern Michigan State line;

Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line. In Ohio, the

northern State line east to the eastern Fulton County line; the eastern Fulton, Henry, and Putnam County lines; the eastern Allen County line south to the northern Hardin County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to State Route 47; Bounded on the South by State Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

Michigan's assigned geographic area does not include the following grain elevators inside Michigan's area which has been and will continue to be serviced by the following official agencies:

1. Detroit Grain Inspection Service, Inc.: Caldonia Farmers Elevator, St. Johns, Clinton County, Michigan.
2. Northeast Indiana Grain Inspection, Inc.: E.M.P. Coop, Payne, Paulding County, Ohio.

2. Opportunity for designation.

Interested persons, including Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 2004, and ending March 31, 2007. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, www.usda.gov/gipsa/oversight/parovreg.htm.

3. Request for Comments. GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan official agencies. In commenting on the quality of services, commenters are encouraged to submit pertinent data including information on the timeliness, cost, and scope of services provided. All comments must

be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03-22306 Filed 8-29-03; 8:45 am]

BILLING CODE 3410-EN-P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Overseas Enumeration Test.

Form Number(s): DO-1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 75,000 hours.

Number of Respondents: 450,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2004 Overseas Enumeration Test. In response to Congressional direction and stakeholder inquiries and interest, the Census Bureau has embarked on a research and evaluation program that will provide information regarding the feasibility of counting U.S. citizens living overseas and their dependents, including private U.S. citizens living overseas, as part of its 2010 Census data collection process.

The 2004 test will include U.S. citizens living in France, Kuwait, and Mexico, regardless of how long they have resided abroad (this does not include those on vacations or short business trips). People who are not U.S. citizens will not be included in the counts. France, Kuwait, and Mexico were selected as test sites based on several criteria such as geographic diversity, significant numbers of U.S. citizens, and estimates from administrative records that could be compared to the test census counts for evaluation purposes.

The 2004 Overseas Enumeration Test will be a "mixed-mode" test, which will employ the use of paper questionnaires and the Internet. For the respondent-

initiated paper returns, the Census Bureau will provide questionnaires to U.S. citizens to pick up at embassies, consulates, and from organizations that serve Americans overseas. Questionnaires can be returned by mail or completed via the Internet.

The Census Bureau is developing a comprehensive communications strategy, consisting of a marketing and promotional campaign that will address educating overseas Americans about the overseas enumeration test, motivating participation, and reaching them through local venues such as radio and print media.

The objectives of the 2004 Overseas Enumeration Test are to determine the feasibility, quality and cost of collecting data from U.S. citizens living overseas. The results of the 2004 Overseas Enumeration Test will be used to provide information and recommendations to inform a test in 2006. If Congress decides to include an expanded overseas enumeration in the 2010 census, a "dress rehearsal" would be conducted in 2008.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202-395-7245) or email (susan_schechter@omb.eop.gov).

Dated: August 26, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-22243 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the reengineered 2010 decennial census of population and housing, including the American Community Survey, the short-form-only 2010 census, and other related decennial programs. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: October 9-10, 2003. On October 9, the meeting will begin at approximately 9 a.m. and end at approximately 5 p.m. On October 10, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4700 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763-2070, TTY (301) 457-2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside-user perspective about how research-and-design plans for the 2010 reengineered decennial census and the development of the American Community Survey and other related programs will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010

reengineered decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: August 26, 2003.

Keith Hall,

*Acting Under Secretary for Economic Affairs,
Economics and Statistics Administration.*

[FR Doc. 03-22319 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

License Exception TMP: Special Requirements

ACTION: Proposed Information Collection: Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Marna Dove, BIS ICB Liaison, (202) 482-5211, Department of Commerce, Room 6622, 14th &

Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

License Exception TMP of the Export Administration Regulations (15 CFR 740.8) authorizes temporary (not more than one year) exports and reexports of some commodities and software in some situations in which a license otherwise would be required. Information not covered by any other approved collection is obtained from the public in two situations covered by this collection. The first situation is when the exporter or reexporter wishes to keep the commodities or software abroad for more than one year. In such instances, the exporter or reexporter must submit an application for an extension (up to six months) or to convert the transaction to a permanent export or reexport. The second situation occurs when members of the news media wish to use TMP as authorization to take items that otherwise would require a license to destinations in Country Groups D:1 or E:2 or Sudan (*see* 15 CFR part 740, Supp. No. 1 for the constituents of each country group). In this situation, the exporter or reexporter must submit a copy of the packing list or similar information to BIS before the export or reexport.

II. Method of Collection

The information will be collected in written form.

III. Data

OMB Number: 0694-0029.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 3.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Total Annual Cost: \$15 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 26, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03-22242 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of September 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA: Certain Hot-Rolled Carbon Steel Flat Products A-357-814	9/1/02-8/31/03
BELARUS: Steel Concrete Reinforcing Bars A-822-804	9/1/02-8/31/03
CANADA: New Steel Rail, Except Light Rail A-122-804	9/1/02-8/31/03
INDONESIA: Steel Concrete Reinforcing Bars A-560-811	9/1/02-8/31/03
ITALY: Stainless Steel Wire Rod A-475-820	9/1/02-8/31/03
JAPAN: Flat Panel Displays A-588-817	9/1/02-8/31/03
Stainless Steel Wire Rod A-588-843	9/1/02-8/31/03
LATVIA: Steel Concrete Reinforcing Bars A-449-804	9/1/02-8/31/03
MOLDOVA: Steel Concrete Reinforcing Bars A-841-804	9/1/02-8/31/03
POLAND: Steel Concrete Reinforcing Bars A-455-803	9/1/02-8/31/03
REPUBLIC OF KOREA: Stainless Steel Wire Rod A-580-829	9/1/02-8/31/03
Steel Concrete Reinforcing Bars A-580-844	9/1/02-8/31/03
SOUTH AFRICA: Certain Hot-Rolled Carbon Steel Flat Products A-791-809	9/1/02-8/31/03
SPAIN: Stainless Steel Wire Rod A-469-807	9/1/02-8/31/03
SWEDEN: Stainless Steel Wire Rod A-401-806	9/1/02-8/31/03
TAIWAN: Stainless Steel Wire Rod A-583-828	9/1/02-8/31/03
THE PEOPLE'S REPUBLIC OF CHINA: Foundry Coke A-570-862	9/1/02-8/31/03
Freshwater Crawfish Tail Meat A-570-848	9/1/02-8/31/03
Greige Polyester/Cotton Printcloth A-570-101	9/1/02-8/31/03
Steel Concrete Reinforcing Bars A-570-860	9/1/02-8/31/03
UKRAINE: Silicomanganese A-823-805	9/1/02-8/31/03
Solid Agricultural Grade Ammonium Nitrate A-823-810	9/1/02-8/31/03
Steel Concrete Reinforcing Bars A-823-809	9/1/02-8/31/03
Countervailing Duty Proceedings	
ARGENTINA: Certain Hot-Rolled Carbon Steel Flat Products C-357-815	1/1/02-12/31/02
CANADA: New Steel Rail, Except Light Rail C-122-805	1/1/02-12/31/02
ITALY: Stainless Steel Wire Rod C-475-821	1/1/02-12/31/02
Suspension Agreements: None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers)

which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import

Administration Web site at <http://www.ia.ita.doc.gov>.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation

of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of September 2003. If the Department does not receive, by the last day of September 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 27, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03-22345 Filed 8-29-03; 8:45am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-879]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Gibbons, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3874 or (202) 482-0498, respectively.

Amendment to Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on August 11, 2003, the Department published its notice of final determination of sales at less than fair value (LTFV) in the investigation of polyvinyl alcohol (PVA) from the People's Republic of China (PRC). See *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the*

People's Republic of China, 68 FR 47538 (Aug. 11, 2003). On August 11, 2003, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondent, Sinopec Sichuan Vinylon Group (SVW), that the Department had made a ministerial error in its final determination. We did not receive comments on SVW's submission from the petitioners in this investigation, Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Company. After analyzing SVW's submission, we have determined, in accordance with 19 CFR 351.224(e), that we made a ministerial error in our calculation of total freight expenses for certain sales with CIF Chongqing delivery terms in the margin calculations performed for the final determination.

Further, in reviewing the calculation of SVW's freight expenses for these CIF Chongqing transactions, we discovered two other clerical errors in the margin program directly related to the one identified by the respondent. First, we discovered that the error in total freight expenses discussed above also relates to SVW's FOB Chongqing sales. Second, in determining which inland freight expenses were applicable to SVW's CIF Chongqing sales, we discovered that we had incorrectly recalculated marine insurance expenses. Correcting these errors resulted in a revised margin for SVW.

For a detailed discussion of the ministerial errors noted above, as well as the Department's analysis, see the August 25, 2003, memorandum to Jeffrey May from the Team entitled "Ministerial Error Allegation in the Final Determination of the Antidumping Duty Investigation on Polyvinyl Alcohol from the People's Republic of China."

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of PVA from the PRC. The revised dumping margins are as follows:

Manufacturer/exporter	Original final margin (percent)	Amended final margin (percent)
Sinopec Sichuan Vinylon Works	7.40	6.91
PRC-wide	97.86	97.86

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of

PVA from the PRC. The BCBP shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03-22346 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503H]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Committee, together with the Tilefish Industry Advisors and Tilefish Technical Team, will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 18, 2003, from 10 a.m. to 4 p.m.

ADDRESSES: This meeting will be held at the Crowne Plaza Meadowlands, Two Harmon Plaza, Secaucus, NJ; telephone: 201-348-6900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to address the decision of the court in *Hadaja v. Evans* which raised questions with respect to the Administrative Record for tilefish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice

that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03-22341 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Invention Promoters/Promotion Firms Complaints.

Form Number(s): PTO/SB/2048.

Agency Approval Number: 0651-0044.

Type of Request: Revision of a currently approved collection.

Burden: 38 hours annually.

Number of Respondents: 100 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, complete the form, and submit the complaint to the USPTO. The USPTO estimates that it will take an invention promoter or promotion firm approximately 30 minutes (0.5 hours) to prepare and submit a response to a complaint.

Needs and Uses: The Inventors' Rights Act of 1999 requires the USPTO to provide a forum for publishing complaints concerning invention promoters and responses by the invention promoters to these complaints. An individual may submit a complaint to the USPTO, which is then forwarded to the identified invention promoter for response. Complaints and responses are published on the USPTO web site. The public uses this collection to submit a complaint to the USPTO regarding an invention promoter or to respond to a complaint. The USPTO uses this information to comply with its statutory duty to publish the complaint along with any response from the invention promoter.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703-308-7400, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before October 2, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: August 26, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03-22253 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003-C-014]

Revision of the United States Patent and Trademark Office Seal

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; Revision of agency seal.

SUMMARY: The United States Patent and Trademark Office revises its agency seal.

ADDRESSES: Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Maulsby at (703) 305-8341.

SUPPLEMENTARY INFORMATION: The USPTO is revising its official seal established under 35 U.S.C. 2(b)(1). Effective October 1, 2003, the USPTO adopts the following as its seal with which letters patent, certificates of trademark registrations, and papers issued by USPTO will be authenticated and which shall be judicially noticed:



Dated: August 26, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03-22291 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Manufactured by a Certain Company in Botswana

August 26, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection to deny entry to shipments allegedly manufactured by a certain company in Botswana.

EFFECTIVE DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The Bureau of Customs and Border Protection has conducted on-site

verification of textile and apparel production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, the Bureau of Customs and Border Protection has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the Bureau of Customs and Border Protection to issue regulations regarding the denial of entry of shipments from such companies. (See **Federal Register** notice 64 FR 41395, published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and Bureau of Customs and Border Protection law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the Bureau of Customs and Border Protection to deny entry to textile and textile products allegedly manufactured by Uni-Oriental (Pty) Ltd. of Botswana for two years. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been illegally transshipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such

amendment will be published in the **Federal Register**.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 2003.

Commissioner,
*Bureau of Customs and Border Protection,
Washington, DC 20229.*

Dear Commissioner: The Bureau of Customs and Border Protection has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, the Bureau of Customs and Border Protection has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the Bureau of Customs and Border Protection to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and Bureau of Customs and Border Protection law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection, effective for goods exported on and after September 2, 2003 and extending through September 1, 2005, to deny entry to textiles and textile products allegedly manufactured by the company Uni-Oriental (Pty) Ltd. of Botswana. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been

illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the
Implementation of Textile Agreements.
[FR Doc.03-22202 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0136]

Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000-0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. The OMB clearance expires on October 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Zaffos, Acquisition Policy Division, GSA (202) 208-6091.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 37,500.

Responses Per Respondent: 34.

Total Responses: 1,275,000.

Hours Per Response: .312.

Total Burden Hours: 397,800.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: August 26, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03-22248 Filed 8-29-03; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF EDUCATION

Office of Management; Performance Review Board; Notice of Membership

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review

Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended June 30, 2003. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education is composed of career senior executives, non-career senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay level adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education to serve on the PRB of the Department of Education for the specified SES performance cycle: Chair: William Leidinger, Gerald Reynolds, Jack Martin, John Higgins, Maria Ferrier, Susan Sclafani, Thomas Skelly, Philip Link, Steven Winnick, Patricia Guard, Veronica Trietsch, Jeannette Lim, and Thomas Pestka.

FOR FURTHER INFORMATION CONTACT:

Althea Watson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, room 2E124, FOB-6, 400 Maryland Avenue, SW., Washington, DC 20202-4573. Telephone: (202) 401-2548.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.gpoaccess.gov/nara/index.html>.

Dated: August 27, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03-22318 Filed 8-27-03; 2:28 pm]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[Docket Nos. EA-280]

Application To Export Electric Energy; Direct Energy Marketing Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Direct Energy Marketing Inc. (DEMI) has applied for authority to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586-4708 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 13, 2003, DEMI applied to the Office of Fossil Energy of the Department of the Department of Energy (DOE) for authority to export electric energy from the United States to Canada. DEMI is a Delaware corporation with its principal place of business in Stamford, Connecticut. DEMI is wholly-owned by Centrica U.S. Holdings Inc., an indirect, wholly-owned subsidiary of Centrica plc. Centrica plc is a major supplier of energy, telecommunications, and financial services in the United

Kingdom. DEMI and its affiliates have no franchised service territory in the United States or Canada for the sale of natural gas or electricity, nor do DEMI or its affiliates own or operate any generation or transmission facilities in the United States or Canada. DEMI will operate as a marketer and broker of electric power at wholesale and may arrange services in related areas such as fuel supplies and transmission services.

DEMI proposes to export electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company. DEMI will purchase the energy to be exported from electric utilities and Federal power marketing agencies within the United States as defined in the FPA.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DEMI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DEMI application to export electric energy to Canada should be clearly marked with Docket EA-280. Additional copies are to be filed directly with Catherine P. McCarthy, LeBeouf, Lamb, Greene & MacRae, L.L.P. 1875 Connecticut Avenue, NW., Suite 1200, Washington, DC 20007 AND Robert Frank, Vice President, Regulatory Affairs, Centrica North America, 8 Greenway Plaza, Suite 1000, Houston, TX 77046.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will

not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page select "Electricity regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on August 26, 2003.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03-22302 Filed 8-29-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Docket No. PP-66-1]

Application to Transfer Presidential Permit; Citizens Communications Company and Vermont Electric Power Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Communications Company (Citizens) and Vermont Electric Power Company, Inc. (VELCO) have jointly applied to transfer Presidential Permit PP-66 from Citizens to VELCO.

DATES: Comments, protests or requests to intervene must be submitted on or before October 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of

a proposed voluntary transfer of physical facilities, in accordance with the regulations at 10 CFR 205.323, the existing holder of a permit and the transferee are required to file joint application for transfer with the Department of Energy (DOE) that includes a statement of reasons for the transfer.

On June 21, 1979, DOE issued Presidential Permit PP-66 to Citizens Utilities Company (now Citizens Communications Company) for one 120,000-volt (120-kV) electric transmission line that crosses the United States border with Canada near Derby Line, Vermont, and interconnects with similar transmission facilities in Canada owned by Hydro Quebec.

On August 21, 2003, Citizens and VELCO (collectively, the "Applicants") jointly filed an application with DOE to transfer Presidential Permit PP-66 from Citizens to VELCO. VELCO is a Vermont corporation comprised of several electric utilities operating in Vermont (as further described in the application). VELCO currently owns and operates most of the bulk transmission facilities in Vermont, other than those currently owned by Citizens. VELCO proposes to purchase from Citizens transmission facilities in northern Vermont, including the international transmission facilities that are the subject of PP-66.

In this application, the Applicants state that there will be no physical changes to the existing permitted facilities.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the joint application to transfer Presidential Permit PP-66 from Citizens to VELCO should be clearly marked with Docket PP-66-1. Additional copies are to be filed directly with L. Russell Mitten, Esq., VP, General Counsel, Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905; Mr. Gary Parker, V.P., Director of Planning, Engineering, Construction and Transmission, Vermont Electric Power Company, Inc., 366 Pinnacle Ridge Road, Rutland, VT 05701; and Kenneth G. Hurwitz, Esq., Haynes and Boone, LLP, 550 11th Street, NW, Suite 650, Washington, DC 20004-1314; and John H. Marshall, Esq.,

Downs Rachlin Martin PLLC, 90 Prospect Street, P.O. Box 99, St. Johnsbury, VT 05819-0099.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit with any conditions and limitations, or denying it) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on August 26, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03-22303 Filed 8-29-03; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-347-002]

Chandeleur Pipe Line Company; Notice of Compliance Filing

August 25, 2003.

Take notice that on August 18, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Substitute Third Revised Sheet No. 69B, to become effective July 1, 2003.

Chandeleur asserts that the purpose of this filing is to correct a typographical error on this sheet.

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: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22218 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01-76-007 and CP01-77-007]

Dominion Cove Point LNG, LP.; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 19, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 18, 2003:

Third Revised Sheet No. 5.
Third Revised Sheet No. 6.
Third Revised Sheet No. 7.
Third Revised Sheet No. 10.
Third Revised Sheet No. 11.

On May 20, 2003, Cove Point filed revised tariff sheets (Second Revised Sheet Nos. 5, 6, 7, 10, and 11) to reflect the correct rates to be effective until the Commission authorized commencement of commercial operations at Cove Point's LNG import terminal. The tariff sheets superseded at that time, which had been approved in a letter order issued February 28, 2003, in Docket No. CP01-76-003, *et al.*, implemented the rates and fuel retention to become applicable upon reactivation. In a letter order issued on June 18, 2003 in Docket Nos. CP01-76-005 and CP01-77-005, the Commission approved the correct rates to be effective June 1, 2003.

In its May 20 filing, Cove Point indicated that, as soon as the Commission approved a date for placing the import facilities in service, it would immediately file to reinstate the postreactivation rate and fuel sheets to be effective on that date. The Commission authorized the commencement of commercial operations of the import facilities in a letter order issued on August 18, 2003. To coincide with the reactivation, Cove Point respectfully requests that the Commission approve the filed tariff sheets with an August 18, 2003 effective date.

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 eLibrary (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 eLibrary (e-Filing) link.

Protest Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22214 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03-222-000]

Maine Public Utilities Commission, et al., Complainants, v. New England Power Pool and ISO New England, Inc., Respondents; Notice of Complaint

August 25, 2003.

Take notice that on August 21, 2003, the Maine Public Utilities Commission, the Maine Public Advocate, the Rhode

Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, the Rhode Island Attorney General, Pinpoint Power, NRG Energy, Inc. and Gen Power, LLC (collectively, Complainants) filed a Complaint Requesting Fast Track Processing against the New England Power Pool and ISO New England, Inc. (NEPOOL/ISO-NE) pursuant to Sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules (18 CFR 385.206). Complainants request that the Commission reject the methodology currently proposed by NEPOOL/ISO-NE for allocating the costs of transmission upgrades in New England.

Complainants request the Commission to adopt instead the Complainants' proposal, which Complainants assert provides an appropriate method for allocating transmission upgrade costs to the load that benefits from the upgrade.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before comment date. 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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866)208-3676, or for TTY, contact (202)502-8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

September 5, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22216 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-573-000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 15, 2003, PG&E Transmission, Northwest Corporation, (GTN) as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of September 15, 2003:

Fourth Revised Sheet No. 6.
Second Revised Sheet No. 211.
Second Revised Sheet No. 212.
Original Sheet No. 229.

GTN states that the filing is being made to establish a mechanism that will allow GTN's incremental fuel rate, established in conjunction with GTN's 2002 Pipeline Expansion Project, to roll down over time.

GTN states that copies of the filing have 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 the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). 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: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22221 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP03-574-000]

PG&E Gas Transmission, Northwest
Corporation; Notice of Proposed
Change in FERC Gas Tariff

August 25, 2003.

Take notice that on August 19, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Third Revised Sheet No. 138 and Second Revised Sheet No. 139, with an effective date of September 18, 2003.

GTN states that these sheets are being filed to provide shippers with an alternative means of establishing security for interruptible transportation (IT) service that is in addition to the current methods available to IT shippers.

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 "eLibrary" (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 eLibrary (e-Filing) link.

Comment Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22222 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP99-518-048]

PG&E Gas Transmission, Northwest
Corporation; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 15, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Second Revised Sheet No. 21B, with an effective date of September 14, 2003.

GTN states that it is submitting Second Revised Sheet No. 21B in order to establish negotiated rate tariff language that it expects will be utilized in conjunction with future negotiated rate transactions for purposes of establishing a value for fuel gas that is retained in-kind by the pipeline.

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 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 the protest date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 eLibrary (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 eLibrary (e-Filing) link.

Protest Date: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22223 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP03-568-000]

Questar Pipeline Company; Notice of
Tariff Filing

August 25, 2003.

Take notice that on August 14, 2003, Questar Pipeline Company (Questar) tendered for filing has part of its FERC Gas Tariff, the following tariff sheets, with an effective date of October 1, 2003:

First Revised Volume No. 1.
Twenty-Ninth Revised Sheet No. 5.
Sixteenth Revised Sheet No. 6.
Original Volume No. 3.
Thirty-Sixth Revised Sheet No. 8.

Questar states that the filing incorporates into its storage and transportation rates, the revised annual charge adjustment (ACA) unit rate of \$0.00210 per Dth.

Questar states that copies of the filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS). 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 eLibrary (e-Filing) link.

Comment Date: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22220 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03-544-001]

Texas Gas Transmission, LLC (formerly Texas Gas Transmission Corporation); Notice of Compliance Filing

August 25, 2003.

Take notice that on August 4, 2003, Texas Gas Transmission, LLC (Texas Gas) (formerly Texas Gas Transmission Corporation) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of July 7, 2003:

First Revised Sheet No. 201.

First Revised Sheet No. 293.

Texas Gas states that the filing is an administrative filing. Texas Gas further states that the purpose the filing is to submit a tariff provision already accepted by the Commission for incorporation in Texas Gas's Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22219 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96-25-022. et al.]

Coral Power, L.L.C., et al.; Electric Rate and Corporate Filings

August 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Coral Power, L.L.C., Coral Energy Management, LLC, Coral Canada U.S. Inc.

[Docket Nos. ER96-25-022, ER01-1363-002, ER01-3017-002]

Take notice that on August 18, 2003, Coral Power, L.L.C. (Coral Power), Coral Energy Management, LLC (Coral EM) and Coral Canada U.S. Inc. (Coral Canada), filed with the Federal Energy Regulatory Commission their consolidated three-year updated market power analysis. Coral Power, Coral EM and Coral Canada state that they are power marketers and brokers with their principal place of business in Houston, Texas and do not directly own or control generation or transmission assets.

Comment Date: September 8, 2003.

2. Galt Power, Inc.

[Docket No. ER03-1001-001]

Take notice that on August 12, 2003, Galt Power, Inc. (Galt Power) submitted an amended petition to the Commission for acceptance of Galt Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Galt Power states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Galt Power also states that it is not in the business of generating or transmitting electric power.

Comment Date: September 3, 2003.

3. Tex Par Energy, Inc.

[Docket No. ER03-1219-000]

Take notice that on August 15, 2003, TexPar Energy, Inc. tendered for filing a

Notice of Cancellation of its market-based rate authority and reporting of electric power sales transactions and agreements. TexPar Energy, Inc., states that the cancellation should take effect August 8, 2003, and has not entered into any contracts to sell power. *Comment Date:* September 5, 2003.

4. Southern Company Services, Inc.

[Docket No. ER03-1220-000]

Take notice that on August 18, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedules A and B of the Interchange Contract dated December 15, 1980 between the City of Tallahassee, Florida, and Southern Companies (Rate Schedule FERC No. 62). These cancellations were made pursuant to a bilateral amendment to the Interchange Contract. *Comment Date:* September 8, 2003.

5. California Independent System Operator Corporation

[Docket No. ER03-1221-000]

Take notice that on August 18, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the ISO Tariff, Amendment No. 56 for acceptance by the Commission. The ISO states that the purpose of the amendment is to modify Tariff provisions regarding Dispatching and Scheduling Reliability Must-Run Energy to reflect the demise of the California Power Exchange.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting the amendment to be made effective in sixty days.

Comment Date: September 8, 2003.

6. California Independent System Operator Corporation

[Docket No. ER03-1222-000]

Take notice that on August 18, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the ISO Tariff, Amendment No. 57, for acceptance by the Commission. The ISO states that this filing is an addendum to Amendment No. 49 and that this filing should complete resolution of revenue

disbursement to a New Participating Transmission Owner that does not serve End-Use Customers.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting the amendment to be made effective in sixty days.

Comment Date: September 8, 2003.

7. Montana Mid-Merit Power, LLC, NorthWestern Energy Division of NorthWestern Energy Corp.

[Docket No. ER03-1223-000]

Take notice that on August 18, 2003, Montana Megawatts I, LLC (MMI) and NorthWestern Energy Division of NorthWestern Corporation (NWE), tendered for filing a power purchase agreement, as amended, under which MMI states it will sell capacity and energy at cost-based rates to NWE pursuant to Section 205 of the Federal Power Act.

Comment Date: September 8, 2003.

8. Philadelphia Gas Works

[Docket No. ER03-1225-000]

Take notice that on August 18, 2003, Philadelphia Gas Works tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: September 8, 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 eLibrary (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.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22217 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03-126-000, et al.]

Global Common Greenport, LLC, et al.; Electric Rate and Corporate Filings

August 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Global Common Greenport, LLC

[Docket No. EC03-126-000]

Take notice that on August 18, 2003, Global Common Greenport LLC (GCG or the Applicant) filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization to dispose of its jurisdictional assets. Specifically, as part of a corporate reorganization, GCG's member interests will be transferred to its corporate affiliates WJH Holding, LLC and William J. Haugland. GCG is a Commission-authorized power marketer.

Comment Date: September 8, 2003.

2. Southern California Edison Company

[Docket No. EL02-126-001]

Take notice that on August 14, 2003, Southern California Edison Company (Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's July 16, 2003 Order Directing the Submission of Additional Information. Edison states that it is unable to supply the Commission with all of the requested information at this time.

Edison states that copies of this filing were served upon the parties listed on the service list in Docket No. EL02-126-000.

Comment Date: September 15, 2003.

3. Entergy Services, Inc.

Generator Coalition (Consolidated) v. Entergy Services, Inc.

[Docket No. EL02-46-003 and ER01-2201-004]

Take notice that on August 14, 2003, Entergy Services, Inc. (Entergy) filed a refund report in the above-referenced dockets relating to Entergy's Generator Imbalance Agreement. A copy of the refund report has been served on all parties to the service lists in the above-referenced proceedings and the state commissions in the Entergy region.

Comment Date: September 4, 2003.

4. MDU Resources Group, Inc.

[Docket No. ES03-52-000]

Take notice that on August 19, 2003, MDU Resources Group, Inc. submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue additional shares of common stock in connection with a three-for-two stock split of common stock, to be effected in the form of a fifty-percent stock dividend.

Comment Date: September 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary (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.

Linda Mitry,

Acting Secretary.

[FR Doc. 03-22215 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01-127-000, et al.]

PPL Martins Creek, LLC, et al.; Electric Rate and Corporate Filings

August 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PPL Martins Creek, LLC

[Docket No. EG01-127-000]

Take notice that on August 8, 2003, PPL Martins Creek, LLC (PPL Martins Creek) tendered for filing an Amended Application for Redetermination of Status as an Exempt Wholesale Generator.

PPL Martins Creek states it has served copies of its Application on the parties listed on the Commission's official service list for this proceeding and on the Pennsylvania Public Utility Commission and the Securities and Exchange Commission.

Comment Date: September 5, 2003.

2. Green Field Wind Farm, L.L.C.

[Docket No. EG03-90-000]

Take notice that on August 12, 2003, Green Field Wind Farm, L.L.C. (the Applicant), with its principal office at 3001 Broadway Street, NE., Suit 695, Minneapolis, MN 55413, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an approximately 80 MW wind-powered generation facility located in Eastern Wisconsin. Applicant further states that electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 5, 2003.

3. Blue Sky Wind Farm, LLC

[Docket No. EG03-91-000]

Take notice that on August 11, 2003, Blue Sky Wind Farm, LLC (the Applicant), with its principal office at

3001 Broadway Street NE., Suite 695, Minneapolis, MN 55413, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an approximately 80 MW wind-powered generation facility located in Eastern Wisconsin. Applicant also states that the electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 5, 2003.

4. NRG Energy Center Dover LLC, NEO Freehold "Gen LLC, NEO Chester-Gen LLC

[Docket No. ER00-3160-001]

Take notice that on August 12, 2003, NRG Energy Center Dover, NEO Freehold-Gen LLC and NEO Chester-Gen LLC tendered for filing their triennial review in compliance with the Commission's Order issued August 9, 200, in NRG Energy Center Dover LLC, Docket No. ER00-3160-000.

Comment Date: September 3, 2003.

5. Sithe Energy Marketing L.P., Sithe/Independence Power Partners, L.P., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling, Power Partners, L.P.

[Docket Nos. ER02-2202-002, ER03-42-003, ER98-2782-004]

Take notice that on August 11, 2003, Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power partners, L.P., and Sithe/Independence Power Partners, L.P. (collectively, the Sithe Entities), tendered for filing a notice of change in status pursuant to section 205 of the Federal Power Act with respect to each entity's authority to engage in wholesale sales of capacity, energy and ancillary services at market-based rates. The Sithe Entities state that the change in status involves the indirect transfer of indirect ownership interests in the Sithe Entities from Apollo Energy LLC and subsidiaries of Marubeni Corporation to RCSE, LLC (RCSE), so that Sithe is owned equally by Exelon SHC, Inc., and RCSE

Comment Date: September 2, 2003.

6. Westar Energy, Inc.

[Docket No. ER03-1183-000]

Take notice that on August 8, 2003, Westar Energy, Inc. (Westar) submitted for filing revised sheets for Second

Revised Rate Schedule FERC No.264, Electric Transmission and Service Contract between Westar and Kansas Electric Power Cooperative, Inc. (KEPCo) and revised sheets for Original Rate Schedule FERC No.183, Electric Power Transmission and Service Contract between Westar's wholly owned subsidiary, Kansas Gas and Electric Company, Inc. and KEPCo. Westar states that these revised sheets remove points of delivery and add points of interconnection between Westar and KEPCo to accommodate the transaction between Westar and Midwest Energy, Inc. (Midwest) under which Midwest will acquire certain transmission and distribution assets from Westar. Additionally, Westar states that the revised sheets permit KEPCo to apply to the Southwest Power Pool (SPP) to convert existing transmission service to regional network service under SPP's open access transmission tariff.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: August 29, 2003.

7. Metropolitan Chicago Healthcare Council

[Docket No. ER03-1185-000]

Take notice that on August 11, 2003, Metropolitan Chicago Healthcare Council tendered for filing a Notice of Cancellation for Market-based Rate Authority in Docket No. 99-3705-000 dated July 22, 1999.

Comment Date: September 2, 2003.

8. Power Access Management

[Docket No. ER03-1186-000]

Take notice that on August 11, 2003, Power Access Management tendered for filing a Notice of Cancellation for Market-based Rate Tariff in Docket No. ER97-1084-000 dated January 2, 1997. Access Management states that the company is no longer in business and has not entered into any contracts to sell power.

Comment Date: September 2, 2003.

9. Midwest Generation, LLC

[Docket No. ER03-1187-000]

Take notice that on August 11, 2003, Midwest Generation, LLC (Midwest) tendered for filing Midwest's FERC Electric Tariff, Original Volume No. 2. Midwest states that this is a rate schedule designating compensation to be paid by Commonwealth Edison Company for black start service provided from certain designated Midwest generating facilities.

Comment Date: September 2, 2003.

10. NorthWestern Energy

[Docket No. ER03-1188-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 17, which is the Upper Mississippi Valley Power Pool Agreement which was superseded by the Mid-Continent Area Power Pool Agreement (NorthWestern's Rate Schedule 29) in 1972.

Comment Date: September 2, 2003.

11. NorthWestern Energy

[Docket No. ER03-1189-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 25, which is an electric power wheeling agreement between NorthWestern and Rushmore Gas & Transmission Company that was superseded by NorthWestern's FERC Electric Rate Schedule No. 33.

Comment Date: September 2, 2003.

12. NorthWestern Energy

[Docket No. ER03-1190-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 26, which is an electric power wheeling agreement between NorthWestern and the State of South Dakota on behalf of Southern State College, Springfield, South Dakota and Northern State College, Aberdeen, South Dakota. NorthWest states that the service originally provided under FERC Electric Rate Schedule No. 26 is now being provided under NorthWestern's Service Agreement No. 15, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

13. NorthWestern Energy

[Docket No. ER03-1191-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 27,

which is an electric power wheeling agreement between NorthWestern and the State of South Dakota on behalf of Southern State College, Springfield, South Dakota. The service originally provided under FERC Electric Rate Schedule No. 27 is now being provided under NorthWestern's Service Agreement No. 14, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

14. NorthWestern Energy

[Docket No. ER03-1192-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 28, which is an electric power wheeling agreement between NorthWestern and the City of Groton, South Dakota. The service originally provided under FERC Electric Rate Schedule No. 28 is now being provided under NorthWestern's Service Agreement No. 11, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

15. NorthWestern Energy

[Docket No. ER03-1193-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 32, which is a firm power sales agreement for the winter seasons 1990 through 1993 between NorthWestern and Minnesota Power & Light that expired by its terms on April 30, 1993.

Comment Date: September 2, 2003.

16. NorthWestern Energy

[Docket No. ER03-1194-000]

Take notice that on August 11, 2003, NorthWestern Energy, division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 35, which is an interconnection agreement between NorthWestern and Western Area Power Administration that expired by its terms on December 31, 2000.

Comment Date: September 2, 2003.

17. NorthWestern Energy

[Docket No. ER03-1195-000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of the Non-Firm Point to Point Transmission Service Agreement between NorthWestern and Tenaska Power Services Company. The non-firm transmission service agreement is a conforming agreement under NorthWestern's Open Access Transmission Tariff. The agreement was executed November 25, 1997; however, NorthWestern has never provided any service pursuant to that agreement.

Comment Date: September 2, 2003.

18. Georgia Power Company

[Docket No. ER03-1197-000]

Take notice that on August 12, 2003, Southern Company Services, Inc., on behalf of Georgia Power Company, filed revisions to the Interchange Contract dated July 1, 1980 between Georgia Power Company and Crisp County Power Commission (Georgia Power Company's First Revised Rate Schedule FERC No. 803). Southern Company Services, Inc., states that this revision is made pursuant to a bilateral amendment to the Interchange Contract. Southern Company Services, Inc. requests that the revisions to the Interchange Contract be given an effective date of August 12, 2003.

Comment Date: September 3, 2002.

19. Southern Company Services, Inc.

[Docket No. ER03-1198-000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Interchange Contract dated February 27, 1981 between Jacksonville Electric Authority and Southern Companies. This Interchange contract is (Southern Operating Companies' First Revised Rate Schedule FERC No. 53). SCS states that this cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 3, 2003.

20. Southern Company Services, Inc.

[Docket No. ER03-1199-000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power

Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Restated Interchange Contract dated June 30, 1991, between Cajun Electric Power Cooperative, Inc. and Southern Companies. This Interchange Contract is (Southern Operating Companies' First Revised Rate Schedule FERC No. 76. SCS states that this cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 3, 2003.

21. Southern Company Services, Inc.

[Docket No. ER03-1200-000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an amendment to the Interchange Contract dated August 7, 1981 between South Carolina Public Service Authority and Southern Companies. This Interchange Contract is Southern Operating Companies' First Revised Rate Schedule FERC No. 51. SCS states that this revision is made pursuant to a bilateral amendment to the Interchange Contract. Southern Companies request that the revisions to the Interchange Contract be effective on July 30, 2003.

Comment Date: September 3, 2003.

22. Monongahela Power Company

[Docket No. ER03-1201-000]

Take notice that on August 12, 2003, Monongahela Power Company (Monongahela), tendered for filing pursuant to Commission's regulations 18 CFR 35.15, a Notice of Cancellation of Monongahela's Rate Schedule FERC No. 28, consisting of a Power Delivery Agreement (Agreement) dated January 1, 1968 among Monongahela, Buckeye Power Inc., The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, The Dayton Power and Light Company, Ohio Power Company and The Toledo Edison Company. Monongahela states that the Agreement terminated by its own terms effective June 20, 2003, and Monongahela request an effective date of June 20, 2003 for the cancellation and waiver of the Commission's regulations.

Monongahela states that a copy of this filing has been served on Buckeye Power Inc., the Public Utilities Commission of Ohio, American Electric Power Service Corporation on behalf of

Ohio Power Company and Columbus and Southern Power Company (now Columbus Southern), FirstEnergy Service Corporation on behalf of The Toledo Edison Company, The Cincinnati Gas & Electric Company and The Dayton Power and Light Company.

Comment Date: September 3, 2003.

23. NEPA Energy LP

[Docket No. ER03-1203-000]

Take notice that on August 12, 2003, NEPA Energy LP (NEPA) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1 pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.15. FERC Electric Tariff, Original Volume No. 1 was filed with the Commission in Docket No. ER00-2316-000 on June 13, 2000.

NEPA requests an effective date of August 1, 2003 for the cancellation. NEPA states it has no customers under this tariff.

Comment Date: September 3, 2003.

24. Virginia Electric and Power Company

[Docket No. ER03-1204-000]

Take notice that on August 12, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Fauquier Landfill Gas, L.L.C. (Fauquier). Dominion Virginia Power states that the Interconnection Agreement sets forth the terms and conditions governing the interconnection between Fauquier's generating facility, located in Fauquier County, Virginia, and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission accept this filing to make the Interconnection Agreement effective on August 13, 2003, the day after the filing. Dominion Virginia Power states that copies of the filing were served upon Fauquier and the Virginia State Corporation Commission.

Comment Date: September 3, 2003.

25. DTE East China, LLC

[Docket No. ER03-1206-000] DTE Energy Trading, Inc.

Take notice that on August 12, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) submitted for filing, pursuant to Section 205 of the Federal Power Act, and part 35 of the Commission's regulations, a revision to the cost-based ceiling applicable, respectively, to DTE East China's sales

and DTE Energy Trading's re-sales of electric capacity and energy from the electric generating facilities owned and operated by DTE East China.

Comment Date: September 3, 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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03-22351 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03-70-000, et al.]

PSEG Fossil LLC, et al.; Electric Rate and Corporate Filings

August 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Fossil LLC, PSEG Nuclear LLC

[Docket No. AC03-70-000]

Take notice that on August 8, 2003, PSEG Fossil LLC (PSEG Fossil) and PSEG Nuclear LLC (PSEG Nuclear) submitted a filing seeking to comply with Commission's Order No. 631, 103 FERC ¶ 61,021. PSEG Fossil and PSEG Nuclear state that, as required by Order No. 631, on January 1, 2003, the difference between the liabilities on the books and the Asset Retirement Obligations (ARO) has been debited or credited to net income, as appropriate, since no amounts are to be refunded to customers.

Comment Date: August 28, 2003.

2. Portland General Electric Company

[Docket No. AC03-71-000]

Take notice that on August 7, 2003, Portland General Electric Company (PGE) submitted a filing in compliance with Commission's Order No. 631, 103 FERC 61,021. PGE states that, as required by Order No. 631, on January 1, 2003, PGE has recorded a cumulative effect of an accounting charge on net income for an Asset Retirement Obligation associated with the Boardman Coal Plant. PGE requests that the Commission grant waiver of the requirement that such compliance filing be made within 60 days of the effective date of the final rule and grant any other waivers as necessary to accept the compliance filing.

Comment Date: August 27, 2003.

3. Blue Spruce Energy Center, LLC

[Docket No. EG03-93-000]

Take notice that on August 14, 2003, Blue Spruce Energy Center, LLC (Blue Spruce), c/o Calpine Corporation, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Spruce owns and operates a nominal 336 MW generation facility located in Aurora, Colorado and previously obtained an exempt wholesale generator determination. Blue Spruce states that it is seeking a new determination that it will remain an exempt wholesale generator notwithstanding a material change in facts. Blue Spruce further states that copies of the application were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

Comment Date: September 8, 2003.

4. St. Paul Cogeneration, LLC

[Docket No. EG03-94-000]

Take notice that on August 14, 2003, St. Paul Cogeneration, LLC (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an up to 35 MW biomass-fired cogeneration facility located in St. Paul, Minnesota. Applicant also states that electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 8, 2003.

5. Minnesota Power

[Docket No. ER03-831-001]

Take notice that on August 14, 2003, Minnesota Power tendered for filing in compliance with Commission Order No. 614, a Second Revised Rate Schedule FERC No. 125 for the Public Utilities Commission of Brainerd, Minnesota (Brainerd). Minnesota Power requests an effective date of February 28, 2003.

Comment Date: September 4, 2003.

6. New York State Electric & Gas Corporation

Docket No. ER03-927-001]

Take notice that August 14, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to FERC's July 31, 2003 acceptance letter, Docket No. ER03-927-000, paginated tariff sheets to the Service Agreements For Network Integrated Transmission Service consistent with Order No. 614, FERC 31,096.

NYSEG states it has served copies of the paginated tariff sheets to the customers under the Service Agreements For Network Integrated Transmission Service and the New York State Public Service Commission.

Comment Date: September 4, 2003.

7. Texxon Utilities, Ltd. Co.

[Docket No. ER03-1150-001]

Take notice that on August 14, 2003, Texxon Utilities, Ltd. Co., tendered for filing a revised Rate Schedule No. 1 amending their petition filed July 29, 2003 in Docket No. ER03-1150-000.

Comment Date: September 4, 2003.

8. Liberty Electric Power LLC

[Docket No. ER03-1209-000]

Take notice that on August 13, 2003, Liberty Electric Power, LLC (Liberty) tendered for filing, pursuant to Section

205 of the Federal Power Act (16 U.S.C. 824d) and part 35 of the Commission's Rules of Practice and Procedure, a revised rate schedule for reactive power to be provided to the PJM Interconnection, LLC transmission grid. Liberty requests an effective date of September 1, 2003.

Comment Date: September 3, 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 eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03-22349 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EC03-122-000, et al.]

Sithe Energies, Inc., et al., Electric Rate and Corporate Filings

August 19, 2003.

The following filings have been made with the Commission. The filings are

listed in ascending order within each docket classification.

1. Sithe Energies, Inc., Apollo Energy LLC, Exelon (Fossil) Holdings, Inc., Exelon Power Holdings, LP, Exelon SHC, Inc., ExRes SHC, Inc. Marubeni Corporation, National Energy Development Inc. and RCSE, LLC.

[Docket No. EC03-122-000]

Take notice that on August 11, 2003, Sithe Energies, Inc. (Sithe), Apollo Energy LLC (Apollo Energy), Exelon (Fossil) Holdings, Inc. (Exelon Fossil), Exelon Power Holdings, LP (Exelon Power), Exelon SHC, Inc. (Exelon SHC), ExRes SHC, Inc., (ExRes SHC), Marubeni Corporation (Marubeni), National Energy Development Inc. (NEDI) and RCSE, LLC (RCSE and collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities. The Applicants state that the disposition will occur through a three-step Transaction whereby Apollo, Marubeni and Exelon Power will effectively transfer all of their interests in Sithe to Exelon SHC, which in turn, will contribute its interest in Sithe to ExRes SHC. The Applicants further state that in the final step of the transaction, RCSE will purchase a fifty percent interest in ExRes SHC, making Sithe an indirect subsidiary equally owned by Exelon SHC and RCSE. Sithe states it is engaged primarily, through various subsidiaries, in the development and operation of non-utility generation facilities. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: September 2, 2003.

2. PSEG Energy Holdings L.L.C., PSEG Energy Technologies Inc., Quonset Point Cogen, L.P., DG Kingston LLC.

[Docket No. EC03-123-000]

Take notice that on August 14, 2003, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b (2000), and part 33 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 33, Quonset Point Cogen, L.P. (Quonset), and DG Kingston LLC (DG Kingston or Buyer) (collectively, the Applicants) respectfully request Commission approval to permit PSEG Energy Holdings L.L.C. (PSEG Holdings) to sell and Buyer to acquire 100 percent of the shares of PSEG Holdings' wholly-owned subsidiary PSEG Energy Technologist Inc (PSEG ET). PSEG ET states that it currently owns 100 percent of the

outstanding shares of 50 Belver Avenue Associates Corporation and QPC Corporation, the sole general and limited partners, respectively, of Quonset, a public utility subject to the Commission's jurisdiction under the FPA. The applicants state that the proposed transaction will result in DG Kingston indirectly acquiring control over Quonset's 7.5 MW gas-fired electric generating facility in Washington County, Rhode Island, as well as associated jurisdictional facilities, a wholesale power purchase agreement and Quonset's market-based rate schedule on file with the Commission.

DG Kingston states this is a new market entrant in New England that does not currently own or control generation or inputs to electric generation in the New England markets. The Applicants, therefore, request that Commission proceed in an expedited manner and issue an order granting this application by September 15, 2003 in order to facilitate closing of this transaction by September 20, 2003.

Comment Date: September 4, 2003.

3. Tenaska Virginia Partners, L.P.

[Docket No. EC03-124-000]

Take notice that on August 14, 2003, Tenaska Virginia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Virginia), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations, an Application for authorization to effect the transfer of a 30% indirect beneficial interest in Tenaska Virginia's Fluvanna County, Virginia electric generating project and the accompanying jurisdictional assets to affiliates of Harbert Power Corporation and The Northwestern Mutual Life Insurance Company.

Tenaska Virginia states that a copy of the filing was served on the Virginia State Corporation Commission.

Comment Date: September 4, 2003.

4. Cinergy Solutions Holding Company, Inc. Trigen Solutions, Inc.

[Docket No. EC03-125-000]

Take notice that on August 14, 2003, Cinergy Solutions Holding Company, Inc. (Cinergy Solutions) and Trigen Solutions, Inc. (Trigen, and collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Trigen will transfer to Cinergy Solutions its

indirect interests in a 35 megawatt electric generation facility located in St. Paul, Minnesota. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: September 4, 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's Web site at <http://www.ferc.gov>, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03-22350 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1273-009]

Parowan City Utah; Notice of Availability of Draft Environmental Assessment

August 26, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission)

regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Center Creek Hydroelectric Project located on Center Creek, in Iron County, Utah, and has prepared a draft Environmental Assessment (EA) for the project. The project occupies 21.43 acres of United States lands administered by the Bureau of Land Management.

The draft EA contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA 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 eLibrary (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, (202) 502-8659.

Any comments on this draft EA should be filed within 30 days from the date of this notice and should be addressed to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1273-009 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site <http://www.ferc.gov> under the "e-Filing" link.

For further information, contact Gaylord Hoisington at (202) 502-6032 or gaylord.hoisington@ferc.gov.

Linda Mitry,
Acting Secretary.

Draft Environmental Assessment for Hydropower License, Center Creek Hydroelectric Project, Utah

[FERC Project No. 1273-009]

Federal Energy Regulatory Commission,
Office of Energy Projects, Division of
Hydropower—Environment and
Engineering, 888 First Street, NE
Washington, DC 20426, August 2003

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Summary

On November 15, 2002, Parowan City filed an application for a subsequent license for the existing 600-kilowatt, Center Creek Hydroelectric Project located at the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management. The project generates about 2,300 megawatt-hours (MWh) annually.

The issues addressed in this draft environmental assessment are the potential effects of the continued operation and maintenance of the proposed project on: (1) Aquatic resources; (2) terrestrial resources, (3) threatened and endangered species; and

(4) cultural resources. There are no major issues with this project.

Parowan City's proposal to relicense the project includes the environmental measure to monitor and remove any noxious and undesirable plants after any ground-disturbing activities.

Parowan City does not propose any changes to the project's facilities or operations.

In this draft environmental assessment (EA), Commission staff analyze the effects of Parowan City's proposed project, with one additional staff recommended environmental measure (to develop a cultural resources management plan if any new or undocumented archeological or historic sites are discovered during project operation or maintenance) and the no-action alternative.

We estimate the proposed project would generate an average of 2,300 MWh annually at an annual cost of \$18,000 and an annual net power benefit of \$56,000. The cost of the staff's measure is minimal and would not affect project economics.

Based on our independent analysis, we conclude that issuing a subsequent license for the project, with the environmental measure that we recommend, would not be a major federal action significantly affecting the quality of the human environment. Environmental Assessment Office of Energy Projects Center Creek Hydroelectric Project [FERC No. 1273-009-Utah]

I. Application

On November 15, 2002, Parowan City (Parowan) filed an application for a subsequent license for the existing 600-kilowatt (kW) Center Creek Hydroelectric Project (project), located at the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah (figure 1). The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management (BLM).

II. Purpose of Action and Need for Power

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license non-federal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a license to Parowan, and if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing

environmental resources and/or to mitigate for any adverse environmental impacts that would occur due to operation and maintenance of the project.

This draft environmental assessment (EA) assesses the effects associated with operation of the proposed project and alternatives to the proposed project, and makes recommendations to the Commission on whether to issue a license, and if so, recommends terms and conditions to become a part of any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that.

Public access for the above information is available only through the Public Reference Room, or by e-mail at public.refrenceroom@ferc.gov.

The project would be best adapted to a comprehensive plan for improving or developing the waterway. In addition to the power and developmental purposes for which licenses are issued, the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

In this draft EA, we, the Commission staff, assess the effects of operating the project as proposed by Parowan, and operating the project as proposed by Parowan with staff's mitigative and enhancement measures. We also consider the effects of the no-action alternative.

B. Need for Power

Parowan operates the Center Creek Project (FERC No. 1273) and Red Creek Project (FERC No. 2782) to provide power to its customers through its municipal power system. In addition to these two sources, Parowan also meets its power needs by: (1) purchasing power through the Utah Association of Municipal Power Systems (UAMPS), of which Parowan is a member, and (2) encouraging power conservation by its customers.

Power demand for Parowan in recent years is summarized in table 1. Included in this power demand are residential, commercial, and other customers. Over the given 4-year period, total demand has risen about 7 percent. As part of its energy conservation effort, Parowan annually distributes energy saving inserts that are provided by UAMPS. Additionally, Parowan is in the process of upgrading from a 2,400-volt delta system to a 12,470-volt wye system.

Parowan is also converting street lighting from 200-watt mercury bulbs to 100-watt sodium fixtures.

TABLE 1.—RECENT RETAIL POWER LOAD FOR PAROWAN CITY
[Source: Parowan City]

Year	Retail power load (MWh)
1998	12.89
1999	13.07
2000	13.49
2001	13.81

The project is located in the Northwest Power Pool Area (NWPP) of the Western Electricity Coordinating Council (WECC) region of the North American Electric Reliability Council (NERC). WECC annually forecasts electrical supply and demand in the region for a 10-year period. The most recent report on annual supply and demand indicates that, for the period from 2002–2011, the average annual growth rate is projected to be 2.5 percent. In response to projected growth, WECC members will be adding or contracting for about 16,000 megawatts (MW) of new capacity generation during the 10-year period. The electricity generated from the project would benefit the region by providing a portion of the needed regional power.

If relicensed, the project would continue to contribute to Parowan's power needs as well as meeting a small portion of the regional need for power. The project would also continue to displace non-renewable fossil-fueled power generation used by some of the facilities in the UAMPS, thereby conserving fossil fuel resources and avoiding associated atmospheric emissions.

III. Proposed Action and Alternatives

A. Parowan's Proposal

1. Parowan's Project Facilities and Operation

The existing project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (4) an 18 to 26-inch-diameter, 19,300-foot-long steel penstock; (5) a 600-kW powerhouse; (6) an 80-foot-long, 2.4-kilovolt underground transmission line; and (7) appurtenant facilities (figure 2).

Parowan proposes to continue operating the project run-of-river. When operating, the project diverts a maximum of 24 cubic feet per second (cfs) of stream flow from Center Creek.

Water exiting the powerhouse goes into an irrigation canal for the use of downstream irrigation right-holders.

2. Proposed Environmental Measures

Parowan proposes to monitor and remove any noxious and undesirable plants after any ground-disturbing activities. Parowan does not propose any changes to project facilities or operation.

Public access for the above information is available only through the Public Reference Room, or by e-mail at public.refrenceroom@ferc.gov.

B. Staff's Preferred Alternative

The staff considered what, if any, protection, mitigation, and enhancement measures would be beneficial to those resources affected by the project and its operation. We recommend in addition to Parowan's proposal that if any archeological or historic sites should be discovered during project operation or maintenance, Parowan prepare a site-specific plan in consultation with the Utah State Historic Preservation Officer (SHPO) and BLM to evaluate the significance of the sites and to mitigate impacts to those sites that are determined to be eligible for inclusion in the National Register of Historic Places.

C. No-Action Alternative

Under the no-action alternative, the project would continue to operate under the terms and conditions of the existing license, and no new environmental protection, mitigation, or enhancement measures would be implemented. We use this alternative to establish the baseline environmental condition for comparison with other alternatives.

D. Alternatives Considered But Eliminated From Detailed Study

We considered the following alternatives to Parowan's proposal but eliminated them from detailed study because they are not reasonable in the circumstances of this case.

1. Nonpower License

A nonpower license is a temporary license that the Commission would terminate whenever it would determine that another governmental agency would assume regulatory authority and supervision over the lands and facilities covered by the nonpower license. In this case, no government agency has suggested its willingness or ability to do so. No party has sought a nonpower license, and we have no basis for concluding that the project should no longer be used to produce power.

Issuing a nonpower license, therefore, is not a realistic alternative in these circumstances.

2. Denial of License and Decommissioning the Project

Project decommissioning could be accomplished with or without removing the project facilities. Either alternative would involve denial of the license application and surrender or termination of the existing license. In both cases, the energy that the project would generate would be lost, and consequently Parowan's need for the project's power would not be satisfied. Additionally, no participant has suggested decommissioning. For these reasons, we have no basis for recommending decommissioning of the project with or without removing the project facilities.

IV. Consultation and Compliance

A. Agency Consultation

The Commission's regulations (18 CFR Section 4.38) require applicants to consult with the appropriate resource agencies before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

When the Commission issues a notice that the application is ready for environmental analysis, formal comments may be submitted by concerned entities in accordance with section 4.34(b) of the Commission's regulations under the FPA. The comments provided by concerned entities are made part of the record and are considered during review of the proposed project.

On May 8, 2003, the Commission issued a public notice indicating that the project was ready for environmental analysis, and soliciting motions to intervene, comments, terms and conditions, and prescriptions. We received one letter from the U.S. Department of the Interior's Fish and Wildlife Service (FWS) filed July 1, 2003, in response to that notice. FWS recommends that Parowan monitor and remove any noxious and undesirable plants after ground-disturbing activities. As discussed in Section V.2 of this draft EA, Parowan has agreed to this recommendation making the recommendation a part of its proposed project.

B. Interventions

In addition to filing comments, organizations and individuals may petition to intervene and become a party to the licensing proceedings. There are no interventions in this proceeding.

C. Scoping

We issued Scoping Document 1 (SD1) on March 4, 2003, to enable appropriate federal, state, and local resource agencies, Indian tribes, other nongovernmental organizations, and individuals to participate in the identification of issues, concerns, and opportunities associated with this proposed action. Specifically, we requested the entities to forward written information that they believed would assist the Commission in conducting an accurate and thorough analysis of the site-specific, as well as the cumulative effects of licensing the proposed project.

On April 7, 2003, the FWS filed comments recommending that we address the effects of the project on terrestrial resources and make two changes to the endangered species list. We have addressed the FWS comments in the draft EA. Also, after we received SD1 comments, we issued a letter saying we would not issue an SD2 but would use SD1 as a basis for the environmental assessment taking into account the recommendations of the FWS.

D. Water Quality Certification

Under Section 401(a) of the Clean Water Act,¹ the Commission may not issue a license for a hydroelectric project unless the state certifying agency has either issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed 1 year.²

On April 13, 2001, Parowan applied to the Utah State Department of Environmental Quality (DEQ) for water quality certification (WQC) for the project. DEQ received the request on April 16, 2001. On June 17, 2002, DEQ granted certification to Parowan for the project. The WQC contains no conditions.

¹ 33 U.S.C. "1341(a)(1).

² Section 401(a)(1) requires an applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters to obtain from the state in which the discharge originates certification that any such discharge would comply with applicable water quality standards.

V. Environmental Analysis

A. General Description of Center Creek Basin

The project powerhouse is located near the south edge of town. The diversion structure is high in the mountains originating at the confluence of Center Creek (Parowan Creek) and Bowrey Creek. Parowan Creek upstream of the project area flows largely through the Dixie National Forest.

The climate in the lower part of the Parowan Valley is semi-arid, with the mountains having somewhat cooler temperatures. The average annual precipitation recorded at Parowan is 12.4 inches/year. Record high and low temperatures are 101 and minus 23 degrees Fahrenheit, respectively.

The canyons have highly varied geologic formations with multicolored layers of rock, highly complex cliff formations, talus slopes, and towering spirals. Varied forms of shape, color, and complex patterns of rock and vegetation make the canyons in which the project is located, highly scenic. Natural vegetation is sparse in Parowan Valley but begins to increase gradually as increased elevation provides cooler temperatures and more precipitation. These higher and cooler canyons support different types and more abundant vegetation than is found in the arid foothills. East of the project, within the Dixie National Forest, mountain peaks range from 7,500 to 10,000 feet.

B. Cumulative Effects

According to the Council on Environmental Quality's regulations for implementing NEPA (§thnsp;1508.7), an action may cause cumulative impacts on the environment if its impacts overlap in time and/or space with the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on staff's review of Parowan's license application, and agency and public comments, we have determined that there are no cumulative impacts as a result of continued operation of the project. No other development activities exist or are anticipated, to the extent that we know, in the project area that, in conjunction with the continued operation of the project, would cumulatively affect resources within the project area.

C. Proposed Action and Action Alternatives

In this section, we discuss the effects of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the specific environmental issues.

Only the resources that would be affected, or about which comments have been made by interested parties, are included in detail in this draft EA. At this time no new construction or modifications to the project are planned. Therefore, we have determined, based on our review of Parowan's license application, and as a result of our scoping process including agency and public comments, that geology and soils, aesthetics, recreation and land use, and socioeconomics would not be affected by the continued operation of the project and, therefore, will not be analyzed in detail in this EA.

1. Aquatic Resources

Affected Environment

Water Quantity

The project's diversion dam collects water from Parowan Creek immediately below the confluence with Bowery Creek at an elevation of about 6,275 feet. Parowan Creek at the diversion dam drains an area of about 50 square miles. Lands within the Parowan Creek subbasin upstream of the diversion dam are largely within the Dixie National Forest with a small amount of private lands scattered throughout the area. The average elevation of the subbasin is about 8,900 feet. Parowan Creek drains into the greater Bonneville Basin, which is a closed basin (letter by Willie R. Taylor, Director, Office of Environmental Policy and Compliance, USFWS, Washington, DC, July 1, 2003).

Surface water in Parowan Creek derives mostly from rainfall and snowmelt runoff. Snow is the dominant form of precipitation in the subbasin from October through April. Average total annual precipitation in the subbasin varies by elevation and temperature ranging from 12.4 inches at the project powerhouse (6,000 feet) in the hot and arid, lowest portion of the subbasin to 35.8 inches near Brian Head Station (9,770 feet) in the cooler and wetter, upper portion of the subbasin. Parowan calculates the average total annual precipitation at the diversion dam to be about 30.4 inches.

There are numerous springs in the project area fed by snowmelt originating

in the upper subbasin. Additionally, the Parowan Creek bed is largely gravel and green vegetation carpets the landscape on both sides of the creek indicating that there is some sub-surface flow through the alluvium.

Parowan Reservoir Company,³ at its Yankee Meadows Reservoir located on Bowery Creek about 7 creek miles upstream of the project diversion dam, largely regulates inflow to the immediate area of the project diversion dam intake. Parowan Reservoir Company impounds snowmelt runoff in the spring and releases it throughout the latter part of the summer to satisfy irrigation water supply needs. Under an unregulated flow condition, the annual hydrograph would show low or no flows occurring from November through March and again in July, peak flows in May and June, and transition flows in April and August through October (figure 1). Under the existing, regulated condition, the annual hydrograph is flat with flows ranging from a low of around 6.0 to 7.0 cfs from September through March to 8.0 to 10.0 cfs from April through August. Parowan calculates the existing average annual inflow at the diversion dam to be about 8.0 cfs.

Although the existing average monthly inflows at the diversion dam are much below the hydraulic capacity of the project (24 cfs),⁴ peak flow data for the period of record 1964 to 1987 on Center Creek (USGS gage no. 10241470),⁵ a tributary to Parowan Creek about 0.5 miles upstream of the diversion dam, shows that flows upwards of 200 cfs occur in the project area, although infrequently.⁶

Figure 3. Natural and regulated inflow at the project diversion dam as calculated by Parowan. "Regulated inflow" is a calculation of surface flow at the diversion based on the generation record. "Natural inflow" is a theoretical projection of the hydrograph based on the drainage area, mean annual precipitation, and main channel slope. The project does not account for surface flow that infiltrates the stream gravel before reaching the diversion dam;

³ Parowan Reservoir Company is a separate company that controls the flows for irrigation and for Parowan City to use at the Center Creek Project. Yankee Meadows Reservoir is an irrigation storage reservoir owned and operated by the Parowan Reservoir Company.

⁴ Because the flow on average is much below the hydraulic capacity of the project, Parowan normally diverts all the flow in Parowan Creek at the diversion dam.

⁵ Flow data accessed from the USGS Web site (http://waterdata.usgs.gov/nwis/peaks/?site_no=10241470&agency_cd=USGS) on June 27, 2003.

⁶ Parowan calculates that a 200-cfs flow at the diversion dam has a recurrence interval of about 10 years.

therefore, the projection somewhat overestimates surface flow at the project. (Source: staff)

Water Quality

Parowan Creek upstream of the project area flows largely through the Dixie National Forest. The drainage area is high elevation, remote, and sparsely populated. The Utah Water Quality Board classifies Parowan Creek in the project area as a Category 1 High Quality Water protected for secondary contact recreation (Class 2B), coldwater species of game fish and other cold water aquatic life (Class 3A), and agricultural uses, including irrigation of crops and stock watering (Class 4).⁷

There are no recent water quality data for Parowan Creek to our knowledge, however, because Parowan Creek largely flows through a sparsely populated area upstream of the project, we expect that the water quality of Parowan Creek in the project area is good.

Fisheries

Parowan Creek upstream of the project diversion dam contains a self-sustaining population of rainbow trout and brown trout; however, there are no known fish populations downstream of the project diversion dam. (letter by Willie R. Taylor, Director, Office of Environmental Policy and Compliance, USFWS, Washington, DC, July 1, 2003). A BLM habitat assessment of Parowan Creek conducted in 1982⁸ describes Parowan Creek as possessing "Agood habitat" overall but that trout habitat is limited to Parowan Creek upstream of the project diversion dam. The BLM assessment states that although the bypassed reach is dewatered during the summer months, the stream banks are stable and there is a "Fair" amount of cover.

Environmental Impacts and Recommendations

Project Operation

Parowan has a Utah state water right (#75-27) to divert up to 24.0 cfs, the hydraulic capacity of the project, out of Parowan Creek, Center Creek, and Bowery Creek and its tributaries to be used for power generation. Parowan's right to this water is for non-consumptive use; therefore, after using it for power generation, Parowan returns the diverted creek flows to an irrigation canal downstream of the powerhouse so as not to adversely affect downstream

⁷ Utah Administrative Code, R317-2, Standards of Quality for Waters of the State, effective March 1, 2003.

⁸ Parowan included a copy of the BLM habitat assessment in Appendix E-7 of the license application.

irrigation water rights holders. By diverting the flow into the penstock, Parowan actually benefits some irrigators, because the diverted flow would otherwise pass downstream of the diversion dam and seep into the canyon alluvium where the water would have to be pumped to be utilized.

Parowan also possesses a state water right (#75-5) to pump 1.047 cfs from the project forebay well to be used for power generation at the project.⁹

Parowan's right to the well water is for non-consumptive use, and Parowan utilizes the water to increase penstock flow and also to keep the project forebay, desilting pond, and penstock from freezing during the winter.

Parowan states that it generally operates the project run-of-river, but occasionally utilizes the 19.9 acre-foot desilting pond for peaking purposes. Parowan proposes to continue operating the project in this fashion, which they term Arun-of-the-river with a minor peaking capability component." No federal or state agency or Indian tribe has filed recommendations related to project operation.

There is no indication that Parowan's mode of project operation in any way affects downstream water rights holders or aquatic resources. Parowan returns up to 24 cfs of diverted creek water to an irrigation canal after they use it for project generation, so there is no consumption of the diverted water. Because Parowan Creek drains into a closed basin where all the flow is either diverted by irrigators or lost to evaporation or seepage, there are no fisheries resources downstream of the project powerhouse affected by the project operation.

Project Flow Releases

By letter to the applicant dated May 17, 2001 (see appendix E-1 of the license application), the FWS inquired if the project had the flexibility to provide flows that follow a more natural hydrograph. The natural hydrograph for the project area shows annual high flows occurring in the months of April through May and lower down to no flow (freezing conditions in December) the remainder of the year (figure 1). Parowan Reservoir Company largely regulates the inflow that comes into the immediate area of the project intake. The regulation of the inflow is done to

⁹Parowan states that they use the forbay well for irrigation as well as power generation, and therefore, that the well is not considered part of the project. However, we note that the water right for the well provides for the use of the well for power generation by Parowan. Water is pumped from the well to be used, at least in part, for the generation of electricity at the project.

ensure that irrigation needs downstream of the project are met throughout the growing season and not for meeting hydroelectric operational needs.

Parowan Reservoir Company stores flows at its Yankee Meadows Reservoir and then releases the flows more evenly throughout the course of the year, thereby flattening the annual hydrograph (figure 1). The project has minor storage capacity, and therefore, is incapable of re-regulating Parowan Reservoir Company's shaping of the river flows. By flattening the natural hydrograph, Parowan Reservoir Company causes monthly average inflows to the project in most years to never exceed 10 cfs, so there is very little flow during the months of April through June relative to natural conditions from which to work.¹⁰ Therefore, we conclude that the project has no capacity to provide a flow regime that follows a more natural hydrograph.

Water Quality

Parowan proposes no new construction or land-disturbance at the project that would lead to water quality problems,¹¹ and there is no evidence to suggest that current project operation and maintenance adversely affect water quality. No federal or state agency or Indian tribe has filed recommendations related to water quality, and ODEQ's Section 401 WQC for the project has no water quality conditions.

Unavoidable Adverse Impacts

None.

2. Terrestrial Resources

Affected Environment

Vegetation

The project area is wooded with a mixture of riparian vegetation. In general, a narrow band of riparian vegetation gives way to drier pinyon-juniper and sagebrush plant communities. The riparian and upland

¹⁰When we say "from which to work," we envision a situation where we establish a relatively high bypassed reach minimum flow in April, May, and June, and a lower or no minimum flow requirement the remainder of the year so as to mimic the natural hydrograph.

¹¹However, we note that on page 4 of the license application, Parowan states that it will at some point need to install a direct bypass line around the project desilting pond to allow the pond to be drained for cleaning. Parowan states that they are not certain whether they will seek authorization for this modification as part of this relicense proceeding or through a separate proceeding, presumably through amendment of any license issued for the project. Due to Parowan's uncertainty, we do not recognize the modification as part of their formal proposal for this relicense proceeding, and therefore, we do not discuss the water quality-related effects of this action in this EA.

vegetation along the creek is a mixture of large narrowleaf cottonwoods, sandbar willows, box elder, a few river birch and maples, pines, Gambel oaks, skunkbrush, Mountain juniper, and sagebrush. The presence of both riparian species and more upland-drier species creates good wildlife habitat with varied structure and streamside shading.

Green vegetation on both sides of the creek, above and below the diversion during low flow periods when the majority of the flow is diverted into the penstock signals the presence of sub-surface water flowing through the alluvium. Add to this, the flow from small springs and several smaller tributary canyons below the diversion, and the result is, the stream is seldom, if ever, completely without water and there is no evidence to suggest the riparian community will be affected by the continued operation and maintenance of the project.

Wildlife

The habitat along the penstock and in the vicinity of the diversion supports many different animals including: cottontail rabbit, ground squirrels, chipmunks, woodrat, western harvest mouse, porcupine, and deer mouse and a variety of birds, both neotropical migrants and residents such as the grosbeak, towhee, bunting, warbler and thrush.

Environmental Impacts and Recommendations

Parowan does not propose any ground-disturbing activities that would disturb or remove important riparian vegetation. Given there are no proposed changes to project structures or operations, riparian vegetation along the project area would likely remain the same.

In its letter filed July 1, 2003, the FWS makes the following Section 10(j) recommendation:

The licensee shall monitor for noxious and undesirable plant species in any areas of surface disturbance caused by project related activities, including maintenance activities. If noxious and undesirable plant species are located, they shall be removed or treated with appropriate herbicide applications until destroyed. Surface disturbance shall include any activity resulting in vegetation clearing or breaking of the soil surface.

FWS says the above condition is needed because noxious and undesirable plant species alter plant communities, generally resulting in a decline of native plant species which provide food and cover for wildlife. FWS says controlling noxious and

undesirable plants is necessary to protect and enhance wildlife habitat in the project area.

Parowan agreed to implement this recommendation and Commission staff also agrees that this recommendation would ensure that noxious and undesirable plants do not become established because of project-related activities. We recommend Parowan prepare a plan to control noxious and invasive weeds.

Unavoidable Adverse Impacts

None.

3. Threatened and Endangered Species

Affected Environment

By letter dated December 3, 2002, Commission staff requested a list of any threatened and endangered species at the project from the FWS. The FWS responded on December 26, 2002, saying that the following listed or candidate species may occur in the project area:

Species	Status
Bald eagle	Threatened.
California condor	Endangered.
Mexican spotted owl	Threatened.
Utah prairie dog	Threatened.

Environmental Impacts and Recommendations

Parowan surveyed the project area for threatened and endangered species and did not observe any of the above species. We have no other sources of information indicating these species exist in the area. Because we have no data indicating the above species exist within the project area, and because Parowan does not propose any changes to project structures or operations, we find that the proposed project would have no effect on threatened and endangered species.

Unavoidable Adverse Impacts

None.

4. Cultural Resources

Affected Environment

On May 4, 2001, and March 21, 2002, the State Historic Preservation Officer (SHPO) commented that no cultural resources, listed or eligible for inclusion in the National Register of Historic Places would be affected by the continued operation and maintenance of the project (letter from Barbara L. Murphy and James L. Dykmann, respectively, State of Utah, Department of Community and Economic Development, Division of State History, Utah State Historical Society, Salt Lake City, Utah).

Environmental Impacts and Recommendations

If the project continues to operate as it has in the past, it is unlikely that any new sites would be discovered. However, if any new or undocumented archeological or historic sites are discovered during project operation or maintenance, Parowan should: (1) Consult with the SHPO and BLM about the discovered sites; (2) prepare a site-specific cultural resource management plan, including a schedule to evaluate the significance of the sites and to avoid or mitigate any impacts to sites found eligible for inclusion in the National Register of Historic Places; (3) base the site-specific plan on recommendations of the SHPO and BLM and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; (4) file the site-specific plan for Commission approval, together with the written comments of the SHPO and BLM; and (5) take the necessary steps to protect the discovered archeological or historic sites from further impact until notified by the Commission that all of these requirements have been satisfied.

The Commission may require cultural resources work and changes to cultural resources management plans based on the filings. Parowan would not be allowed to implement a cultural resources management plan or begin any land-clearing or land-disturbing activities in the vicinity of any discovered sites until informed by the Commission that the requirements have been fulfilled.

Unavoidable Adverse Impacts

None.

VI. Developmental Analysis

In previous sections of this draft EA, we assess the effects of continued operation of the project on the environment. In this section, we look at the effect proposed environmental measures would have on the project's power benefits and summarize the cost of environmental and developmental measures considered in our analysis. Also in this section, we show: (1) the cost of the proposed environmental measures for the project and (2) how the proposed environmental measures would affect the project's economics.

A. Power and Economic Benefits of the Project

The project has an installed capacity of 600 kW and provides an average annual energy generation of 2,300 MWh. Parowan does not propose any changes to project structures or operations. To calculate the economic benefits of the

project, we equate the value of project power benefits to the current cost Parowan would have to pay for the same amount of energy and capacity using alternative generating resources. We do not consider future inflation effects in our analysis.

The cost of alternative power is used as a threshold in our determination of positive or negative project power benefits. A positive net annual power benefit shows how much less it would cost Parowan to use the project's power instead of the most likely alternative power source. A negative net annual power benefit shows how much more it would cost to use the project's power instead of the most likely alternative power source.

B. Cost of Environmental Enhancement Measures

Any measures proposed or recommended by Parowan, agencies, or Commission staff could affect project economics because of the cost of these measures or their effect on power generation.

In this draft EA, we consider the implementation of a plan to control noxious and invasive weeds. The added cost of this measure is considered minimal. Such a plan would have negligible effects on project economics and would not affect annual generation.

C. Cost of Proposed Project

The economic parameters we used for our analysis are shown in table 3. The project, as proposed by Parowan, would have an annual cost of \$18,000 (7.4 mills/kWh). The current annual value of power from the project would be \$74,000 (32.1 mills/kWh). To determine whether the proposed project is economically beneficial, we subtract the cost of the project from the value of its power. As proposed, this project would yield a net annual power benefit of about \$56,000 (24.7 mills/kWh).

TABLE 2.—PARAMETERS FOR ECONOMIC ANALYSIS OF THE CENTER CREEK PROJECT

[Source: Parowan City and Commission staff]

Economic parameter	Value
Period of analysis	30 years.
Discount/interest rate ...	6.0 percent. ¹
Operation and maintenance.	\$17,118 per year. ²
Alternative energy value	32.1 mills per kWh. ³

¹ The discount and interest rates of 6.0 percent are provided by Commission staff as typical values for this type of analysis.

² The annual operation and maintenance cost is estimated by Commission staff.

³The alternative energy value for the project is based on Utah Power & Light Company's current avoided cost as found in Electric Service Schedule No. 37, effective March 11, 2002.

D. Cost of Staff-Recommended Alternatives

Commission staff recommended one additional environmental measure: a cultural resource management plan, if during project operation and maintenance any new or undocumented archeological sites are discovered. The added cost of this measure and a plan to control noxious and invasive weeds is minimal and these measures would not affect project generation. Therefore, the staff-recommended alternative would have the same cost and generation benefits as the no-action alternative.

VII. Comprehensive Development and Recommended Alternative

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which a project is located. When we review a proposed project, we equally consider the environmental, recreational, fish and wildlife, and other non-developmental values of the project, as well as power and developmental values. Accordingly, any license issued shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses.

Based on our independent review of agency and public comments filed on this project and our review of the environmental and economic effects of the proposed project and its alternatives, we selected the proposed project, with staff's additional measure, as the preferred option. We recommend this option because: (1) Issuance of a new hydropower license by the Commission would allow Parowan to operate the project as an economically beneficial and dependable source of electrical energy; (2) the 600-kW project would eliminate the need for an equivalent amount of fossil-fuel derived energy and capacity, which helps conserve these nonrenewable resources and limits atmospheric pollution; (3) the public benefits of the selected alternative would exceed those of Parowan's proposal and the no-action alternative, and (4) the recommended measures would protect existing environmental resources.

We recommend the following environmental measures be included in any license issued by the Commission for the Center Creek Project: (1) monitor and remove any noxious and undesirable plants after ground-

disturbing activities; and (2) should archeological or historic sites be discovered during project operation or maintenance, prepare a site-specific cultural resource management plan in consultation with the SHPO and BLM to evaluate the significance of the sites and to mitigate impacts to those sites that are determined to be eligible for inclusion in the National Register of Historic Places.

From our evaluation of the environmental and economic effects of the project, we conclude that licensing the Center Creek Project with our additional recommended environmental protection measures would best adapt the project to a comprehensive plan for the Center Creek Basin.

VIII. Recommendations of Fish and Wildlife Agencies

Under the provisions of Section 10(j) of the FPA, each hydropower license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife resources affected by the project, where those conditions are not inconsistent with the purpose and requirements of the FPA or other applicable law.

We received one Section 10(j) recommendation from the FWS in its letter filed July 1, 2003. FWS recommends that Parowan monitor and remove any noxious and undesirable plants after any ground-disturbing activities. As discussed in this draft EA, Parowan now includes this recommendation in its proposed project. Commission staff recommends Parowan prepare a plan to implement this recommendation.

IX. Consistency With Comprehensive Plans

Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We identified 9 plans filed by federal, and state agencies that address various resources in Utah; however, none are relevant to the continued operation of the project.

X. Finding of No Significant Impact

We've prepared this environmental assessment for the project pursuant to the National Environmental Policy Act of 1969. Should the Commission decide to issue a license for the project, staff analysis shows that licensing the project would not be a major federal action

significantly affecting the quality of the human environment. With our recommended measures existing environmental resources would be protected.

XI. Literature Cited

Sunrise Engineering, Inc., 2001. Application for a License for a Minor Water Power Project—Center Creek Hydroelectric Project—Parowan City (FERC Project No. 1273). November 15, 2002.

XII. List of Preparers

Gaylord W. Hoisington B Project Coordinator B Terrestrial, Cultural Resources, and Threatened and Endangered Species; Soil Conservationist; B.S., Recreation.

Nicholas Jayjack B Aquatic Resources B Fishery Biologist; M.S., Environmental Science in Civil Engineering; B.S., Fisheries and Aquatic Sciences.

Linda Lehman B Civil Engineer; M.S., Civil Engineering; B.S., Civil Engineering.

[FR Doc. 03-22352 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 178-017]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 178-017.

c. *Date filed:* April 14, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon Hydroelectric Project.

f. *Location:* On the Kern River, near the Town of Bakersfield, Kern County, California. The project occupies approximately 11.26 acres of public land located within the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Randal S. Livingston, Pacific Gas and Electric Company, Power Generation, Mail Code N11E, P.O. Box 770000, San Francisco, CA 94177 (415)973-7000.

i. *FERC Contact*: Allison Arnold, (202) 502-6346 or allison.arnold@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 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. The Kern Canyon Hydroelectric Project consists of: (1) An existing 150-foot-long and 23-foot-high dam; (2) an existing 3-acre reservoir having a usable capacity of 27-acre-feet; (3) a 1.58-mile-long horseshoe shaped tunnel; (4) a 520-foot-long steel penstock varying in diameter from 96 inches to 90 inches; (5) a powerhouse containing one generating unit with an installed capacity of 9,540 kilowatts; (6) existing transmission facilities; and (7) appurtenant facilities. The project is estimated to generate an average of 67.6 gigawatthours annually. The dam and existing project facilities are owned by the applicant.

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 "eLibrary" 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.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

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.

Linda Mitry,
Acting Secretary.

[FR Doc. 03-22353 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2192-013 and 2590-040]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application type*: Amendment of License to Revise Project Boundary.

b. *Projects Nos*: 2192-013 and 2590-040.

c. *Date Filed*: June 9, 2003; amended July 15, 2003.

d. *Applicant*: Consolidated Water Power Company.

e. *Name of Projects*: Biron Hydroelectric Project and Whiting Hydroelectric Project.

f. *Location*: The Biron Hydroelectric Project is located on the Wisconsin River, in Wood and Portage Counties, Wisconsin. The Whiting Hydroelectric Project is located on the Wisconsin River, in Portage County, Wisconsin.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 7919(a)-825(r) and 799 and 801.

h. *Applicant Contact*: Mark E. Anderson, Resource Manager, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495-8050, (715) 422-3972, or e-mail mark.anderson@storaenso.com.

i. *FERC Contact*: Any questions on this notice should be addressed to Etta Foster at (202) 502-8769, or e-mail address: etta.foster@ferc.gov.

j. *Deadline for filing comments and/or motions*: September 26, 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. Please include the project numbers (P-2192-013 and 2590-040) on any comments or motions filed.

k. *Description of Request*: Consolidated Water Power Company (CWPCo) proposes to add approximately 19.14 acres to the Whiting project boundary, and approximately 49.79 acres to the Biron project boundary. The additional acres will provide various forms of public access to the water or on lands already associated with the projects.

l. *Location of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (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. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title “COMMENTS”, “PROTEST”, or “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by the agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site as <http://www.ferc.gov> under the “e-filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22354 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–056]

Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-project use of project lands and waters.

b. *Project No.*: 2413–056.

c. *Date Filed*: July 15 and August 21, 2003.

d. *Applicant*: Georgia Power Company.

e. *Name of Project*: Wallace Dam Project.

f. *Location*: The project is located on the Oconee River in Putnam and Morgan Counties, Georgia and on the Altamaha River in Oglethorpe, Greene, and Hancock Counties, Georgia.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. ““791(a)–825(r).

h. *Applicant Contact*: Larry Wall, Georgia Power Company, 241 Ralph McGill Boulevard, NE., Atlanta, GA 30308–3374, Phone (404) 506–2054.

i. *FERC Contact*: Rebecca Martin, rebecca.martin@ferc.gov Phone (202) 502–6012.

j. *Deadline for filing comments and or motions*: September 12, 2003.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the “e-Filing” link. Please reference “Wallace Dam Project, FERC Project No. 2413–056” on any comments or motions filed.

k. *Description of the Application*:

Georgia Power Company requests Commission approval to construct a non-project electric transmission line that will cross a portion of the project lands and waters at Lake Oconee.

l. *Locations of the Application*: This filing is available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary (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. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title “COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22355 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2670–022]

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Transfer of License.

b. *Project No.*: 2670–022.

c. *Date Filed*: August 4, 2003.

d. *Applicants*: Northern States Power Company (NSP) and City of Eau Claire, Wisconsin (City) (Transferor) and NSP (Transferee).

e. *Name of Project*: Dells Hydroelectric Project.

f. *Location*: Located on the Chippewa River, in Chippewa County, Wisconsin. The project occupies 6.6 acres of land under the administration of the U. S. Bureau of Land Management.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts*: Mr. William Zawacki, Northern States Power Company, 1414 West Hamilton Avenue, Eau Claire, Wisconsin 54702–0008; Mr. Donald Norrell, City of Eau Claire, 203 South Farwell Street, Eau Claire, Wisconsin 54701.

i. *FERC Contact*: Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions*: September 26, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2670–022) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer*: NSP and the City, co-licensees, seek Commission approval to transfer the license for the Dells Hydroelectric Project from NSP and the City to NSP. NSP has exercised a purchase option for all of the City's interest in the project and seeks to become the sole licensee for the project.

l. 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 "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail

FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mityr,
Acting Secretary.

[FR Doc. 03–22356 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No*: 10440–085.

c. *Date filed*: August 15, 2003.

d. *Applicant*: Alaska Power and Telephone Company.

e. *Name of Project*: Black Bear Lake Hydroelectric Project.

f. *Location*: Black Bear Lake on Prince of Wales Island in southeast Alaska in Prince of Wales-Outer Ketchikan Borough.

g. *Filed Pursuant to*: 18 CFR 4.200.

h. *Applicant Contact*: Glen Martin, P.O. Box 222, Port Townsend, WA 98368.

i. *FERC Contact*: John K. Novak, john.novak@ferc.gov, (202)–502–6076.

j. *Deadline for filing comments, motions to intervene and protest*: September 29, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application*: The licensee is requesting a temporary waiver of the minimum flow requirements as set forth in Article 405 of the project license. Article 405 requires monthly minimum flows ranging from 9 cubic feet per second (cfs) to 24 cfs; for August and September the flow requirement is 17 cfs and 24 cfs, respectively. As a result of drought conditions in Southeast Alaska and Prince of Wales Island caused by lower than normal snow pack and minimal rainfall during the spring and summer months, the licensee has not been able to maintain the required August flows even though Black Bear Lake has been drawn down greater than the 15 feet allowed under the license. Currently the licensee has reduced flows to 4.5 cfs and requests approval to continue this release through the remainder of August, until inflow to Black Bear Lake increases. However, prolonged drought conditions may necessitate a continuation of reduced flow. The licensee has consulted with the appropriate resource agencies, and these agencies are in agreement with the licensee's mode of operation during this drought.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the AFERRIS@ link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linda Mitry,
Acting Secretary.

[FR Doc. 03-22357 Filed 8-29-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

Regional Docket Nos. II-2002-01, -02 FRL-7552-1]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for the Dunkirk Steam Generating Station; the Huntley Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to two State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to two citizen petitions asking EPA to object to operating permits issued to two facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Dunkirk Steam Generating Station in Dunkirk, NY, and Huntley Generating Station in Tonawanda, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007-1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for the Dunkirk Steam Generating Station, and the Huntley Generating Station are available electronically at: <http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm>.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section,

Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone (212) 637-4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Dunkirk Steam Generating Station

On January 11, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Dunkirk Steam Generating Station. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit lacks a compliance schedule to address notices of violations issued for alleged opacity violations and violations under the Prevention of Significant Deterioration of Air Quality (PSD) regulations; (2) DEC improperly denied NYPIRG's request for a public hearing on the permit; (3) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (4) the permit distorts annual certification requirements; (5) the permit does not require prompt reporting of any deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); (6) the permit's startup/shutdown, malfunction, maintenance, and upset provision violates part 70; (7) the permit fails to include federally enforceable emission limits established under pre-existing permits; and (8) the permit lacks monitoring sufficient to assure the facility's compliance with all applicable requirements.

On July 31, 2003, the Administrator issued an order partially granting and partially denying the petition on the Dunkirk Steam Generating Station. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Move a startup/shutdown, malfunction, maintenance, and upset provision from the federal

side to the State-side of the permit; (2) either incorporate into the title V permits provisions from pre-existing permits, or delete such applicable requirements by following the requisite public participation procedures (pre-existing permit conditions relating to the ash silo, spray paint booth, emergency generators, amount of sludge burned, and boilers 1 through 4); and (3) establish and monitor operating parameters at each electrostatic precipitator to assure compliance of particulate matter emissions from the facility boilers. The order also explains the reasons for denying NYPIRG's remaining claims.

II. Huntley Generating Station

On January 7, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Huntley Generating Station. NYPIRG raises each of the above eight issues in its petition for the Huntley Generating Station, as well. In addition, NYPIRG raises three additional issues in the petition for the Huntley Generating Station: (1) The permit lacks federally enforceable conditions that govern the procedures for permit renewal; (2) the permit inappropriately placed compliance requirements that pertain to the ash silo in the State-only side of the permit; and (3) the proposed permit improperly describes the annual compliance certification process. On July 31, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Incorporate into the permit prompt reporting of violations relating to boiler particulate matter requirements; (2) move a startup/shutdown, malfunction, maintenance, and upset provision from the federal side to the State-side of the permit; (3) either incorporate into the title V permits provisions from pre-existing permits, or delete such requirements by following the requisite public participation procedures (pre-existing permit conditions relating to the facility boilers, welding booths and tables, and the wastewater treatment plant lime silo); (4) incorporate additional parametric monitoring of particulate matter emissions from the facility boilers; and (5) incorporate additional monitoring, recordkeeping and reporting of fugitive particulate matter emissions from the coal handling processes. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: August 8, 2003.

William J. Muszynski,
Acting Regional Administrator, Region 2.
[FR Doc. 03-22316 Filed 8-29-03; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7549-9]

Clean Water Act section 303(d): Notice of Availability of 4 Total Maximum Daily Loads (TMDLs), Informational Meetings and Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability, request for comment, informational meetings and public hearing.

SUMMARY: This notice announces the date of availability for comment of four draft total maximum daily loads (TMDLs) being established under section 303(d) of the Clean Water Act for polychlorinated biphenyls (PCBs) in Delaware River Zones 2 through 5 (from Trenton, New Jersey to the head of Delaware Bay). The U.S. Environmental Protection Agency (EPA), jointly with the Delaware Department of Natural Resources and Environmental Control (DNREC), the New Jersey Department of Environmental Protection (NJDEP), the Pennsylvania Department of Environmental Protection (PADEP), and the Delaware River Basin Commission (DRBC), will hold three informational meetings and a single public hearing on the proposed TMDLs, which will be established in final form by December 15, 2003.

DATES: Electronic and faxed comments must be received by, and mailed comments must be postmarked no later than, October 21, 2003. Electronic submission of comments is encouraged. The dates of the three informational meetings are as follows: September 22, 24 and 25, 2003, from 7 to 9 p.m. The public hearing on the TMDLs will be held on October 16, 2003, from 7 to 9 p.m and may be extended, if necessary. The draft TMDLs, along with background information, will be published electronically on or before September 15, 2003.

ADDRESSES: By the deadlines set out above, written comments on the draft TMDLs should be sent electronically to berlin.lenka@epamail.epa.gov or in hard copy to: Lenka Berlin, Office of Watersheds (3WP10), USEPA, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, or faxed to Lenka Berlin at 215-814-2301. The draft TMDLs, along

with background information, will be published on the DRBC Web site, <http://www.drbc.net>. The September 22 informational meeting will be held at the Carvel State Office Building, 820 North French Street, 2nd Floor, Wilmington, Delaware. The September 24 informational meeting will be held at the NJDEP Office, Public Hearing Room, 401 East State Street, Trenton, New Jersey.

The September 25 informational meeting will be held at the PADEP Southeast Regional Office, Lee Park, Hearing Room, 555 North Lane, Conshohocken, Pennsylvania. The October 16 public hearing will be held at the Independence Visitor Center, Independence Ballroom, 2nd Floor, One North Independence Mall West (6th & Market), Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan Schulz, EPA Region 2, at 212-637-3829; Mary Kuo, EPA Region 3, at 215-814-5721; Pamela Bush, DRBC, at 609-883-9500 x203.

SUPPLEMENTARY INFORMATION: The USEPA proposes to establish TMDLs for PCBs in the Delaware River. Technical development and interstate coordination necessary to support the TMDLs has been provided by DRBC. Issuance of the TMDLs is required by December 15, 2003, pursuant to a May 1997 Consent Decree and Settlement Agreement in an action entitled *American Littoral Society and Sierra Club v. the United States Environmental Protection Agency et al.*, which decree establishes dates for the adoption of TMDLs in the State of Delaware. The December 15, 2003 deadline will satisfy a revised Memorandum of Agreement between EPA and NJDEP, dated September 16, 2002, which provides for completion of the TMDLs in New Jersey by December 31, 2003. A Memorandum of Understanding between EPA and PADEP, dated April 7, 1997, provides for the adoption of certain TMDLs in Pennsylvania, including the TMDLs for PCBs in the Delaware River, within ten years. No deadline was set for completion of the Pennsylvania TMDLs. Following review and appropriate consideration of public comments, EPA will establish in final form TMDLs for PCBs in the Delaware River. EPA then will forward the TMDLs to DNREC, NJDEP and PADEP, respectively. These agencies will incorporate the TMDLs into their current water quality management plans.

The informational meetings on September 22, 24 and 25 will begin with a presentation by representatives of EPA, the state environmental agency (DNREC, PADEP or NJDEP) and DRBC

and followed by an informal question and answer session. The informational meetings will not be conducted as part of the record. Comments for the record will be accepted at the public hearing on October 16 and in writing as described above during the comment period. No agency responses will be offered at the hearing. However, EPA will review all data and information submitted during the comment period and will revise the TMDLs as appropriate. A written response document will be prepared prior to final EPA action.

Walter E. Mugdan,

Director, Division of Environmental Planning and Protection, Region 2.

John A. Armstead,

Acting Director, Water Protection Division, Region 3.

[FR Doc. 03-22162 Filed 8-29-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 03-2739]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 27, 2003, the Commission released a public notice announcing the September 25, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Thursday, September 25, 2003, 9 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5-A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418-1466 or dblue@fcc.gov. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: Released: August 27, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, September 25, 2003, from 9 a.m. until 5 p.m. The

meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW-C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Thursday, September 25, 2003, 9 a.m.

1. Announcements and Recent News
 - New NANC Members
2. Approval of Minutes
 - Meeting of May 13, 2003
 - Meeting of July 15, 2003
3. Report from Summer Sleuths regarding Number Exhaust Solutions
4. Report of Cost Recovery Working Group
5. Report from NBANC
6. Report of NAPM, LLC status
7. Report of 3-Digit DIG IMG
 - Pros and cons of N11 and 344
 - Cost estimates and cost recovery
8. Report of National Thousands Block Pooling Administrator
 - Activity report
9. Status of Industry Numbering Committee (INC) activities
 - VoIP Workshop
 - Analysis of multiple LRNs for multiple tandems; alternatives
 - Issues associated with PA change orders
 - Porting of wireless grandfathered numbers
10. Report of Local Number Portability Administration (LNPA) Working Group
 - Wireless Number Portability Operations (WNPO) Subcommittee
11. Report of the North American Numbering Plan Administrator (NANPA)
 - CO Code Activity
 - NPA Relief Report
 - NRUF Update
 - Conference call regarding INC's technical analysis of LRN on multiple tandems
12. Report of Oversight Working Group
 - Change Order review
 - Status of NANPA and PA annual reviews
13. New assignment from FCC: Report to FCC by April 30, 2004 regarding

Impact on Increasing Contamination Threshold in Area Codes 310 and 909

14. Update on ENUM from ENUM Forum
15. List of NANC Accomplishments
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business
 - Adjourn no later than 5 p.m.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03-22290 Filed 8-29-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Ellerman, Director; Human Resources Division; Federal Labor Relations Authority (FLRA); 1400 K Street, NW., Washington, DC 20424-0001; (202) 218-7963.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive. The following persons will serve on the FLRA's FY 2003 Performance Review Board: Barbara Reed Bradford, Deputy Director, U.S. Trade and Development Agency; Doris Brown, Human Resources Officer, International Trade Commission, Department of Commerce; Jill M. Crumpacker, Director, Policy, Planning & Performance Management, Federal Labor Relations Authority; David A. Dobbs, Deputy Assistant Inspector General for Aviation, Office of the Inspector General, Department of Transportation; and Joe Schimansky, Executive Director, Federal Service Impasses Panel, Federal Labor Relations Authority.

Authority: 5 U.S.C. 4134(c)(4).

Dated: August 26, 2003.

Dan Ellerman,

Director, Human Resources Division.

[FR Doc. 03-22238 Filed 8-29-03; 8:45 am]

BILLING CODE 6727-01-U

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Texas and California

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03-4, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. The per diems prescribed in Bulletin 03-4 may be found at <http://www.gsa.gov/perdiem>, to be effective for travel 15 days after publication of this notice.

DATES: This notice is effective September 2, 2003 and applies to travel performed 15 days after this date.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501-2362. Please cite Notice of Per Diem Bulletin 03-4.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP enhances the Government's ability to better meet its overall room night demand, and allows travelers to find lodging close to

where they need to conduct business. After an analysis of this additional data, the maximum lodging amount published in the **Federal Register** at 67 FR 56160, August 30, 2002, and amended at 67 FR 69634, November 18, 2002, 68 FR 25034, May 9, 2003, and 68 FR 31706, May 28, 2003, is being changed in the following locations:

State of Texas

- Arlington/Grapevine, including Tarrant County.
- Dallas, including Dallas County.
- City limits of Fort Worth.

State of California

- Los Angeles, including Los Angeles, Orange and Ventura Counties, Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.
- Oakland, including Alameda County.
- Sacramento, including Sacramento County.
- San Francisco, including San Francisco County.
- San Mateo/Redwood City, including San Mateo County.
- City limits of Santa Monica.
- Sunnyvale/Palo Alto/San Jose, including Santa Clara County.

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (68 FR 22314), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in Appendix A to 41 CFR chapter 301, solely on the Internet at <http://www.gsa.gov/perdiem>. This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 22, 2003.

David Drabkin,

Acting Associate Administrator.

[FR Doc. 03-22240 Filed 8-29-03; 8:45 am]

BILLING CODE 6820-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS)

announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date:

September 23, 2003 9 a.m.–4:30 p.m.

September 24, 2003 1 p.m.–3 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including an update on HHS Data Council activities, and the adoption of data standards including clinical data standards. A presentation on an ICD 10 impact study is also planned with a subsequent discussion. In the afternoon there will be reports from Subcommittees on selected activities. On the second day the Committee will hear reports from the Subcommittees and discuss agendas for future NCVHS meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NCVHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: August 25, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03-22300 Filed 8-29-03; 8:45 am]

BILLING CODE 4151-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[30Day-67-03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project: Possession, Use, and Transfer of Select Agents and Toxins (42 CFR part 73) (OMB Control No. 0920-0576)—Revision—Office of the Director (OD), Centers for Disease Control and Prevention (CDC). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188) specifies that the Secretary of Health and Human Services shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select biological agents and toxins. The Act specifies that facilities that possess, use, and transfer select agents register with the Secretary. The Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. This request reflects revisions to the forms approved in February, 2003 as a result of public comments to the Interim Final Rules that CDC and USDA/APHIS published in February, 2003. These forms are: (1) Application for Registration; (2) Facility Notification Form; (3) Request for Exemption; (4) Transfer of Select Agent form; and (5) Clinical and Diagnostic Laboratory Reporting Form. The revisions to the forms are primarily changes to the Guidance documents to clarify instructions and the inclusion of a supplemental form to the Application form for Biosafety Level 4 (BSL4) laboratories. CDC is requesting a 3-year approval for this data collection.

The Application for Registration will be used by facilities to register with CDC. The Application for Registration requests facility information, a list of select agents in use, possession, or for transfer by the facility, characterization of the select agent, and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent. CDC estimates that entities will need an additional 45 minutes for each additional investigator or select agent. BSL4 laboratories will also complete and submit Section 6 of the Application for Registration. CDC is requesting OMB approval to add this section to the Application for Registration because of the unique data required for these facilities. We identified the need for this section during the registration process following the February, 2003 approval of the Application form. Although there are less than 10 respondents for this form, CDC has decided to voluntarily comply with the Paperwork Reduction Act and seek OMB approval for this form. Estimated time to complete and submit Section 6 is 2 hours.

Facilities may amend their registration if any changes occur in the information submitted to the Secretary. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 60 minutes.

The Facility Notification Form must be completed by facilities whenever there is release of a select agent or theft or loss of a select agent. Estimated average time to complete this form is 60 minutes.

The Request for Exemption form will be used by facilities that are using select agents in investigational new drug testing or in cases of public health emergency. Estimated average time to complete this form is 70 minutes.

The Transfer of Select Agent Form will be used by facilities requesting transfer of a select agent to their facilities and by the facility transferring the agent. Estimated average time to complete this form is 1 hour, 45 minutes.

The Clinical and Diagnostic Laboratory Exemption Report will be used by clinical and diagnostic laboratories to notify the Secretary that select agents identified as the result of diagnosis or proficiency testing have been properly disposed of. Estimated average time to complete this form is 60 minutes.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or make a request of the Secretary in writing and CDC is requesting OMB approval to collect this information. The regulation states that an entity must notify the Secretary in writing at least five business days before destroying all select agent or toxin covered by a certificate of registration. The estimated time to gather the information and submit this notification is 30 minutes.

An entity may also apply to the Secretary for an expedited review of an individual by the Attorney General. To apply for this expedited review, an entity must submit a request in writing to the Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. Entities should be aware that CDC is not developing standardized forms to use in these situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

As part of the safety requirements of this regulation, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents and toxins are stored. The results of these inspections must be documented. CDC estimates that, on the average, such documentation will take 1 hour.

Also, as part of the safety requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training. Estimated time for this documentation is 2 hours per principal investigator.

An entity or an individual may request administrative review of a decision denying or revoking either a certification of registration or approval based on a security risk assessment. This request must be in writing within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified. The time to implement such a system is estimated to average 4 hours. Total annualized burden for this data collection is 17,905 hours.

CFR reference	Data collection	No. of respondents	Responses per respondent	Avg burden per response (in hrs.)
73.7(b)	Registration Application	575	1	3.75
73.7(b)	BSL4 Supplement	4	1	2
73.7(e)	Amendment to Registration Application	575	2	1
73.17(a)(e)	Notification Form	10	1	1
73.6(c-e)	Request for Exemption	17	1	1.16
73.14	Transfer of Select Agent	575	5	1.75
73.6(a)(2)	Clinical and Diagnostic Laboratory Exemption Report	1,000	4	1
73.7(i)	Notification of Inactivation	6	1	30/60
73.8(g)	Request Expedited Review	6	1	30/60
73.10(b)	Documentation of Self-inspection	575	1	1
73.13(f)	Documentation of Training	575	1	2
73.18	Administrative Review	14	1	4
73.15(d)	Ensure Secure Record keeping System	575	1	30/60

Dated: August 25, 2003.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03-22254 Filed 8-29-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-68-03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498-1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

Menthol Crossover Study—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC). CDC proposes a study to measure differences in African-American and Caucasian smokers in the dose and metabolism of chemicals in smoke from menthol and non-menthol cigarettes.

African-American smokers are more likely than Caucasian smokers to develop some forms of cancer and to have shorter long-term survival after diagnosis. More than 65% of African American smokers smoke menthol cigarettes, compared with about 23% of white smokers. Smoking menthol cigarettes has been associated with higher blood-cotinine levels. Cotinine is a product of the metabolism of nicotine, and the higher cotinine levels suggest that menthol may enable a smoker to obtain more nicotine from each cigarette. In addition, people who smoke menthol cigarettes also have higher levels of carbon monoxide in their breath than do people who smoke non-menthol cigarettes, and an elevated carbon monoxide level is a risk factor for cardiovascular disease. Additionally, the presence of menthol in cigarettes may change the way people smoke cigarettes.

All previous studies have compared people who smoke menthol cigarettes

with those who smoke non-menthol cigarettes; and it is not known whether increased cotinine and carbon monoxide levels in people who smoke menthol cigarettes are attributable to racial or ethnic differences, or a combination of multiple factors. In addition, no previous study has examined the differences between urinary levels of cancer-causing chemicals in people who smoke menthol or non-menthol cigarettes and correlated these findings with smoke exposure intake estimates using salivary cotinine and filter solanesol.

For this two-part crossover study, we will recruit African-American and Caucasian smokers of both sexes who smoke either menthol or non-menthol cigarettes as study subjects. We will determine smoking history then randomly assign each participant to smoking either menthol or non-menthol cigarettes for an initial 2-week period. Study participants then will switch to the opposite type of cigarette for the next 2 weeks. At baseline, and after each 2-week period, we will measure the way the participants smoke the test cigarettes to determine smoking topography. Saliva, urine, and breath samples will be collected to measure by-products of smoking, and participants will complete a brief smoking-history questionnaire. There is no cost to respondents.

Forms	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Response to Flyer: Screening Interview Form	200	1	5/60	17
Site Visits: Check in, Study Information, Visit 1, 2, 3	71	3	15/60	53
Consent Form, Questionnaire, Visit 1, 2, 3	71	3	15/60	53
Urine Sample and Saliva Sample, Visit 1, 2, 3	71	3	15/60	53
Breath Carbon monoxide (CO) Sample: Test Smoke 1, Breath CO Sample; Test Smoke 2, Breath CO Sample; Visit 1, 2, 3	71	3	45/60	160
Sample Test Cigarettes, Distribute Baggies & Cigarettes, Visit 1 and 2	71	2	15/60	36
Instructions and Check out, Visit 1 and 2	71	2	15/60	36
Smoking Cessation Advice, Visit 3 only	71	1	15/60	18

Forms	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Final Check Out, Visit 3 only	71	1	15	18
Total	444

Dated: August 25, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03-22255 Filed 8-29-03; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.
ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at <http://workplace.samhsa.gov> and <http://www.drugfreeworkplace.gov>

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301-443-6014 (voice), 301-443-3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories,
8901 W. Lincoln Ave.,
West Allis, WI 53227,
414-328-7840/800-877-7016
(Formerly: Bayshore Clinical Laboratory);

ACM Medical Laboratory, Inc.,
160 Elmgrove Park,
Rochester, NY 14624,
585-429-2264;

Advanced Toxicology Network,
3560 Air Center Cove, Suite 101,
Memphis, TN 38118,
901-794-5770/888-290-1150;

Aegis Analytical Laboratories, Inc.,
345 Hill Ave.,
Nashville, TN 37210,
615-255-2400;

Alliance Laboratory Services,
3200 Burnet Ave.,
Cincinnati, OH 45229,
513-585-6870
(Formerly: Jewish Hospital of Cincinnati, Inc.);

Baptist Medical Center-Toxicology Laboratory,
9601 I-630, Exit 7,
Little Rock, AR 72205-7299,
501-202-2783

(Formerly: Forensic Toxicology Laboratory Baptist Medical Center);

Clinical Reference Lab,
8433 Quivira Rd.,
Lenexa, KS 66215-2802,
800-445-6917;

Diagnostic Services Inc., dba DSI,
12700 Westlinks Dr.,
Fort Myers, FL 33913,
239-561-8200/800-735-5416;

Doctors Laboratory, Inc.,
P.O. Box 2658, 2906 Julia Dr.,
Valdosta, GA 31602,
912-244-4468;

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC,
1229 Madison St., Suite 500, Nordstrom Medical Tower,
Seattle, WA 98104,
206-386-2661/800-898-0180

(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.);

DrugScan, Inc.,
P.O. Box 2969, 1119 Mearns Rd.,
Warminster, PA 18974,
215-674-9310;

Dynacare Kasper Medical Laboratories*,
10150-102 St., Suite 200,
Edmonton, Alberta,
Canada T5J 5E2,
780-451-3702/800-661-9876;

ElSohly Laboratories, Inc.,
5 Industrial Park Dr.,
Oxford, MS 38655,
662-236-2609;

Express Analytical Labs,
3405 7th Ave., Suite 106,
Marion, IA 52302,
319-377-0500;

Gamma-Dynacare Medical Laboratories*,
A Division of the Gamma-Dynacare Laboratory Partnership,
245 Pall Mall St.,
London, ONT,
Canada N6A 1P4,
519-679-1630;

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

- General Medical Laboratories,
36 South Brooks St.,
Madison, WI 53715,
608-267-6225;
- Kroll Laboratory Specialists, Inc.,
1111 Newton St.,
Gretna, LA 70053,
504-361-8989/800-433-3823
(Formerly: Laboratory Specialists, Inc.);
- LabOne, Inc.,
10101 Renner Blvd.,
Lenexa, KS 66219,
913-888-3927/800-873-8845,
(Formerly: Center for Laboratory Services, a
Division of LabOne, Inc.);
- Laboratory Corporation of America Holdings,
7207 N. Gessner Rd.,
Houston, TX 77040,
713-856-8288/800-800-2387;
- Laboratory Corporation of America Holdings,
69 First Ave.,
Raritan, NJ 08869,
908-526-2400/800-437-4986,
(Formerly: Roche Biomedical Laboratories,
Inc.);
- Laboratory Corporation of America Holdings,
1904 Alexander Dr.,
Research Triangle Park, NC 27709,
919-572-6900/800-833-3984,
(Formerly: LabCorp Occupational Testing
Services, Inc., CompuChem Laboratories,
Inc.; CompuChem Laboratories, Inc., A
Subsidiary of Roche Biomedical
Laboratory; Roche CompuChem
Laboratories, Inc., A Member of the Roche
Group);
- Laboratory Corporation of America Holdings,
10788 Roselle St.,
San Diego, CA 92121,
800-882-7272,
(Formerly: Poisonlab, Inc.);
- Laboratory Corporation of America Holdings,
1120 Stateline Rd. West,
Southaven, MS 38671,
866-827-8042/800-233-6339 ,
(Formerly: LabCorp Occupational Testing
Services, Inc.; MedExpress/National
Laboratory Center);
- Marshfield Laboratories,
Forensic Toxicology Laboratory,
1000 North Oak Ave.,
Marshfield, WI 54449,
715-389-3734/800-331-3734;
- MAXXAM Analytics Inc. *,
5540 McAdam Rd.,
Mississauga, ON,
Canada L4Z 1P1,
905-890-2555,
(Formerly: NOVAMANN (Ontario) Inc.);
- MedTox Laboratories, Inc.,
402 W. County Rd. D,
St. Paul, MN 55112,
651-636-7466/800-832-3244;
- MetroLab-Legacy Laboratory Services,
1225 NE 2nd Ave.,
Portland, OR 97232,
503-413-5295/800-950-5295;
- Minneapolis Veterans Affairs Medical Center,
Forensic Toxicology Laboratory,
1 Veterans Dr.,
Minneapolis, MN 55417,
612-725-2088;
- National Toxicology Laboratories, Inc.,
1100 California Ave.,
Bakersfield, CA 93304,
661-322-4250/800-350-3515;
- Northwest Drug Testing, a Division of NWT
Inc.,
1141 E. 3900 S.,
Salt Lake City, UT 84124,
801-293-2300/800-322-3361,
(Formerly: NWT Drug Testing, NorthWest
Toxicology, Inc.);
- One Source Toxicology Laboratory, Inc.,
1705 Center St.,
Deer Park, TX 77536,
713-920-2559,
(Formerly: University of Texas Medical
Branch, Clinical Chemistry Division;
UTMB Pathology-Toxicology Laboratory);
- Oregon Medical Laboratories,
P.O. Box 972, 722 East 11th Ave.,
Eugene, OR 97440-0972,
541-687-2134;
- Pacific Toxicology Laboratories,
9348 DeSoto Ave.,
Chatsworth, CA 91311,
800-328-6942,
(Formerly: Centinela Hospital Airport
Toxicology Laboratory);
- Pathology Associates Medical Laboratories,
110 West Cliff Dr.,
Spokane, WA 99204,
509-755-8991/800-541-7891x8991;
- PharmChem Laboratories, Inc.,
4600 N. Beach,
Haltom City, TX 76137,
817-605-5300,
(Formerly: PharmChem Laboratories, Inc.,
Texas Division; Harris Medical
Laboratory);
- Physicians Reference Laboratory,
7800 West 110th St.,
Overland Park, KS 66210,
913-339-0372/800-821-3627;
- Quest Diagnostics Incorporated,
3175 Presidential Dr.,
Atlanta, GA 30340,
770-452-1590/800-729-6432
(Formerly: SmithKline Beecham Clinical
Laboratories; SmithKline Bio-Science
Laboratories);
- Quest Diagnostics Incorporated,
4770 Regent Blvd.,
Irving, TX 75063,
800-824-6152,
(Moved from the Dallas location on 03/31/01;
Formerly: SmithKline Beecham Clinical
Laboratories; SmithKline Bio-Science
Laboratories);
- Quest Diagnostics Incorporated,
4230 South Burnham Ave., Suite 250,
Las Vegas, NV 89119-5412,
702-733-7866/800-433-2750,
(Formerly: Associated Pathologists
Laboratories, Inc.);
- Quest Diagnostics Incorporated,
400 Egypt Rd.,
Norristown, PA 19403;610-631-4600/877-
642-2216
(Formerly: SmithKline Beecham Clinical
Laboratories; SmithKline Bio-Science
Laboratories);
- Quest Diagnostics Incorporated,
506 E. State Pkwy.,
Schaumburg, IL 60173,
800-669-6995/847-885-2010
(Formerly: SmithKline Beecham Clinical
Laboratories; International Toxicology
Laboratories);
- Quest Diagnostics Incorporated,
7600 Tyrone Ave.,
Van Nuys, CA 91405,
818-989-2520/800-877-2520
(Formerly: SmithKline Beecham Clinical
Laboratories);
- Scientific Testing Laboratories, Inc.,
450 Southlake Blvd.,
Richmond, VA 23236,
804-378-9130;
- Sciteck Clinical Laboratories, Inc.,
317 Rutledge Rd.,
Fletcher, NC 28732,
828-650-0409;
- S.E.D. Medical Laboratories,
5601 Office Blvd.,
Albuquerque, NM 87109,
505-727-6300/800-999-5227;
- South Bend Medical Foundation, Inc.,
530 N. Lafayette Blvd.,
South Bend, IN 46601,
574-234-4176 x276;
- Southwest Laboratories,
2727 W. Baseline Rd.,
Tempe, AZ 85283,
602-438-8507/800-279-0027;
- Sparrow Health System,
Toxicology Testing Center, St. Lawrence
Campus,
1210 W. Saginaw,
Lansing, MI 48915,
517-377-0520
(Formerly: St. Lawrence Hospital &
Healthcare System);
- St. Anthony Hospital Toxicology Laboratory,
1000 N. Lee St.,
Oklahoma City, OK 73101,
405-272-7052;
- Sure-Test Laboratories, Inc.,
2900 Broad Ave.,
Memphis, TN 38112,
901-474-6026;
- Toxicology & Drug Monitoring Laboratory,
University of Missouri Hospital & Clinics,
2703 Clark Lane, Suite B, Lower Level,
Columbia, MO 65202,
573-882-1273;
- Toxicology Testing Service, Inc.,
5426 N.W. 79th Ave.,
Miami, FL 33166,
305-593-2260;
- US Army Forensic Toxicology Drug Testing
Laboratory,
2490 Wilson St.,
Fort George G. Meade, MD 20755-5235,
301-677-7085.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in

the NLCP certification maintenance program.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03-22374 Filed 8-29-03; 8:45 am]

BILLING CODE 4160-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08-03-034]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, October 9, 2003, from 9 a.m. to 12 a.m. (noon). The meeting of the Committee's working groups will be held on Thursday, September 25, 2003, at 9 a.m. to 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Houston Yacht Club, 3620 Miramar Drive, La Porte, Texas (281) 471-1255. The working groups meeting will be held at the Port of Texas City, 2425 Highway 146 North, Texas City, Texas (409) 945-4461. Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston-Galveston, Attn: LT Tobey, 9640 Clinton Drive, Floor 2, Houston, TX 77029. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Captain Richard Kaser, Executive Director of HOGANSAC, telephone

(713) 671-5199, Commander Tom MARIAN, Executive Secretary of HOGANSAC, telephone (713) 671-5164, or Lieutenant (LT) Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671-5155, e-mail katobey@vtshouston.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) (or the Committee Sponsor's representative), Executive Director (CAPT Kaser) and Chairman (Tim Leitzell).

(2) Approval of the June 5, 2003 minutes.

(3) Old Business:

- (a) Dredging projects.
- (b) Electronic navigation.
- (c) AtoN (Aids to Navigation)

Knockdown Working Group.

- (d) Mooring subcommittee report.
- (e) Texas City Container Terminal

Update.

- (f) Education initiative.
- (g) Port Security Subcommittee report.
- (h) Bridge Allision Prevention

Working Group.

- (4) New Business.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, and port security. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished.

Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. If you would like to have

written materials distributed to each member of the committee in advance of the meeting, you should send your request along with 15 copies of the materials to the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant to the Executive Secretary as soon as possible.

Dated: August 20, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 03-22205 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1481-DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-1481-DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 29, 2003:

Pasco County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management

Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations, 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22264 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1481–DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 22, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22265 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 6, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–22260 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR),

dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Fountain, Wabash, and White Counties for Public Assistance (already designated for Individual Assistance.)

Greene County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22261 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Lake, Porter, and Vanderburgh Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-22262 Filed 8-29-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1476-DR]

Indiana; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA-1476-DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Owen County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-22263 Filed 8-29-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3173-EM]

New York; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA-3173-EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Madison County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and

Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-22267 Filed 8-29-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1484-DR]

Ohio; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA-1484-DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 2003:

Franklin County for Individual Assistance.
Jefferson County for Individual Assistance (already designated for Public Assistance.)
Carroll County for Public Assistance (already designated for Individual Assistance.)
Monroe County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03-22266 Filed 8-29-03; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Radiological Emergency Preparedness: Review of Exercise Evaluation Criteria and Methodology

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the opening of a 60-day comment period for a review of FEMA's radiological emergency preparedness (REP) exercise evaluation criteria and methodology. FEMA published a **Federal Register** notice entitled "Radiological Emergency Preparedness: Exercise Evaluation Methodology" at 66 FR 47526, September 12, 2001, for FEMA's use when evaluating exercises. FEMA published a **Federal Register** notice with the same title at 67 FR 20580, April 25, 2002, correcting and superseding our notice of September 12, 2001. Since January 1, 2002, FEMA has evaluated REP exercises using the approach and criteria contained in the **Federal Register** notices, and it is appropriate at this time for FEMA to examine the results of their use. We invite your comments pursuant to our review.

DATES: Please submit your comments on or before November 3, 2003.

ADDRESSES: Please submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington DC 20472, or send them by e-mail to rules@fema.gov. Please refer to "REP: Review of Exercise Evaluation Criteria and Methodology" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street SW., Washington

DC 20472; (202) 646-3664, or (e-mail) vanessa.quinn@dhs.gov.

SUPPLEMENTARY INFORMATION: FEMA, through its REP program, evaluates exercises of offsite response plans and procedures. The REP exercises test the capability of Offsite Response Organizations, which are the State and local agencies responsible for responding to incidents involving nuclear power plants, to perform in accordance with the provisions of their plans. This activity is undertaken pursuant to FEMA regulations, which appear in 44 CFR part 350, and a Memorandum of Understanding (MOU) between FEMA and the Nuclear Regulatory Commission (NRC), which appears at 44 CFR part 353, appendix A.

In 1996, the FEMA Director announced a strategic review of the REP Program. FEMA then established a Strategic Review Steering Committee (SRSC), with membership from FEMA and the NRC, to carry out the review. The SRSC completed its work in 1999 and forwarded recommendations to FEMA management for implementation. A key SRSC recommendation, strongly supported by the REP community, called for FEMA to streamline its exercise program and change from an objective-based approach to exercise evaluation to a results-oriented approach. FEMA implemented the SRSC's recommendation in a **Federal Register** notice entitled "Radiological Emergency Preparedness: Exercise Evaluation Methodology" at 66 FR 47526, September 12, 2001, for FEMA's use when evaluating exercises. FEMA published a **Federal Register** notice of the same title at 67 FR 20580, April 25, 2002, correcting and superseding our notice of September 12, 2001.

The new approach and criteria have been in effect for over a year, and it is appropriate at this time to examine the results of their use. We are requesting comments on specific criteria that might require some fine-tuning, as well as comments on the efficacy of the outcome-oriented methodology. The April 25, 2002, notice containing the criteria and methodology subject to review is posted on the REP home page at <http://www.fema.gov/rrr/rep/repfrn.shtm#eval>.

Coordination With the Nuclear Regulatory Commission

FEMA conducts the REP program in part under authority of an MOU with the NRC. The text of the current MOU is published in appendix A to 44 CFR part 353. Section E of the MOU provides that each agency will provide an opportunity for the other agency to

review and comment on emergency planning and preparedness guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance. FEMA has transmitted a copy of this document to the NRC and requested their comments no later than the date upon which the public comment period closes.

Dated: August 12, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness & Response.

[FR Doc. 03-22259 Filed 8-29-03; 8:45 am]

BILLING CODE 6718-06-P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of the Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning October 1, 2002, and ending September 30, 2003. Each PRB will be composed of at least three of the Senior Executive Service members listed below:

Name and Title

Carlton D. Spriggs—Deputy Director, U.S. Secret Service.
 Barbara S. Riggs—Chief of Staff (USSS).
 Brian K. Nagel—Assistant Director, Investigations (USSS).
 Mark J. Sullivan—Assistant Director, Protective Operations (USSS).
 Carl J. Truscott—Assistant Director, Protective Research (USSS).
 Stephen T. Colo—Assistant Director, Administration (USSS).
 Donald A. Flynn—Assistant Director, Inspection (USSS).
 Keith L. Prewitt—Assistant Director, Human Resources & Training (USSS).
 George D. Rogers—Assistant Director, Government & Public Affairs (USSS).
 Paul D. Irving—Assistant Director, Homeland Security (USSS).
 John J. Kelleher—Chief Counsel (USSS).

FOR FURTHER INFORMATION CONTACT:

Sheila M. Lumsden, Chief, Personnel Division, 950 H Street, NW., Suite 7400, Washington, DC 20223, Telephone No. (202) 406-5307.

W. Ralph Basham,
Director.

[FR Doc. 03-22213 Filed 8-29-03; 8:45 am]

BILLING CODE 4810-42-M

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-4815-N-61]

**Notice of Submission of Proposed
Information Collection to OMB:
Application for Approval—FHA Title I/
Title II Lender/Mortgagee or Ginnie
Mae Mortgage-Backed Securities
Issuer**

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information obtained determines if an entity meets the criteria required for approval to participate as Title I/Title II lenders/mortgagees or Ginnie Mae mortgage-backed securities issuers.

DATES: *Comments Due Date:* October 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502-0005) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395-6974; E-mail Lauren_Wittenberg@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may also be obtained through HUD's Information Collection Budget Tracking System at <http://mf.hud.gov.63001/po/i/icbts/>.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5)

the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for Approval—FHA Lender and/or Mortgage-Backed Securities Issuer.

OMB Approval Number: 2502-0005.
Form Numbers: HUD-11701, HUD 92001-B.

Description of the Need for the Information and its Proposed Use: Information obtained determines if an entity meets the criteria required for approval to participate as Title I / Title II lenders/mortgagees of Ginnie Mae mortgage-backed securities issuers.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

Reporting Burden: Number of Respondents 25,450; Average annual responses per respondent 1.2; Total annual responses 32,250; Average burden per response 3.5 hrs.

Total Estimated Burden Hours: 8,938.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2003.

Wayne Eddins,

*Departmental Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 03-22247 Filed 8-29-03; 8:45 am]

BILLING CODE 4210-72-P

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
**Notice of Availability of Draft
Comprehensive Conservation Plan and
Environmental Assessment for Las
Vegas National Wildlife Refuge, Las
Vegas, NM**

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan (CCP) and Environmental Analysis (EA) for the Las Vegas National Wildlife Refuge is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, describes how the Service intends to manage this refuge over the next 15 years.

ADDRESSES: A copy of the CCP is available on compact diskette or hard copy, and you may obtain a copy by writing: Yvette Truitt, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, PO Box 1306, Albuquerque, NM 87103-1306. Requests may also be made via electronic mail to: yvette_truitt@fws.gov.

FOR FURTHER INFORMATION CONTACT: Yvette Truitt, Biologist/Natural Resource Planner, 505-248-6452 or Joe Rodriguez, Refuge Manager, 505-425-3581.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) requires a CCP. The purpose is in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370d).

Background: The Las Vegas National Wildlife Refuge was established on August 24, 1965 by the authority of the Migratory Bird Conservation Act (16 U.S.C. 712d) for use as an inviolate sanctuary, or any other management purpose, for migratory birds. Located in northeastern New Mexico, the 8672 acre

Refuge is comprised of prairie grasslands, ponderosa pine forest, pinon-juniper woodlands, steep canyons, lakes and ponds, small disjointed patches of riparian areas and irrigated lands. Management efforts focus on enhancing and restoring native grassland, riparian and wetland communities for migratory birds, fish and other wildlife species.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, land acquisition, invasive species control, and administration and staffing for the Refuge. The key refuge issues and how they are addressed in the plan alternatives are summarized below. Alternative A is the current management, or what is currently offered at the Refuge. Alternative B is the proposed action. Alternative C would call for no active management on the Refuge.

Improvements to public use facilities: Alternative A: The public use program would remain at current levels and no new facilities would be developed on the Refuge. Alternative B: The public use program would increase and/or enhance educational and outreach activities, recreational opportunities, community involvement, and improve facilities. Alternative C: The public use program would be discontinued.

Refuge Land and Boundary Protection: Alternative A: There would be no acquisition of in holdings and, no exploration of possible refuge boundary expansion. Alternative B: The Service would actively pursue acquisition of in holdings under existing authorities and policies from willing sellers. The Service would begin discussions with adjacent land owners regarding habitat conservation partnership opportunities to cooperatively enhance or protect wildlife habitats through agreements. The refuge would consider (*in concept only*) future purchase of fee simple and less than fee simple interest in lands adjacent the refuge from willing sellers only. Any purchase of interest in lands would be subject to additional NEPA compliance and other policy considerations. Alternative C: Same as Alternative A.

Water management activities: Alternative A: Improvements to the water delivery system would remain secondary to other immediate management needs on the Refuge. Alternative B: Improvements to water management activities would be accomplished. Costs would be spread over a long period of time and to the degree possible shared through the development of partnerships and in-

kind efforts. Alternative C: There would be no water delivery improvements.

Comment Period: Please submit comments within 45 days after the date of this publication in the **Federal Register**.

Public Meetings/Hearings: An open house/public involvement session to receive comments on the Draft CCP/EA will be held in September 17, 2003. Special mailings, newspaper articles, and other media announcements will be used to inform the public of the time and location of the meeting.

Send Comments To: Yvette Truitt, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103-1306. Comments may also be sent via electronic mail to: yvette_truitt@fws.gov.

Dated: August 20, 2003.

Geoffrey L. Haskett,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 03-22256 Filed 8-29-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010-0140).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 210—Forms and Reports and part 206—Product Valuation. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled “30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS-2014, Report of Sales and Royalty Remittance).”

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Submit written comments by either fax (202) 395-6566 or e-mail (OIRA_DOCKET@omb.eop.gov) directly to the Office of Information and Regulatory Affairs, OMB, Attention:

Desk Officer for the Department of the Interior (OMB Control Number 1010-0140). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A-614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at mrm.comments@mms.gov. Include the title of the information collection and the OMB Control Number in the “Attention” line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231-3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt at telephone (303) 231-3211 or FAX (303) 231-3781. You may also contact Sharron Gebhardt to obtain a copy at no cost of the form and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS-2014, Report of Sales and Royalty Remittance).

OMB Control Number: 1010-0140.
Bureau Form Number: Form MMS-2014.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under The Mineral Leasing Act (30 U.S.C. 1923) and The Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI’s Indian trust responsibility.

The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982, 30 U.S.C. 1701 *et seq.*, states in Section 101(a) that the Secretary “* * * shall establish a comprehensive inspection, collection, and fiscal and production

accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.” The persons or entities described at 30 U.S.C. 1713 are required to make reports and provide reasonable information as defined by the Secretary.

Form MMS–2014, Report of Sales and Royalty Remittance, is the only document used for reporting oil and gas royalties, certain rents, and other lease-related transactions to MMS (e.g., transportation and processing allowances, lease adjustments, and quality and location differentials).

MMS is requesting OMB’s approval to continue to collect this information. Not collecting this information would limit the Secretary’s ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from “Report of Sales and Royalty Remittance” to “30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance)” to clarify the regulatory

language we are covering under 30 CFR parts 210 and 206.

Frequency: Monthly.

Estimated Number and Description of Respondents: 1,600 payors.

Estimated Annual Reporting and Recordkeeping “Hour” Burden: 125,856 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burden hours, we assumed that respondents perform certain requirements in the normal course of their activities. These business activities are considered to be usual and customary, which we took into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
210.20(a); 210.21(c)(1); 210.50; and 210.52(a)(1), (2), (b), (c), and (d); 210.354.	You must submit Form MMS–2014 * * * to MMS electronically * * * You must submit an electronic sample of your report for MMS approval * * * Records may be maintained in microfilm, microfiche, or other recorded media * * * You must submit a completed Form MMS–2014 (Report of Sales and Royalty Remittance) to MMS with: (1) All royalty payments; and, (2) Rents on nonproducing leases, * * * When you submit Form MMS–2014 data electronically, you must not submit the form itself, Completed Forms MMS–2014 for royalty payments are due by the end of the month following the production month * * * completed Forms MMS–2014 for rental payments are due no later than the anniversary date of the lease * * *. A completed Report of Sales and Royalty Remittance (Form MMS–2014) must be submitted each month once sales or utilization of production occur, * * * This report is due on or before the last day of the month following the month in which production was sold or utilized, * * *.	.1167 (Manual 1%) .05 (Electronic 99%)	24,840 2,459,160	2,898 122,958
206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *.			Burden hours included in hours above.
206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *.			Burden hours included in hours above.
206.110(c)(1)	You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method * * *.			Burden hours included in hours above.
206.114 and 206.115(a)	You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.			Burden hours included in hours above.
206.157(a)(1)(i); 206.157(b)(1)	Arm’s-length transportation contracts and non-arm’s-length or no contract. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.			Burden hours included in hours above.
206.157(c)(1)(i) and (c)(2)(i); 206.159(c)(1)(i) and (c)(2)(i).	Arm’s-length contracts and non-arm’s-length or no contract. The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.			Burden hours included in hours above.
206.157(e)(2)	For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *.			Burden hours included in hours above.

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.157(e)(3)	For lessees transporting gas production from leases on the OCS, * * * the lessee must submit a corrected Form MMS-2014 to reflect actual costs, * * *.	Burden hours included in hours above.		
206.157(f)(1); 206.178(f)(1)	You must modify the Form MMS-2014 by the amount received or credited for the affected reporting period.	Burden hours included in hours above.		
206.159(a)(1)(i) and (b)(1)	Arm's-length processing contracts and non-arm's-length or no contract. The lessee must claim a processing allowance by reporting it as a separate line entry on the Form MMS-2014.	Burden hours included in hours above.		
206.159(e)(3)	For lessees processing gas production from leases on the OCS, * * * the lessee must submit a corrected Form MMS-2014 to reflect actual costs, * * *.	Burden hours included in hours above.		
206.172(e)(6)(ii)	You must pay and report on Form MMS-2014 additional royalties due * * *.	Burden hours included in hours above.		
206.174(a)(4)(ii)	If the major portion value is higher, you must submit an amended Form MMS-2014 to MMS * * *.	Burden hours included in hours above.		
206.178(d)(2)	You must report transportation allowances as a separate line item on Form MMS-2014.	Burden hours included in hours above.		
206.180(c)(2)	You must report gas processing allowances as a separate line item on Form MMS-2014.	Burden hours included in hours above.		
206.353(d)(2); 206.354(d)(2)	Lessees must submit corrected Forms MMS-2014 to reflect adjustments to royalty payments * * *.	Burden hours included in hours above.		
Total			2,484,000	125,856

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on May 13, 2003, (68 FR 25622) announcing that

we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 2, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public 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 request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Acting Information Collection Clearance Officer: Nicolette Humphries (202) 208-7744.

Dated: August 21, 2003.

Lucy Querques Denett,
Associate Director for Minerals Revenue Management.

[FR Doc. 03-22336 Filed 8-29-03; 8:45 am]

BILLING CODE 4310-MR-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-03-028]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: September 4, 2003 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.

3. Ratification List.
 4. Inv. No. 731-TA-1020 (Final) (Barium Carbonate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 12, 2003.)

5. *Outstanding action jackets*: none. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:
 Issued: August 27, 2003.

Marilyn R. Abbott,
Secretary to the Commission.
 [FR Doc. 03-22388 Filed 8-28-03; 10:30 am]
BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 30, 2003, American Radiolabeled Chemical Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoyllecgonine (9180)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Metazocine (9240)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to

the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,
Deputy Assistant Administrator, Office of Diversion Control.
 [FR Doc. 03-22332 Filed 8-29-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 2, 2003, Bristol Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Oxycodone (9143), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,
Deputy Assistant Administrator, Office of Diversion Control.
 [FR Doc. 03-22329 Filed 8-29-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations

(CFR), this is notice that on May 2, 2003, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50619, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of Schedule II controlled substance.

The firm plans to manufacture bulk controlled substance for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
 [FR Doc. 03-22331 Filed 8-29-03; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22, 2003, Cambridge Isotope Laboratories, Inc., 50 Frontage Road, Andover, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoyllecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

Drug	Schedule
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22328 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF justice

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal of Application

As set forth in the **Federal Register** on April 2, 2003, (68 FR 16089), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of Levorphanol (9220) a basic class of controlled substance listed in Schedule II.

By letter dated June 30, 2003, ISP Freetown Fine Chemicals, Inc., requested that their application to manufacture Levorphanol be withdrawn. Therefore, said application is hereby withdrawn.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22327 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 29, 2003 and published in the **Federal Register** on May 29, 2003, (68 FR 32088), Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive West Deptford, New Jersey, 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import Phenylacetone for conversion to amphetamine base to sell in bulk to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc., to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time.

DEA has investigated Johnson Matthey, Inc., on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 3101.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22326 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 9,

2003, Lin-Zhi International, Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085-2917, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances to make drug testing reagents and controls.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Officer of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22330 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 7, 2003, and published in the **Federal Register** on April 29, 2003, (68 FR 32088), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II
Methyphenidate (1724)	II

The firm plans to produce bulk products for finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22324 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated April 29, 2003, and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of Schedule II of controlled substance listed below:

Drug	Schedule
Dextropropoxyphene (9273)	II

The firm plans to manufacture bulk products for distribution to its customers.

No comments or objections have been received. DEA has considered the

factors in Title 21, United States Code, Section 823(a) and determined that the registration of Organichem Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22325 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 2, 2003 and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Schedules I & II, for the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoyllecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to import the listed

controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03-22322 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 2, 2003, and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Roche Diagnostics corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7515) ...	I
Tetrahydrocannabinol (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoyllecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics

Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation to insure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed in granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

[FR Doc. 03-22323 Filed 8-29-03; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of August 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such

workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed

importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(I.L.B.) (No shift in production to a foreign country) have not been met.

TA-W-51,958; *UTI Star Guide, Arvada, CO*

TA-W-52,093; *Mendocino Forest Products, Fort Bragg, CA*

TA-W-52,149; *OEC Medical Systems, Inc., d/b/a GE OEC Medical*

Systems, Inc., a subsidiary of The General Electric Co., Warsaw, IN

TA-W-52,215; *Cooper B-Line, Portland, OR*

TA-W-51,918; *Alstom T&D Industries, High Voltage Switchgear Div., Charleroi, PA*

TA-W-51,995; *Occidental Chemical Corp., New Owner—Elementis*

Chromium LP, a subsidiary of Elementis PLC, Castle Hayne, NC

TA-W-52,267; *Ken-Bar Manufacturing Co., Baldwin, GA*

TA-W-52,292; *Manning Lighting, Sheboygan, WI*

TA-W-52,297; *Intermet, Radford Foundry, Radford, VA*

TA-W-52,327; *NIBCO, Inc., Central Tooling Services Center, Elkhart, IN*

TA-W-51,800; *Meridian Automotive Systems, Exterior Composites Div.,*

Centralia, IL

TA-W-51,838; *Rio Grande Forest Products, Inc., Espanola, NM*

TA-W-52,128 & A, B; *Control Engineering Co., Pellston, MI,*

Harbor Springs, MI and Boyne City, MI

TA-W-52,171; *Read-Rite Corp., Fremont, CA*

TA-W-52,293; *Hilti North America, a Div. of Hilti Corp., Plant 5, Tulsa, OK*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-52,003; *Menlo Logistics, Inc., d/*

b/a Menlo Worldwide Logistics, a wholly owned subsidiary of Menlo

Worldwide, LLC, Edison, NJ

TA-W-52,357; *Motorola, Inc., Personal Communications Sector (PCS),*

Libertyville, IL

TA-W-52,255; *Solelectron Technology, Inc., Charlotte, NC*

TA-W-52,403; *Jones Equipment, Inc., Missoula, MT*

TA-W-51,970; *Northwest Airlines, Inc., St. Paul, MN*

TA-W-52,358; *JDS Uniphase, Rochester, MN*

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment declines) have not been met.

TA-W-52,421; *State of Alaska Commercial Fisheries Entry Commission Permit #S04T64920J, Dillingham, AK*

TA-W-52,326; *Bojud Knitting Mills, Inc., Amsterdam, NY*

The investigation revealed that criteria (a)(2)(A) (I.C) (increased imports) and (a)(2)(B) (II.C) (has shifted production to a foreign country) have not been met.

TA-W-52,052; *Corning Cable Systems, Telecommunications Cable Plant (TCP), Hickory, NC*

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA-W-52,117; *Johnstown America Corp., Johnstown, PA: June 9, 2002.*

TA-W-52,202; *Lexel Company, Hutsonville, IL: June 23, 2002.*

TA-W-52,274; *Thomson, Inc., Circleville Glass Operations, Circleville, OH: June 27, 2002.*

TA-W-52,336; *Consolidated Diesel Co., Whitakers, NC: July 16, 2002.*

TA-W-52,349; *Terry Apparel, a/k/a Mariana Apparel, Mariana, AR: July 18, 2002.*

TA-W-52,173; *Carr Lowrey Glass Co., Baltimore, MD: June 27, 2002.*

TA-W-52,332; *Aircraft Precision Products, Inc., Ithaca, MI: July 15, 2002.*

TA-W-52,252; *Richmond Management, LLC, Talbott, TN: July 3, 2002.*

TA-W-52,319; *Akron Porcelain and Plastics Co., Inc., Akron, OH: June 20, 2002.*

TA-W-52,340; *RST&B Curtain and Drapery, Florence, SC: July 17, 2002.*

TA-W-52,431; *PFC, Inc., Athens, TN: July 29, 2002.*

TA-W-52,465; *Moog Aircraft, Salt Lake City, UT: July 31, 2002.*

TA-W-52,276; *Bureau of Engraving, Inc., Electronics Group, Minneapolis, MN: July 10, 2002.*

TA-W-52,197; *Specialty Mode, Inc., Jacksonville, NC.*

TA-W-52,072; *Colson Associates, Inc., a div. of Colson Caster Corp., Jonesboro, AR: June 16, 2002.*

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA-W-52,080; *MJJ Brilliant, Inc., New York, NY: June 2, 2002.*

TA-W-52,187; *General Electric, Industrial Systems/Motors Div., a subsidiary of General Electric Co., Jonesboro, AR: June 27, 2002.*

TA-W-52,194; *Cascades Diamond, Inc., including leased workers of Dunhill Staffing Systems, Thorndike, MA: June 24, 2002.*

TA-W-52,275; *Cordis Corp., Miami Lakes, FL: June 20, 2002.*

TA-W-52,300; *A.O. Smith, Water Products Co., including leased workers of Manpower, ESI and Quantum, McBee, SC: July 8, 2002.*

TA-W-52,328; *Photocircuits Corp., including leased workers of Express Personnel Services, Peachtree City, GA: July 16, 2002.*

TA-W-52,341; *Firestone Tube Co., Russellville, AR: July 16, 2002.*

TA-W-52,401; *Avaco Steel Processing, Tonawanda, NY: July 24, 2002.*

TA-W-52,443; *Formica Corp., Evendale Facility, Cincinnati, OH: July 31, 2002.*

TA-W-52,456; *Cutler Hammer, Inc. (formerly Innovative Technology, Inc.), div. of The Eaton Corp., Brooksville, FL: August 1, 2002.*

TA-W-52,457; *Coherent, Inc., Printed Circuit Boards Department, Auburn, CA: August 4, 2002.*

TA-W-52,458; *APW, Creedmoor, NC: August 4, 2002.*

TA-W-51,502; *Ericsson Micro Electronics, Inc., Power Modules Div., Richardson, TX: April 7, 2002.*

TA-W-52,237; *Alstom Power, Inc., Performance Projects, Chattanooga, TN: July 3, 2002.*

TA-W-52,299; *Gerber Plumbing Fixtures, LLC, Gerber Plumbing Fixtures Corp., Globe Valve Div., Delphi, IN: July 11, 2002.*

TA-W-52,375; *Sanmina-SCI Corp., EMS Div., Huntsville, AL: July 22, 2002.*

TA-W-52,450; *VF Imagewear, Tupelo, MS: August 1, 2002.*

TA-W-52,037; *Swan Finishing Co., Inc., Fall River, MA: June 13, 2002.*

TA-W-52,115; *Penn Iron Works, Inc., Sinking Spring, PA: June 16, 2002.*

TA-W-52,226 & A; *Yorkshire Americas, Inc., Charlotte, NC and Lowell Manufacturing facility, Lowell, NC: July 2, 2002.*

TA-W-52,254; *Alexander Fabrics LLLP, Burlington, NC: July 1, 2002.*

TA-W-52,263; *Trelleborg YSH, Inc., a div. of Trelleborg Industries, Inc., a div. of Trelleborg AB, Logansport, IN: July 1, 2002.*

TA-W-52,424; *Emglo Products, LLC, a wholly owned subsidiary of Flack and Decker (USA), Inc., including leased workers of Rom Ruggeri Enterprise, d/b/a Spherion, Johnstown, PA: July 29, 2002.*

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA-W-52,335; *American Bag Corp., a div. of Milliken and Company, Stearns, KY: November 21, 2002.*

I hereby certify that the aforementioned determinations were issued during the months of August. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: August 18, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03-22287 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,381]

Belding Hausman, Inc., Lincolnton, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2003, in response to a petition filed by the company on behalf of workers at Belding Hausman, Inc., Lincolnton, North Carolina.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22286 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-51,768]

Chilkoot Fish Company, Haines, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 14, 2003, in response to a worker petition filed by a company official on behalf of workers at Chilkoot Fish Company, Haines, Alaska.

The petitioner no longer wants to pursue the petition investigation. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 13th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22276 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,428]

Edison Fashion, Inc., Bronx, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2003, in response to a petition filed by UNITE!, New York Apparel and Allied Workers Joint Board, Local 10, Local 89-22-1 and Local 189, on behalf of workers at Edison Fashion, Inc., Bronx, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22271 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,505]

Flextronics Logistics, Mt. Juliet, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed on behalf of workers at Flextronics Logistics, Mt. Juliet, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22282 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,511]

Cooper Crouse-Hinds Myers-Hub, Montebello, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed on behalf of workers at Cooper Crouse-Hinds Myers-Hub, Montebello, California.

A petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22281 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,447]

Fisher Controls, LLC, a Division of Emerson Electric Company, North Stonington, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 1, 2003 in response to a petition filed by a company official on behalf of workers at Fisher Controls, LLC, a division of Emerson Electric Company, North Stonington, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22269 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,442]

Fruit Of The Loom, Harlingen, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 31, 2003 in response to a worker petition filed by a company official on behalf of workers at Fruit Of The Loom, Harlingen, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22270 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-52,510]

General Binding Corporation (GBC), Booneville, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003 in response

to a worker petition which was filed by a company official on behalf of workers at General Binding Corporation (GBC), Booneville, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22268 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,211]

Heraeus Quartztech, Inc., Fairfield, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 2, 2003, in response to a worker petition filed by a company official on behalf of workers at Heraeus Quartztech, Inc., Fairfield, New Jersey.

The petitioner has requested that the petition be with-drawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22275 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,425]

Home Products International, Inc., Eagan, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2003, in response to a worker petition filed by the International Association of Machinists and Aerospace Workers, District Lodge Number 77, Egan, Minnesota, on behalf of workers at Home Products International, Eagan, Minnesota.

The petitioner union representative has requested the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22285 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,407]

Jonathan Reed, Inc., Lumberton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 2003 in response to a petition filed by a company official on behalf of workers at Jonathan Reed, Inc., Lumberton, North Carolina.

The company official has requested that the investigation be terminated. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22272 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,518]

Paper Converting Machine Co., Green Bay, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed by the United Auto Workers Union Local 1102, on behalf of workers at Paper Converting Machine Company, Green Bay, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22279 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,470]

Premium Security, Kentwood, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 5, 2003 in response to a petition filed by the company on behalf of workers at Premium Security, Kentwood, Michigan.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22283 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-52,469 and TA-W-52,469A]

Shell E & P Company, Houston, TX, Shell E & P Company, New Orleans, Louisiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 5, 2003 in response to a worker petition filed on behalf of workers at Shell E & P Company, Houston, Texas (TA-W-52,469) and Shell E & P Company, New Orleans, Louisiana (TA-W-52,469A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03-22284 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-52,584]

**Siebel Systems, Emeryville, CA; Notice
of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed by the One Stop Career Center, on behalf of workers at Siebel Systems, Emeryville, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of August, 2003.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. 03-22278 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-52,324]

**Sierra Pine, Ltd, Medite Division,
Medford, OR; Notice of Termination of
Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 16, 2003 in response to a petition filed by the Association of Western Pulp and Paper Workers (AWPPW) on behalf of workers at Sierra Pine, LTD, Medite Division, Medford, Oregon.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of August, 2003.

Linda Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. 03-22273 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-52,345]

**SPX Dock Products, A Division of SPX
Corporation, Milwaukee, WI; Notice of
Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 18, 2003, in response to a petition filed by the International Union of Teamsters, "General" Local Union, No. 200, on behalf of workers at SPX Dock Products, a division of SPX Corporation, Milwaukee, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of August, 2003.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. 03-22277 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-52,512]

**Triquint Optoelectronics, Breinigsville,
PA; Notice of Termination of
Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003, in response to a petition filed by a company official on behalf of workers at TriQuint Optoelectronics, Breinigsville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of August, 2003.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. 03-22280 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-52,306]

**York International Corporation,
Grantley Plant, York, PA; Notice of
Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 15, 2003, in response to a worker petition filed on behalf of workers at York International Corporation, Grantley Plant, York, Pennsylvania.

The company official has requested that this petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. 03-22274 Filed 8-29-03; 8:45 am]

BILLING CODE 4510-30-P

**MEDICARE PAYMENT ADVISORY
COMMISSION****Commission Meeting**

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 11, 2003, and Friday, September 12, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on September 11, and at 9 a.m. on September 12.

Topics for discussion include: setting the context for Medicare spending; disease management and care coordination services in traditional Medicare; the quality of care in Medicare; outpatient dialysis payment issues; risk adjustment in Medicare+Choice; inpatient hospital issues; workplans for payment adequacy analyses, including physicians, hospital outpatient departments, and post-acute care providers. There will also be a panel on the growth and variation in the use of physician services.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (<http://www.MedPAC.gov>).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220-3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220-3700.

Mark E. Miller,
Executive Director.

[FR Doc. 03-22344 Filed 8-29-03; 8:45 am]

BILLING CODE 6820-BW-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03-097]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, September 18, 2003, 1 p.m. to 4 p.m. eastern daylight time.

ADDRESSES: Florida Space Authority, Auditorium, 100 Spaceport Way, Cape Canaveral, Florida 32920, (321) 730-5301.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q-1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358-0074.

SUPPLEMENTARY INFORMATION: The first 30 minutes of the meeting will be reserved for public comment on safety at Kennedy Space Center specifically or in NASA in general. Following public comment, the Aerospace Safety Advisory Panel will discuss potential content of the next annual report to the NASA Administrator. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Space Shuttle Program, International Space Station Program, Aviation Safety Program, and Cross-Program Areas. The Aerospace Safety Advisory Panel is chaired by Ms. Shirley C. McCarty and is composed of nine members and two consultants.

The meeting will be open to the public up to the seating capacity of the room (150). Photographs will only be permitted during the first 10 minutes of the meeting. Visitors will be requested to sign a visitor's register.

Members of the public that would like to make a 5 minute verbal presentation to the Panel should contact Ms. Susan Burch on (202) 358-0550 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting.

Verbal presentation and written comments should be limited to the subject of safety at Kennedy Space Center specifically or in NASA in general.

June W. Edwards,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 03-22195 Filed 8-29-03; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03-098)]

Revolutionize Aviation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the Revolutionize Aviation Subcommittee (RAS).

DATES: Wednesday, September 17, 2003, 9 a.m. to 5 p.m.

ADDRESSES: Sheraton Pentagon South (Capital Ballroom), 4641 Kenmore Avenue, Alexandria, VA 22304, 703/751-4510.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Lynch, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202/358-4594.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the Joint Revolutionize Aviation Subcommittee (RAS) and Research, Engineering, and Development (RE&D) Advisory Committee meeting are as follows:

- National Plan
- SATS/Capstone 21
- Unmanned Aerial Vehicles in the National Airspace System
- Environmental R&D

—NASA/FAA Safety R&D Roadmaps
It is imperative that the meeting be held on the above date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

June W. Edwards,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 03-22335 Filed 8-29-03; 8:45 am]

BILLING CODE 7510-01-P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; telephone (202) 606-8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314(c)(1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective September 1, 2003, the members of the National Endowment for the Humanities SES Performance Review Board selected to serve are Jeffrey Thomas, Assistant Chairman for Planning and Operations—Board Chairman, Cherie Harder, Senior Counselor to the Chairman, Stephen Ross, Director, Office of Challenge Grants and George Farr, Director, Division of Preservation and Access. All members will serve "until replaced."

Bruce Cole,
Chairman.

[FR Doc. 03-22241 Filed 8-29-03; 8:45 am]

BILLING CODE 7536-01-P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for NSB Public Service

Award Committee (#5195) have determined that renewing this group for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 4, 2003, unless they are renewed. For more information contact Susanne Bolton at (703) 292-7488.

Dated: August 27, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03-22289 Filed 8-29-03; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, August 8, 2003, through August 21, 2003. The last biweekly notice was published on August 19, 2003, (68 FR 49812).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration.

Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 2, 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 PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. 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 a 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of

mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

**AmerGen Energy Company, LLC,
Docket No. 50-461, Clinton Power
Station, Unit 1, DeWitt County, Illinois**

Date of amendment request: April 3, 2003.

Description of amendment request: The proposed amendment would permit application of an alternative source term (AST) methodology, according to Section 50.67, "Accident source term," of title 10 of the Code of Federal Regulations (10 CFR) with the exception that Technical Information Document (TID) 14844, "Calculation of Distance Factors for Power and Test Reactor

Sites," will continue to be used as the radiation dose basis for equipment qualification. The proposed amendment would include Technical Specifications (TS) and associated Bases revisions to reflect implementation of AST assumptions; TS and associated Bases revisions to increase main steam isolation valve allowable leakage; TS and associated Bases revisions to decrease allowed feedwater isolation valve leakage to allow margin to be used for other release paths; TS and associated Bases revisions to delete requirements for the main steam isolation valve leakage control system; TS and associated Bases revisions to reflect requirements for availability of Standby Liquid Control (SLC) System in Mode 3 and use of the SLC System to buffer suppression pool pH to prevent iodine re-evolution during a postulated radiological release; TS and associated Bases revisions to reflect higher allowed charcoal adsorber penetrations in laboratory testing; TS Bases revision to reflect an increased allowed secondary containment drawdown time; TS Bases revision to identify additional containment leakage exclusions from L_a and exclusions from secondary containment bypass allowances; additional allowance for filtered and unfiltered leakage into the control room envelope; and development of new offsite and control room atmospheric dispersion factors calculated using site-specific meteorology data collected between 2000 and 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment implements alternative source term (AST) assumptions in revisions to the analyses of the following limiting design basis accidents at Clinton Power Station (CPS).

- Loss-of-Coolant Accident
- Main Steam Line Break Accident, and
- Control Rod Drop Accident

The AST does not require modification of the facility; rather, once the occurrence of an accident has been postulated the new source term is an input to evaluate the potential consequences. The implementation of the AST has been evaluated in revisions to the analyses of the limiting design basis accidents at CPS. Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events is

within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

The equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident and therefore, inoperability of the equipment cannot increase the probability of any previously evaluated accident. The radiological consequences of the above design basis accidents have been evaluated with applications of AST assumptions. The results conclude that the radiological consequences remain within applicable regulatory limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The application of AST does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Approval of the basis change from the original source term developed in accordance with Technical Information Document (TID) 14844 to a new AST, as described in Regulatory Guide 1.183, is requested. The results of the accident analyses revised in support of the proposed changes, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies as specified in Regulatory Guide 1.183.

Safety margins and analytical conservatism have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences due to design basis accidents comply with the requirements of 10 CFR 50.67 and the guidance of Regulatory Guide 1.183.

The margin of safety is considered to be that provided by meeting the applicable regulatory limits. Relaxation of these Technical Specification requirements results in an increase in dose following certain design basis accidents. However, since the doses following these design basis accidents remain within the regulatory limits, there is not a significant reduction in a margin of safety. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the

control room, are within the corresponding regulatory limits.

Therefore, operation of CPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

**Nine Mile Point Nuclear Station, LLC,
Docket No. 50-410, Nine Mile Point
Nuclear Station Unit No. 2, Oswego
County, New York**

Date of amendment request: August 15, 2003.

Description of amendment request: The licensee proposed to revise the reactor coolant system pressure-temperature (P-T) limit curves specified in Section 3.4.11, "RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits," of the Technical Specifications (TSs). The proposed P-T limit curves will be based, in part, on an alternative methodology and will be valid for 22 effective full-power years. The alternative methodology, identified as American Society of Mechanical Engineers Boiler and Pressure Vessel Code Case N-640, has been previously approved for generic use by the Nuclear Regulatory Commission (NRC).

The associated licensee-controlled TSs Bases pages would also be changed to reflect the above TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes, if approved by the NRC, will be made in a manner such that conservatism is maintained through compliance with applicable NRC regulations and guidance. No hardware design change is involved with the proposed amendment, thus there will be

no adverse effect on the functional performance of any plant structure, system, or component (SSC). All SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. P-T limit curves were not previously factored into the probability of accidents, nor were they factored into scenarios of previously analyzed accidents. Accordingly, the revised P-T limit curves will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Section Chief: Richard J. Laufer.

**Nuclear Management Company, LLC,
Docket No. 50-255, Palisades Plant,
Van Buren County, Michigan**

Date of amendment request: October 17, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.3.1-2 by modifying a constant in the variable

thermal margin/low pressure (TM/LP) trip equation. The proposed change would reduce calculated values for the variable TM/LP trip equation. The proposed equation constant value change results from improvements in plant equipment used to establish the TM/LP trip setpoint. Ultrasonic feedwater flow measurement devices, recently installed at the Palisades Plant, result in less uncertainty applied in the methodology used for determining core power level. Additionally, the devices used to calculate the TM/LP trip setpoint have previously been replaced with devices having less uncertainty. These reduced uncertainties, when combined using the NRC-endorsed methodology described in ANSI/ISA-S67.04-1994, "Setpoints for Nuclear Safety-Related Instrumentation," result in a reduction in the constant (bias term) used to calculate the TM/LP trip setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve operation of any required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. The methodology that was used in determining the recommended change in the constant follows Nuclear Regulatory Commission endorsed standard ANSI/ISA-S67.04-1994, "Setpoints for Nuclear Safety-Related Instrumentation." The probability of an accident previously evaluated will not be increased since the proposed change to the constant value in the Thermal Margin/Low Pressure (TM/LP) trip equation maintains all necessary considerations in the development of uncertainties.

The consequences of an accident previously evaluated will not be increased since the reactor is still protected from violating the TM/LP trip setpoint used in the safety analysis for the Palisades Nuclear Plant.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the constant value for the TM/LP trip equation in the Technical

Specifications would not change or add a system function. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the change being requested.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the constant value for the TM/LP trip equation in the Technical Specifications accounts for all uncertainties that affect the TM/LP trip setpoint. The revised TM/LP trip setpoint will continue to assure that the acceptance criteria established in the safety analysis will be met.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udry, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: L. Raghavan.

**Pacific Gas and Electric Company,
Docket Nos. 50-275 and 50-323, Diablo
Canyon Nuclear Power Plant, Unit Nos.
1 and 2, San Luis Obispo County,
California**

Date of amendment requests: July 24, 2003.

Description of amendment requests: The proposed change will revise Technical Specification (TS) Section 3.8.4, "DC Sources—Operating"; TS Section 3.8.5, "DC Sources—Shutdown"; and TS Section 3.8.6, "Battery Cell Parameters." The proposed change will also add a new section to TS 5.5, "Programs and Manuals" for the maintenance and monitoring of the station safety-related batteries that is based on the recommendations of the Institute of Electrical and Electronics Engineers (IEEE) Standard 450-1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects Technical Specification (TS) sections 3.8.4 "DC

Sources—Operating," TS 3.8.5 "DC Sources—Shutdown," TS 3.8.6 "Battery Cell Parameters," and TS Administrative Controls section 5.5.

The proposed change restructures the TS for the direct current (DC) electrical power subsystem and adds new Conditions and Required Actions with increased Completion Times to address battery charger inoperability. Neither the DC electrical power subsystem nor associated battery chargers are initiators of any accident sequence analyzed in the Final Safety Analysis Report Update (FSARU). Operation in accordance with the proposed TS ensures that the DC electrical power subsystem is capable of performing its function as described in the FSARU. Therefore the mitigating functions supported by the DC electrical power subsystem will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillances, and certain operating limits and actions to a newly-created, licensee-controlled TS 5.5.17, "Battery Monitoring and Maintenance Program," will not challenge the ability of the DC electrical power subsystem to perform its design function. The maintenance and monitoring required by current TS, which are based on industry standards, will continue to be performed. In addition, the DC electrical power subsystem is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power subsystem.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigating actions are initiated that are affected by the proposed changes. The operability of the DC electrical power subsystems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. The proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration in the operating procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new battery maintenance and monitoring program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical system will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F.

Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. 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.

AmerGen Energy Company, LLC, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 20, 2002, as supplemented by letter dated May 30, 2003.

Brief description of amendment: The amendment approves changes to the Clinton facility as described in the Updated Safety Analysis Report. The amendment modifies the basis for compliance with the requirements of Appendix H to title 10 of the Code of Federal Regulations part 50 (appendix H to 10 CFR part 50), "Reactor Vessel Material Surveillance Program Requirements," by approving implementation of the Boiling-Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 157.

Facility Operating License No. NPF-62: The amendment approved revisions to the Updated Safety Analysis Report.

Date of initial notice in Federal Register: February 4, 2003 (68 FR 5669). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1 (TMI-1), Dauphin County, Pennsylvania

Date of application for amendment: September 30, 2002, as supplemented by letter dated March 19, 2003.

Brief description of amendment: The amendment revised Technical Specification Section 6.8.5, "Reactor Building Leakage Rate Testing Program," to reflect a one-time deferral of the scheduled performance of the next Type A Containment Integrated Leak Rate Test from October, 2003, to no later than September 2008.

Date of issuance: August 14, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 12, 2002 (67 FR 68730). The supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 2003.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3 Maricopa County, Arizona

Date of application for amendments: April 25, 2003.

Brief description of amendments: The amendments revise Section 5.3, "Unit Staff Qualifications," of the Technical Specifications to state new education and experience eligibility requirements for operator license applicants. As stated in the letter dated April 25, 2003, the new requirements are outlined by the National Academy for Nuclear Training in its "Guidelines for Initial Training and Qualification of Licensed Operators," which were issued January 2000.

Date of issuance: August 13, 2003.

Effective date: August 13, 2003, and shall be implemented within 90 days of the date of issuance.

Amendment Nos.: Unit 1-148, Unit 2-148, Unit 3-148.

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The

amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 10, 2003 (68 FR 34662). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-003, Indian Point Nuclear Generating Station, Unit 1

Date of amendment request: May 30, 2002.

Brief description of amendment: It would revise the Indian Point Nuclear Generating Station, Unit 1 (IP1) Technical Specifications (TSs) to facilitate the Indian Point Generating Station, Unit 2 (IP2) transition to the Improved TSs. The amendment also revises the requirements of the "Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility"¹ to ensure compliance with the current requirements of 10 CFR 50.59 and 10 CFR 50.83. It also revises the expiration date of Provisional Operating License No. DPR-5 for IP1 to be current with the expiration date for the Facility Operating License No. DPR-26 for IP2.

Date of issuance: August 11, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 52.

Provisional Operating License No. DPR-5: The amendment revised the Technical Specifications, and made changes to and revised the expiration date for IP1 Provisional Operating License DPR-5.

Date of initial notice in Federal Register: July 9, 2002 (67 FR 45564).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: September 19, 2002, as supplemented by letters dated January 8, May 22, and July 1, 2003.

Brief description of amendment: The amendment extends the allowable outage time for the emergency diesel generators from 72 hours to a maximum of 14 days.

Date of issuance: August 8, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 249.

Facility Operating License No. NPF-6: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 12, 2002 (67 FR 68733). The January 8, May 22, and July 1, 2003, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 7, 2002, as supplemented by your letters dated February 28, and May 27, 2003.

Brief description of amendments: The amendments revised the limiting condition for operation, the associated Conditions and Required Actions of Technical Specification (TS) 3.7.1, "Main Steam Safety Valves (MSSVs)," and the values in Table 3.7.1-1, "Operable Main Steam Safety Valves versus Applicable Power in Percent of Rated Thermal Power," by requiring five MSSVs per steam generator to be operable consistent with the accident analyses assumptions. The amendments also modify the associated Required Actions of TS 3.7.1 by adding a requirement to reduce the Power Range Neutron Flux-High reactor trip setpoint when one or more steam generators with one or more MSSVs are inoperable.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 133/133, 128/128.

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 1, 2002 (67 FR 61681). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination

and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 20, 2002, as supplemented by letters dated May 30, and June 27, 2003.

Brief description of amendments: The amendments approve changes to the LaSalle County Station facility as described in the Updated Final Safety Analysis Report. The amendments modify the basis for compliance with the requirements of appendix H to title 10 of the Code of Federal Regulations part 50 (appendix H to 10 CFR part 50), "Reactor Vessel Material Surveillance Program Requirements," by approving implementation of the Boiling-Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program.

Date of issuance: August 13, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 160/146.

Facility Operating License Nos. NPF-11 and NPF-18: The amendments approve revisions to the Updated Final Safety Analysis Report.

Date of initial notice in Federal Register: February 4, 2003 (68 FR 5669).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 30, 2001.

Brief description of amendment: This amendment revises Technical Specification 3/4.4.4, "Reactor Coolant System—Pressurizer," to adopt a new pressurizer high-level limit and to revise the required action when the pressurizer is inoperable.

Date of issuance: August 12, 2003.

¹ NRC letter to Consolidated Edison, "Order to Authorize Decommissioning and Amendment No. 45 to License No. DPR-5 for Indian Point Unit 1 (TAC No. M59664)," dated January 31, 1996.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 255.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: June 24, 2003 (68 FR 37578). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 21, 2003.

Brief description of amendment: This amendment relocates to the Technical Requirements Manual the Technical Specification surveillance requirement pertaining to flow balance testing of the emergency core cooling system (ECCS) high pressure injection and low pressure injection subsystems following system modifications that alter subsystem flow characteristics. Also, the amendment adds an ECCS pump operability requirement to the Technical Specifications.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 256.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: June 10, 2003 (68 FR 34669). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: May 30, 2003.

Brief description of amendment: The amendment deletes technical specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system (PASS) at the Duane Arnold Energy. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: August 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 252.

Facility Operating License No. DPR-49: The amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: July 8, 2003 (68 FR 40713).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The October 8, 2002, submittal proposed the following: (1) The use of a pressure temperature limits report (PTLR), (2) change the minimum boltup temperature, (3) revise the low temperature overpressure protection (LTOP) methodology and analysis, (4) perform the LTOP analyses "in-house," (5) change the LTOP enable temperature, (6) modify TS 2.10.1 to exactly specify the reactor coolant system (RCS) temperature at which the reactor can be made critical, and (7) add a TS for a maximum pressure value for the safety injection tanks. This amendment approves the use of a PTLR for the Fort Calhoun Station. As such TS Figure 2-1 (RCS Pressure—Temperature Limits for Heatup, Cooldown, and In-service Test) will be relocated into Figure 5-1 of the PTLR. In addition, the following TSs were either modified or added for the implementation of the PTLR: define the PTLR in Definitions; TS 2.1.1(8); TS 2.1.1(11); TS 2.1.2 and 2.1.2 References; TS 2.1.6(4); TS 2.3(1)(c); TS 2.3(3); TS 2.3 References; TS 2.10.1; Table 3-5, item 23, TS 3.3(1)(c); and TS 5.9.6. The following TS Bases sections were modified to reflect the implementation of the PTLR: TS 2.1.1, TS 2.1.2, and TS 2.10.1.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003. The amendment shall be implemented within 30 days from the date of issuance, including submitting the first Pressure Temperature Limits Report to the NRC Document Control Desk with copies to the Region IV Regional Administration and Resident Inspector.

Amendment No.: 221.

Facility Operating License No. DPR-40: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: June 24, 2003 (68 FR 37579). The April 10, June 4, July 31, and August 5, 2003, supplemental letters provided additional information that clarified the application, did not expand

the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002, as supplemented by letters dated April 11 and May 21, 2003.

Brief description of amendment: The amendment grants a one-time five-year extension to the current ten-year test interval for the containment integrated leak rate testing.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 220.

Facility Operating License No. DPR-40: Amendment revised the Technical Specifications.

Date of initial notice in Federal

Register: November 12, 2002 (67 FR 68742). The April 11 and May 21, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 5, 2003.

Brief description of amendments: The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—160; Unit 2—161.

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 8, 2003 (68 FR 40716). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 31, 2003.

Brief description of amendments: The amendments replace "Central Power and Light Company (CPL)" with "AEP Texas Central Company" throughout the Operating License of each unit.

Date of issuance: August 11, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment Nos.: Unit 1—155; Unit 2—143.

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Facility Operating Licenses.

Date of initial notice in Federal Register: June 10, 2003 (68 FR 34673). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 13, 2002, as supplemented May 19 and July 11, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.7.2.12, "Steam Generator (SG) Tube Surveillance Program." The revised TS allows the use of Westinghouse leak-limiting Alloy 800 sleeves to repair defective SG tubes as an alternative to plugging the tube.

Date of issuance: August 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 44.

Facility Operating License No. NPF-90: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 18, 2003 (68FR12958). The supplemental letters provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: November 5, 2002.

Brief Description of amendments: These amendments delete the requirement to perform a 15-minute degassed beta and gamma activity test of the secondary coolant and require that the dose equivalent I-131 analysis be performed on a more conservative monthly basis.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003.

Amendment Nos.: 234 and 233.

Renewed Facility Operating License Nos. DPR-32 and DPR-37: Amendments change the Technical Specifications.

Date of initial notice in Federal Register: December 24, 2002 (67 FR 78525). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of August, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03-22106 Filed 8-29-03; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) *Collection title:* Request for Medicare Payment.
- (2) *Form(s) submitted:* G-740S, CMS-1500.
- (3) *OMB Number:* 3220-0131.
- (4) *Expiration date of current OMB clearance:* 10/31/2003.
- (5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* See Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under Part B of the program.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03-22227 Filed 8-29-03; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26170; File No. 812-13010]

The Equitable Life Assurance Society of the United States, et al.; Notice of Application

August 26, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," the foregoing separate accounts each an "Account" and collectively, the

“Accounts”), AXA Advisors, LLC,¹ and AXA Distributors, LLC² (collectively, “Applicants”).

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Applicants to recapture certain credits applied to contributions made under certain amended deferred variable annuity contracts and certificates, described herein, including certain amended certificate data pages and endorsements, that Equitable will issue through the Accounts (the “Amended Contracts”), and under contracts and certificates, including certain certificate data pages and endorsements, that Equitable may issue in the future through the Accounts, and any other separate accounts of Equitable Life or EOC (collectively, “Future Accounts”) that are substantially similar in all material respects to the Amended Contracts (the “Future Contracts”). Applicants also request that the order being sought extend to “Equitable Broker-Dealers,” as defined in the applications for the Existing Order (defined below) (“Prior Applications”).³

FILING DATE: The application was filed on August 22, 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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o The Equitable Life

Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Robin Wagner, Esq. Copy to Foley & Lardner, 3000 K Street, Suite 500, Washington, DC 20007, Attn: Richard T. Choi.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC’s Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

Applicants’ Representations

1. On May 3, 1999, the Commission issued an order (“May 1999 Order”) ⁴ exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The May 1999 Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts as defined in the application for the May 1999 Order.⁵ Specifically, the May 1999 Order permits recapture of Credits if the Contract is returned during the free look period, or if contributions are made within 3 years of annuitization.

2. On July 28, 1999, the Commission issued an order of exemption amending the May 1999 Order (“July 1999 Order”) ⁶ to permit the recapture of Credits of up to 5% under Contracts and Future Contracts under the same specified circumstances.

3. On May 21, 2001, the Commission issued an order of exemption (“May 2001 Order”) amending the July 1999 Order (together with the May 1999 Order and the July 1999 Order, the “Existing Order”) ⁷ to permit the recapture of Credits of up to 6% under Contracts and Future Contracts under the same and certain additional circumstances. The additional circumstances include the recapture of Excess Credits when a Contract owner’s

Net First Year Contributions are lower than Total First Year Contributions, and when a Contract owner fails to fulfill the conditions of a Letter of Intent, all as described in the application for the May 2001 Order.⁸

4. Applicants believe that the Contracts and Amended Contracts are substantially similar in all material respects relevant to the Existing Order, and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, in view of certain differences from the Contracts reflected in the Amended Contracts, Applicants filed an Application to avoid any uncertainty regarding the availability of such relief with respect to the recapture of Credits of up to 6% under the Amended Contracts under the same circumstances described in the Prior Applications,⁹ and under one additional circumstance described in paragraph 8 of Applicants’ Representations, below.

5. The respective Accounts will fund the variable benefits available under the Amended Contracts. Units of interest in Accounts under the Amended Contracts they fund will be registered under the Securities Act of 1933 (the “1933 Act”). Equitable may issue Future Contracts through the Accounts. Equitable also may issue Future Contracts through Future Accounts. That portion of the respective assets of the Accounts that is equal to the reserves and other Amended Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the respective Accounts’ Amended Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be. The same will be true of any Future Account of Equitable Life or EOC.

6. Equitable Life previously offered Contracts as described in the Prior Applications (“2001 Contracts covered by the Existing Order”). Equitable Life currently offers Contracts that constitute Future Contracts covered by the Existing Order. At the appropriate time after

⁴ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812-11388).

⁵ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23774 (Apr. 7, 1999)(File No. 812-11388).

⁶ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812-11662).

⁷ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24980 (File No. 812-12392).

⁸ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24963 (April 26, 2001) (File No. 812-12392).

⁹ Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support this Application. Applicants represent that all of the acts asserted in the Prior Application remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

¹ Formerly named EQ Financial Consultants, Inc.

² On January 1, 2002, AXA Distributors, LLC succeeded by merger to all of the functions, rights and obligations of Equitable Distributors, Inc. (“EDI”). Like EDI, AXA Distributors, LLC is owned by Equitable Holdings, LLC.

³ *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812-11388), 23889 (July 2, 1999) (File No. 812-11662), and 24963 (April 26, 2001) (File No. 812-12392).

effectiveness of the amended registration statements describing the Amended Contracts, Equitable Life will begin offering the Amended Contracts, as well.

7. The Amended Contracts reflect certain differences from the 2001 Contracts covered by the Existing Order. However, Applicants respectfully submit that these differences do not preclude the Amended Contracts from being substantially similar in all material respects to the 2001 Contracts covered by the Existing Order such that they constitute Future Contracts covered by the Existing Order. Nevertheless, as stated above, Applicants are filing this Application to avoid any uncertainty that may arise as a result of the following differences between the 2001 Contracts covered by the Existing Order and the Amended Contracts:

a. Separate Account Charges

2001 Contracts covered by the Existing Order have a mortality and expense risk charge at the annual rate of 1.10% and an administrative expense charge at the annual rate of 0.25%. Amended Contracts have a mortality and expense risk charge at the annual rate of 0.90% and an administrative expense charge of 0.35%.

b. Death Benefit Options and Death Benefit Charges

2001 Contracts covered by the Existing Order offer a guaranteed minimum death benefit ("GMDB") of either a "5% roll up to age 80" or an "annual ratchet to age 80" at no additional charge. Amended Contracts offer a GMDB (return of premiums) at no additional charge; an optional "annual ratchet to age 85" death benefit for a charge at the annual rate of 0.25% of the applicable benefit base; and an optional

"greater of 5% roll up to age 85 or annual ratchet to age 85" death benefit for a charge at the annual rate of 0.50% of the applicable benefit base.

Under 2001 Contracts covered by the Existing Order, withdrawals reduce the GMDB as follows: (i) For Contracts with the 5% roll up to age 80, withdrawals reduce the GMDB on a dollar-for-dollar basis to the extent the sum of withdrawals in a contract year is 5% or less of the GMDB on the most recent contract date anniversary, and on a pro-rata basis thereafter; and (ii) for Contracts with the annual ratchet to age 80, all withdrawals reduce the GMDB on a pro-rata basis. Under Amended Contracts, for all death benefit options, withdrawals reduce the GMDB benefit base on a pro-rata basis.

c. Income Benefit

2001 Contracts covered by the Existing Order may offer an optional baseBuilder income benefit for a charge at the annual rate of 0.30% of the applicable benefit base. Amended Contracts offer an optional guaranteed minimum income benefit for a charge at the annual rate of 0.55% of the guaranteed minimum income benefit base.

d. Protection Plus Benefit

2001 Contracts covered by the Existing Order offer an optional Protection Plus benefit for an annual charge 0.20% of account value (deducted on each contract date anniversary). Amended Contracts offer an optional Protection Plus benefit for an annual charge of 0.35% of account value (deducted on each contract date anniversary).

For Contract owners who elect the Protection Plus benefit (available for nonqualified contracts, subject to state

availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 70-75) of the lesser of total net contributions or the death benefit less total net contributions. For Amended Contract owners who elect the Protection Plus benefit (available for nonqualified, IRA and tax sheltered annuity contracts, subject to state availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 71-75) of such death benefit less total net contributions.

e. Guaranteed Principal Benefits

Amended Contracts offer a guaranteed principal benefit Option 1 for no additional charge, and a guaranteed principal benefit Option 2 for a charge of 0.50% as a percentage of account value (deducted annually on the first 10 contract date anniversaries).

f. Administrative Charge

2001 Contracts covered by the Existing Order do not impose an annual administrative expense charge. Amended Contracts have an annual administrative expense charge of \$30 (deducted from account value on each contract date anniversary).¹⁰ The charge is waived for account values of \$50,000 or more on the contract date anniversary.

g. Contract Withdrawal Charge

2001 Contracts covered by the Existing Order and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows¹¹:

(In percentages)

Contract year	1	2	3	4	5	6	7	8	9	10+
2001 contracts covered by the existing order	8	8	7	6	5	4	3	2	1	0
Amended contracts	8	8	7	7	6	5	4	3	0	0

2001 Contracts covered by the Existing Order offer an annual 15% "free corridor" amount. Amended Contracts offer an annual 10% "free withdrawal" amount.

h. Credits

2001 Contracts covered by the Existing Order offered Credits based on

contributions as described in the Prior Applications according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At Least	But Less Than	
Minimum	\$ 250,000	4.0
\$ 250,000	\$ 1,000,000 ...	5.0
\$ 1,000,000 ...	Maximum	6.0

¹⁰ During the first two contract years, the charge is the lesser of \$30 or 2% of the account value.

¹¹ A withdrawal charge applies in two circumstances: (1) if one or more withdrawals are made during a contract year that, in total, exceed the free withdrawal amount or (2) the contract is

surrendered in order to receive its cash value or cash value is applied to a non-life contingent annuity payout option.

Amended Contracts Order may offer Credits based on contributions as described in the Prior Applications Credits according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum	\$ 500,000	4.0
\$ 500,000	\$ 1,000,000 ...	4.5
\$ 1,000,000 ...	Maximum	5.0

i. Fixed Investment Options

2001 Contracts covered by the Existing Order do not offer a "guaranteed interest account." Amended Contracts offer a "guaranteed interest account" that pays a guaranteed rate of interest and is not subject to a market value adjustment. Equitable will recapture Credits on a pro rata basis from the value in the variable investment options and the guaranteed interest account. If those amounts are insufficient, Equitable will deduct the balance from the fixed maturity options in order of the earliest maturity dates first.

j. Annuitization

Under 2001 Contracts covered by the Existing Order and Amended Contracts (except in Florida) annuity payments may not begin earlier than the fifth contract date anniversary. Under Amended Contracts issued in Florida, annuity payments may begin as early as the first contract date anniversary

8. Applicants may recapture Credits of up to 6% under the Amended Contracts under the same circumstances covered by the Existing Order, described above. In addition, if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, Equitable will recover the Credit that applies to any contribution made within such five-year period.

9. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder 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.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to recapture Credits under Amended Contracts under the same circumstances covered by the Existing Order, and if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in paragraph 8 of Applicants' Representations, above.¹²

3. Applicants submit that the recapture of Credits under the Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when Equitable recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated before an owner starts receiving annuity payments under a life contingent payout option within the first five contract years is not vested. Rather, Equitable retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Credit). The amounts recaptured will never exceed the Credits provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit.

¹²Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the legal analysis set out in the Prior Application.

5. Applicants submit that the recapture of Credits relating to contributions made prior to the date an owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary is designed to provide Equitable with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then annuitize under a life contingent annuity payout option within the first five contract years leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Conclusion

Applicants submit, based on the grounds summarized above, 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.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22293 Filed 8-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48410; File No. SR-Amex-2003-76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend a Suspension of Transaction Charges for Certain Exchange Traded Funds

August 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 22, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until September 30, 2003, the suspension of Amex transaction charges for the iShares Lehman 1-3 year Treasury Bond Fund and iShares Lehman 7-10 year Treasury Bond Fund for specialist, Registered Trader and broker-dealer orders. The text of the proposed rule change is available at the Amex and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange provided the Commission with notice of its intention to file this proposed rule change on August 20, 2003. The Commission reviewed the pre-filing notice and advised the Amex to file the proposed rule change. August 20, 2003 conversation between Michael Cavalier, Associate General Counsel ("AGC"), Amex, and Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission. On August 26, 2003, the Amex asked the Commission to waive the 30-day operative delay. August 26, 2003 telephone conversation between Michael Cavalier, AGC, Amex, and Joseph P. Morra, Special Counsel, Division, Commission. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is extending until September 30, 2003, the suspension of transaction charges in iShares Lehman 1-3 year Treasury Bond Fund (Symbol: SHY) and iShares Lehman 7-10 year Treasury Bond Fund (Symbol: IEF), for specialist, Registered Trader and broker-dealer orders. The Exchange initially filed a suspension in such charges until November 30, 2002 in SR-Amex-2002-91. The fee suspension has subsequently been extended, most recently until August 30, 2003, in SR-Amex-2003-73. No other changes are proposed with this filing.

The Exchange believes a suspension of fees for the two iShares Funds is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act⁶ in general, and furthers the objectives of section 6(b)(4)⁷ in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among the Amex's members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003-76 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22233 Filed 8-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48398; File No. SR-Amex-2003-75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Eight Series of the iShares Trust Based on a Specified Fixed Income Index

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 2003, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list under Rule 1000A the following eight additional series of the iShares Trust ("Trust"), each a "New Fund": (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3-7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10-20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares

Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S. Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act") as well as the Exchange Act. The Commission previously approved amendments to Rule 1000A to accommodate the listing of Index Fund Shares based on an index of fixed income securities, and in particular, series of the iShares Trust based on indexes of fixed income securities.³

The Exchange proposes to list under Rule 1000A the following eight additional series of the iShares Trust ("Trust"), each a "New Fund": (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3-7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10-20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S. Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

Each New Fund will hold certain fixed income securities ("Portfolio Securities") selected to correspond generally to the performance of a

specified U.S. bond index (each, an "Underlying Index"), as described in Exhibit A to the Rule 19b-4 filing. Each of the New Funds intends to qualify as a "regulated investment company" (a "RIC") under the Internal Revenue Code (the "Code").

Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment adviser to each New Fund. The Advisor is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

Administrator/Custodian/Fund Accountant/Transfer Agent/Dividend Disbursing Agent. The Trust has appointed Investors Bank & Trust Co. ("IBT") to act as administrator (the "Administrator"), custodian, fund accountant, transfer agent, and dividend disbursing agent for each of the New Funds. The performance of their duties and obligations will be conducted within the provisions of the 1940 Act and the rules thereunder. There is no affiliation between IBT and the Trust, the Advisor, or the Distributor.

a. Operation of the New Funds

The investment objective of each New Fund will be to provide investment results that correspond generally to the performance of its Underlying Index. In seeking to achieve its respective investment objective, each New Fund will utilize "passive" indexing investment strategies. Each New Fund may fully replicate its Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities ("Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the

¹¹ 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. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) ("Previous Approval Order").

Underlying Index).⁴ The representative sampling techniques that will be used by the Advisor to manage the New Funds do not differ from the representative sampling techniques it uses to manage the Funds that were the subject of the Commission's June 25, 2002 order under the 1940 Act relating to other series of the iShares Trust indexes of fixed income securities.⁵

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a New Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogeneous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) sector, (3) credit rating, (4) coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the Underlying

Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.

According to the Original Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information—such as dividend payments instead of coupon rates, for example.

According to the Original Application, the New Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each New Fund in accordance with changes in the composition of the Underlying Index or to maintain RIC compliance. For example, if at the end of a calendar quarter a New Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange represents that the Advisor expects that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%).⁶ Each New Fund's investment objectives, policies and investment strategies will be fully disclosed in its Prospectus and Statement of Additional Information. Each New Fund (except the iShares Lehman U.S. Aggregate Bond Fund) will invest at least 90% of its assets in Component Securities of its respective Underlying Index. Each of these New

Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these New Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions).

According to the Application, with respect to the iShares Lehman U.S. Aggregate Bond Fund (the "Lehman Aggregate Fund"), additional portfolio flexibility would benefit the Fund, while at the same time permitting it to closely track the performance of its Underlying Index. The Lehman Aggregate Fund will: (i) seek to track the performance of that portion of its Underlying Index comprised of U.S. Treasury securities, U.S. agency securities, corporate bonds, non-corporate bonds (*e.g.*, bonds issued by supra-national entities such as the International Monetary Fund), asset-backed securities, and commercial mortgage-backed securities (approximately 65% of the Underlying Index as of April 30, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 65%) in the Component Securities of its Underlying Index;⁷ and (ii) seek to track the performance of that portion of its Underlying Index invested in U.S. agency mortgage pass-through securities (approximately 35% of the Underlying Index as of April 30, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 35%) through TBA transactions (as defined below) on U.S. agency mortgage pass-through securities. Through the Lehman Aggregate Fund's direct investments in Component Securities of its Underlying Index and its investments in mortgage pass-through securities through TBA transactions as described above, the Lehman Aggregate Fund will have at least 90% of its net assets invested (i) in Component Securities of its Underlying Index and (ii) in investments that have economic characteristics that are substantially identical to the economic characteristics of the Component

⁴ The Trust, Advisor and Distributor ("Applicants") have filed with the Commission an Application for an Amended Order ("Application") under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the New Funds of the Trust from various provisions of the 1940 Act. (File No. 812-13003). A notice of the Application was issued in Investment Company Act Release No. 26151, August 15, 2003. The information provided in this Rule 19b-4 filing related to the New Funds is based on information included in the Application, which includes additional information regarding the Trust and the New Funds. The initial Application for additional series of the iShares Trust based on indexes of fixed income securities (File No 812-12390) is referred to herein as the "Original Application." The Original Application was approved in Investment Company Act Release No. 25622, June 25, 2002 ("Order"). See also, the Previous Approval Order, *supra* note 3, for additional information relating to series of the iShares Trust, as described in the Original Application.

⁵ See *In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 25622 (June 25, 2002) (relating to the iShares 1-3 Year Treasury Index Fund, 7-10 Year Treasury Index Fund, 20+ Year Treasury Index Fund, Treasury Index Fund, Government/Credit Index Fund, Lehman Corporate Bond Fund and GSS InvesTop Corporate Bond Fund).

⁶ Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

⁷ With respect to this portion of its portfolio, the Lehman Aggregate Fund may invest up to 10% of its portfolio in bonds not included in its Underlying Index, but which the Adviser believes will help the Lehman Aggregate Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents.

Securities of its Underlying Index (*i.e.*, TBA transactions).

According to the Application, the Lehman Aggregate Fund needs the investment flexibility to engage in TBA transactions as described above primarily because approximately 35% of the securities in the Lehman Aggregate Fund's Underlying Index are expected to be pools of U.S. agency mortgage pass-through securities.⁸ As discussed below, it is easier to trade and obtain intra-day prices of TBAs than it is to trade and obtain intra-day prices of specific pools of mortgage pass-through securities. The readily available information about intra-day pricing of TBAs and the ease with which they can be traded should make it easier to create and redeem Creation Unit Aggregations and help maintain the efficiency of the Fund's arbitrage mechanism.

The Application states that, although the market for mortgage pass-through securities is extremely deep and liquid, it is impractical to trade mortgage pass-through securities on a pool-by-pool basis, particularly when large dollar amounts are involved. For this reason, the vast majority of mortgage pools are traded using "to-be-announced" or "TBA transactions." A "TBA transaction" essentially is a purchase or sale of a pass-through security for future settlement at an agreed upon date.⁹ It

⁸ As used herein, the term "U.S. agency mortgage pass-through security" or "mortgage pass-through security" refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: the Government National Mortgage Association ("GNMA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"). In the basic pass-through structure, mortgages with similar issuer, term and coupon characteristics are collected and aggregated into a pool. The pool is assigned a CUSIP number and undivided interests in the pool are traded and sold as pass-through securities. The holder of the security is entitled to a *pro rata* share of principal and interest payments (including unscheduled prepayments) from the pool of mortgage loans. The portion of the Lehman U.S. Aggregate Index representing the mortgage pass-through segment of the U.S. investment grade bond market is comprised of multiple pools of mortgage pass-through securities.

⁹ "TBA" refers to a mechanism for the forward settlement of agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. TBA trades generally are conducted in accordance with widely-accepted "Good Delivery" guidelines published by The Bond Market Association. The Good Delivery guidelines facilitate transactions in mortgage pass-through securities by establishing commonly observed terms and conditions for execution, settlement and delivery. In a TBA trade, the buyer and seller decide on general trade parameters, such as agency, coupon, term to maturity, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. TBA transactions promote efficient pricing because the Good Delivery guidelines permit only a small variance between the face amount of the pools

has been estimated that 90% of mortgage pass-through securities (as measured by total dollar volume) are executed as TBA trades.¹⁰ TBA transactions increase the liquidity and pricing efficiency of transactions in mortgage pass-through securities since they permit similar mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

The Lehman Aggregate Fund intends to use TBA transactions to acquire and maintain exposure to that portion of the Lehman U.S. Aggregate Index comprised of pools of mortgage pass-through securities in either of two ways. First, and more commonly, the Lehman Aggregate Fund will enter into TBA agreements and "roll over" such agreements prior to the settlement date stipulated in such agreements. This type of TBA transaction is commonly known as a "TBA roll." In a "TBA roll" the Lehman Aggregate Fund generally will sell the obligation to purchase the pools stipulated in the TBA agreement prior to the stipulated settlement date and will enter into a new TBA agreement for future delivery of pools of mortgage pass-through securities. Second, and less frequently, the Lehman Aggregate Fund will enter into TBA agreements and settle such transactions on the stipulated settlement date by actual receipt or delivery of the pools of mortgage pass-through securities stipulated in the TBA agreement. Since intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the use of TBA agreements should help maintain the efficiency of the Fund's arbitrage mechanism. The Lehman Aggregate Fund will accept actual delivery of mortgage pools only when the Adviser believes it is in the best interests of the Lehman Aggregate Fund and its shareholders to do so. In determining whether to accept actual delivery of mortgage pools, the Adviser will consider, among other things, the potential impact of such acceptance on the efficiency of the Lehman Aggregate Fund's arbitrage mechanism and the

actually delivered and the nominal agreed upon amount. Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and Tradeweb. The Bond Market Association publishes standard notification and settlement dates for TBA trades specifying uniform settlement dates for specific classes of securities. The most active trading market for TBA trades is usually for next-month settlement. *See generally TBAs: To-Be-Announced Mortgage Securities Transactions*, The Bond Market Association (1999).

¹⁰ *Id.* at 3.

Lehman Aggregate Fund's ability to track its Underlying Index. For these reasons, the Adviser believes that the ability to invest a significant portion of the Lehman Aggregate Fund's assets through TBA transactions and to maintain such exposure through the use of TBA rolls would increase the liquidity and pricing efficiency of the Lehman Aggregate Fund's portfolio. In addition, since holding a TBA position exposes the holder to substantially identical market and economic risks as holding a position in a corresponding pool of mortgage pass-through securities, the Adviser believes that the use of TBA transactions as described herein should permit the Lehman Aggregate Fund to closely track the performance of its Underlying Index.

The use of TBA transactions is not intended to help the Lehman Aggregate Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Lehman Aggregate Fund's exposure to its Underlying Index.¹¹

b. Issuance of Creation Unit Aggregations

The issuance of Creation Unit Aggregations will operate, except as noted below, in a manner identical to that of the Funds described in the Previous Approval Order, and in the Original Application. The only difference between the creation process for the New Funds and that of the Funds that are the subject of the Order involves the Lehman Aggregate Fund (discussed below).

1. *In General.* Shares of each New Fund (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The New Funds will issue and redeem iShares only in Creation Unit Aggregations.¹² As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately \$100.

The NAV per share of each New Fund is determined as of the close of the regular trading session on the Amex on each day that the Amex is open. The Trust sells Creation Unit Aggregations of

¹¹ Telephone call between Mike Cavalier, Associate General Counsel, Amex; and Florence Harmon, Senior Special Counsel, Division, Commission, on August 22, 2003.

¹² Generally, each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately \$5 million.

each New Fund only on business days at the next determined NAV of each New Fund.

Creation Unit Aggregations will be issued by each Fund in exchange for the in-kind deposit of a portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the New Fund's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each New Fund in exchange for portfolio securities of the New Fund ("Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each New Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant ("Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable New Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. In-Kind Deposit of Portfolio Securities. Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the New Fund of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the New Fund and (2) the total aggregate market value (per Creation Unit

Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit."

The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. eastern time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant New Fund. The Portfolio Deposit will be applicable to a New Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the New Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each New Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant New Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each New Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

The Lehman Aggregate Fund may invest in and hold mortgage pass-through securities on a TBA basis. Since a TBA transaction is essentially an agreement for future settlement of a mortgage security, it is not possible to accept TBAs as part of the Portfolio

Deposit. Instead, the Fund will designate the mortgage pass-through TBAs to be included in a Portfolio Deposit just as it would any other Deposit Securities of a Portfolio Deposit, and will accept "cash in lieu" of delivery of the designated mortgage pass-through TBAs. The Lehman Aggregate Fund will then enter into TBA agreements included as Deposit Securities in the Portfolio Deposit.¹³ According to the Application, this will substantially minimize the Lehman Aggregate Fund's transaction costs, enhance operational efficiencies and otherwise reduce any operational issues which the acceptance of pools of mortgage pass-through securities might otherwise present.¹⁴

c. Availability of Information Regarding iShares and Underlying Indices

On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio

¹³ Prior to settlement of such TBA transactions, the "cash in lieu" portion of the Portfolio Deposit will be invested in cash equivalents, including money market mutual funds, and such investments, along with cash and other liquid assets identified by BGFA, will be segregated on the books and records of the Fund or its Custodian in accordance with section 18 of the 1940 Act and Investment Company Act Release 10666. Since the price of a TBA transaction includes an assumed rate of return on the cash held in anticipation of settlement, the Fund's investment in cash equivalents prior to settlement is not expected to have a material impact on potential tracking error or the Fund's ability to track its Underlying Index. In addition, since the interest or dividends that the Fund accrues on a daily basis on its investment in cash equivalents will be relatively small and will be included as part of the Cash Component published on a daily basis according to the procedures currently used for the Index Funds, Applicants expect that such dividends and interest will be reflected in the secondary market trading price of iShares of the Fund. The Commission's June 25, 2002 order relating to fixed income funds of the iShares Trust (Investment Company Act Release No. 45622) permits acceptance of a "cash-in lieu" amount to replace Deposit Securities that are unavailable for delivery or for other reasons. In addition, prior iShares orders expressly permit "cash-only purchases of Creation Unit Aggregations" where the Adviser believes such transactions would "substantially minimize * * * transactional costs or would enhance * * * operational efficiencies." See Investment Company Act Release No. 24452 (May 12, 2000).

¹⁴ Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and Tradeweb. In addition, the fungible nature of TBAs and commonly observed execution and settlement procedures create significant pricing efficiencies and market liquidity for TBAs. TBAs typically trade at very narrow spreads on transactions of up to \$300 million or more. Since intra-day pricing of TBAs is readily available and the market for mortgage pass-through TBAs is extremely liquid, the designation of TBAs in the Portfolio Deposit and their inclusion as Fund Securities should make pricing of the Fund and the Deposit Amount more efficient and transparent, thus increasing arbitrage efficiency.

Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by an independent third party (such as Bloomberg L.P.) ("Bloomberg") every 15 seconds during the AMEX's regular trading hours and disseminated every 15 seconds by such third party and by AMEX on AMEX's Consolidated Tape B. The IOPV will be updated throughout the day to reflect changing bond prices, as well as TBA prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of each Fund is readily available to the marketplace.¹⁵ Applicants represent (i) that IOPV will be calculated by an independent third party; (ii) that IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (iii) that IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond "price" based on an analysis of multiple pricing sources is obtained for each security in a Portfolio Deposit.¹⁶ Closing prices of the New Funds' Deposit Securities are readily available from published or other public sources, such as the Trace Reporting and Compliance Engine (commonly known as "TRACE"), or on-line client-based information services provided by Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge, Bloomberg,

¹⁵ Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the Fund's IOPV calculation. For example, intra-day prices for treasury securities, agency securities and TBAs are available from Bloomberg, the Trace Reporting and Compliance Engine (commonly known as "TRACE") and TradeWeb. Intra-day prices for inflation protected public obligations of the U.S. Treasury ("TIPS") are available from Bloomberg and Tradeweb. Intra-day prices of callable agency securities are expected to be available from TradeWeb in July or sometime shortly thereafter. Intra-day prices of corporate bonds are available from TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse First Boston, Goldman Sachs and Lehman Brothers).

¹⁶ For example, Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

Tradeweb, and other pricing services commonly used by bond mutual funds.¹⁷

The Lehman Indices will not be calculated or disseminated intra-day. The value and return of each Lehman Index is calculated and disseminated each business day, at the end of the day, by Lehman Brothers.

Each New Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each New Fund will be calculated and disseminated daily. The Amex also intends to disseminate a variety of data with respect to each New Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Amex. In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each New Fund: (a) the prior Business Day's NAV and the mid-point of the bid-ask price¹⁸ at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.¹⁹

¹⁷ Applicants understand that Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge, and Bloomberg provide prices for each type of Deposit Security. Tradeweb provides prices for each type of Deposit Security except mortgage backed securities and corporate bonds. TRACE provides prices for corporate bonds.

¹⁸ The Bid-Ask Price of a New Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each New Fund's NAV.

¹⁹ The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems.

The primary dealers are among the most active participants in the secondary market for Treasury securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker. The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

d. Redemption of iShares

Creation Unit Aggregations of each New Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each New Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each New Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such New Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the New Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any New Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX, for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. Trade Web, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors have access to free intra-day bellwether quotes. The Bond Market Association provides links to price and other bond information sources on its investor Web site at www.investinginbonds.com. In addition, the transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (e.g., IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

redeemer will receive from the New Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.²⁰

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the New Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the New Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. Clearance and Settlement

The Deposit Securities and Fund Securities of each New Fund will settle via free delivery through the Federal Reserve System for U.S. Government securities and the DTC for corporate securities and non-corporate securities (other than U.S. Government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the New Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities

and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3) an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the New Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the New Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment, through the Federal Reserve system.

iShares of the New Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the New Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide

collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the New Funds will hold the collateral until the delivery of such Deposit Security. The New Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the New Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not new effect the New Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the New Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. Government securities, corporate bonds, non-corporate bonds and iShares on the same T + 3 settlement cycle. Amex represents that according to the Application, the clearance and settlement process will not affect the arbitrage of Shares in the New Fund.²¹

f. Dividends and Distributions

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each New Fund. Certain of the New Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each New Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each New Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then

²⁰ Investors redeeming Creation Unit Aggregations of the Lehman Aggregate Fund will receive cash for any Portfolio Securities that are mortgage pass-through TBAs.

²¹ Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division, Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

of record with amounts received from each New Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. Other Issues

1. Criteria for Initial and Continued Listing. iShares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depository Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of the New Funds is \$5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all funds of the Trust listed on the Exchange.

3. Stop and Stop Limit Orders. Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities,

may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment. See Release No. 34-29063, note 9, (SR-Amex-90-31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

4. Rule 190. Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

5. Prospectus Delivery. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. The Applicants have filed with the Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act. (Investment Company Act Release No. 25595, May 29, 2002). Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

6. Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²² In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

7. Suitability. Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds and of applicable Exchange rules, as well as of

the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

8. Purchases and Redemptions in Creation Unit Size. In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. Surveillance. Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Funds. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the Underlying Index, it would be required to erect and maintain a "Fire Wall" in a form satisfactory to the Exchange to prevent the flow of information regarding the Underlying Index from the index production personnel and index calculation personnel to the sales and trading personnel. The Exchange will implement surveillance procedures to monitor and prevent the misuse of material, non-public information in connection with the indices.²³

10. Hours of Trading/Minimum Price Variation. The New Funds will trade on the Amex until 4:15 p.m. (eastern time). The minimum price variation for quoting will be \$.01.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,²⁴ in general, and furthers the objectives of section 6(b)(5) of the Exchange Act,²⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

²³ Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division, Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²² See Amex Rule 918C.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory agency consents, the Commission will:

- A. by order approve the proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2003-75 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22234 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48396; File No. SR-BSE-2003-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Transaction and Floor Operations Fee Schedules

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 1, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. On August 5, 2003, the BSE filed an amendment to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Floor Operations Fees and Transaction Fees schedules. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

FLOOR OPERATION FEES

(1) Occupancy/Technology Occupancy Fee	\$500.00 per post per month.
Specialist/Floor Trader Technology Fee	\$500.00 per BEACON terminal per month.
Floor Broker Technology Fee	\$100.00 per BEACON terminal per month.
Security Routing Fee	\$500.00 per month per BEACON user-ID that has stocks routed to it.
Floor Facility Fee	\$250.00 per person that regularly accesses the trading floor.
Electronic Trading Permit Fee	\$1,000.00 per trader trading from a remote location per month.
(2) Specialist Post Clearing and Cashiering Post Cashiering Fee	\$750.00 per specialist book for first 3 books per firm. \$100.00 per specialist book for any books in excess of 3 per firm.
Clearing Fee	\$.05 per trade.
(3) Specialist Trade Processing Fees/Credits Pre-Opening Trades	No Charge.
Trades in CTA Securities ranked 1,001 and greater	No Charge (BSE executions only).
Round lot	\$.50 per order.
Odd Lot Trades (includes CSI Issues)	\$.05 per order (\$400 maximum per account).
Trading Account Trades	\$1.50 per order.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Boese, Vice President Legal and Compliance, BSE, to Ms. Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 14, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE added purpose language that elaborates on the overarching

purpose of the rulefiling, inserted purpose language to clarify that the rulefiling will apply solely to BSE members, and provided purpose language that describes the necessity of the fee change to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff services to the BSE specialist community. For purposes of calculating the 60-day

abrogation period, the Commission considers the period to have commenced on August 5, 2003.

ETF Trade Credit	\$2.00 per trade (maximum annual credit capped at total amount paid in upfront annual registration fees).
Revenue Sharing Program	100% (50% after 1st 6 months) non specialist revenue and 50% CTA revenue will be shared on all floor broker generated volume in CTA 501+ issues.
* * * * *	
(4) Other Charges ITS User Fee	[\$.003] \$.0018 per share on [net] outbound specialist trades [(charge for outgoing trades offset by cumulative credit for incoming trades)]. No charge for non-specialist firms.
Quotation Services	Member assumes 100% of cost.
Specialist Margin Account Financing	Charged daily at current broker call rate.
Solely Listed Issue Credit	\$50.00 Credit per issue traded.
Miscellaneous Charges	At cost for phone, postage, courier service, fax usage, after hours BSE staff assistance and other applicable items.
Late Fees	1.5% will be charged on outstanding balances as of the last calendar day of the month.

TRANSACTION FEES

1. Trade Recording and Comparison Charges	
• All BSE executions up to and including 2,500 shares	No Charge.
• All BSE single-sided executions from 2,501–5,000 shares	No Charge.
• All other executions (excluding automated non-BSE executions)	
First 2,500 trades per month	\$.29 per 100 shares
Next 2,500 trades per month	\$.25 per 100 shares
Next 2,500 trades per month	\$.15 per 100 shares
Over 7,500 trades per month	\$.04 per 100 shares
Floor Brokered non-BSE executions	\$.05 per 100 shares
Automated non-BSE executions	[\$.05 per 100 net non-BSE automated shares]. \$.025 per 100 shares for non-BSE automated shares offset by automated incoming volume routed to BSE \$.05 per 100 shares for non-BSE automated shares in excess of automated incoming volume routed to BSE.
Maximum charge per side (single-sided)	\$50.00
Maximum charge per side (cross)	\$25.00
(all trades accumulate for volume discounts)	
2. Value Charges	
* * * * *	

REVENUE SHARING:

TAPE A—Should the Exchange generate its monthly Tape A revenue target, 50% of any amount in excess of this target amount will be shared on a pro-rata basis with those firms that generate a minimum of \$50,000 in overall monthly automated transaction fees.
 TAPE B—50% of NET Tape B revenues will be shared on a per executed trade routed to the BSE.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Floor Operation Fees schedule with the overall goal of increasing the number of stocks traded on the BSE. The Exchange is proposing to eliminate the credit it offers to specialists for inbound Intermarket Trading System ("ITS") volume and to also reduce the fee that it charges to specialists to execute outbound volume through the same system. The credit was initially implemented to induce specialists to attract volume to the BSE through ITS by openly displaying their limit orders. Since the initial implementation of this

credit, overall market conditions have changed and, more importantly, the Limit Order Display Rule, SEC Rule 11Ac1-4,⁴ now requires that specialists display their limit orders. The Exchange realizes that eliminating this credit may increase the overall cost to transact business on the BSE for some specialists and, as a result, further proposes to reduce the cost to transact outbound ITS volume from \$.003/share to \$.0018/share to offset this cost.

The Exchange also proposes to implement a credit program for its specialists by which, for the first six (6) months of the program, the BSE will credit back 100% of the Trade Recording and Value Charge revenue it generates on BSE executed Floor-Brokered trades in the issues ranked 501

⁴ 17 CFR 240.11Ac1-4.

or greater in listed securities volume reported to the Consolidated Tape Association ("CTA"). In addition, as part of the credit program, the BSE proposes to include 50% Tape Revenue sharing for revenue generated on the same Floor-Brokered volume.⁵ After the first six (6) months of the program, the credit of 100% of the Trade Recording and Value Charge revenue will be reduced to 50%. CTA revenue sharing will remain at the current rate of 50%. The purpose of the credit program for the specialists is to acknowledge the importance of their participation in the Exchange's overall initiative by implementing incentives for specialists to increase the number of issues, and related executions, traded on the BSE.

Additionally, the BSE also proposes to amend its Transaction Fees schedule by revising the rate at which it charges member firms that route orders to the BSE and also provide BSE specialists with the capability of routing order flow to other exchanges (for example, through DOT⁶ terminals). A firm may currently use its automated inbound volume that it routes to the BSE to qualify for reduced rates on outbound volume executed through its DOT terminals and will continue to be able to do so. However, a firm that provides automated inbound volume to the BSE, will now be charged rates on its outbound volume (up to the amount of inbound volume routed to the BSE) of \$.025/100 shares. Rates on outbound volume executed in excess of automated inbound volume routed to the BSE will continue to be charged at the rate of \$.05/100 shares, as previously established. These fees are necessary to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff

⁵ The BSE represented to the Commission that the proposed BSE specialist Revenue Sharing Program will not result in a market data revenue rebate that exceeds 50% of Tape A or B market data revenue. See Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation). The BSE represented that the instant proposal simply clarifies the BSE's existing Revenue Sharing arrangement, which does not specifically indicate to whom market data revenue rebates are to be awarded. The Commission has relied on the BSE's representations in not abrogating the proposed fee filing. Telephone conference between John Boese, Vice President Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (August 22, 2003).

⁶ DOT is the New York Stock Exchange's ("NYSE") Designated Order Turnaround System, an application that permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. See Securities Exchange Act Release No. 16649 (March 13, 1980), 45 FR 18541.

services to the BSE specialist community.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-2003-12 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22235 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48394; File No. SR-CBOE-2003-28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Open Outcry Size Guarantees

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 21, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE under Rule 19b-4(f)(6) under the Act.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to open outcry size guarantees in those classes of options that trade on the CBOE Hybrid System ("Hybrid"). Below is the text of the proposed rule change. Proposed new language is in italics.⁴

* * * * *

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The Commission notes that it added language to the rule text that was inadvertently omitted by CBOE. Telephone call between Steve Youhn, Legal

Rule 8.7 Obligations of Market Makers

(a)–(c) No change
 (d) No Change
 (i) Market Maker Trades Less Than 20% Contract Volume Electronically: No change
 (A)–(B) No change
 (C) Continuous Open Outcry Quoting
 Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders.

(D) No change
 (ii) Market Maker Trades More Than 20% Contract Volume Electronically: No change
 (A)–(B) No change
 (C) Continuous Open Outcry Quoting
 Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts for non-broker-dealer orders and one contract for broker-dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**

In May 2003, the Commission approved trading rules for Hybrid,⁵ a trading platform that alters the fundamental way in which the

Exchange conducts business. Hybrid merges the electronic and open outcry trading models and offers market participants the ability to stream electronically their own quotes. Previously (and currently in non-Hybrid classes), CBOE's disseminated quote represented, for the most part, the Designated Primary Market Maker's ("DPM") autoquote price. Market makers ("MMs") were able to affect changes to that quote in open outcry (or by putting up manual quotes). Hybrid offers in-crowd MMs and in-crowd DPMs the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.⁶ In addition, Hybrid permits in-crowd floor brokers, who represent orders on behalf of members, broker-dealers, public customers, and the firm's proprietary account, to enter orders on behalf of their customers for display in the CBOE's best bid or offer ("BBO").⁷ Whereas, prior to Hybrid, there was only one autoquote price comprising the CBOE disseminated quote, Hybrid allows for the introduction of multiple quotes in the quoting equation.

CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C), which only apply to classes trading on Hybrid, impose a 10-up size requirement for MMs responding to a request for a market in open outcry by a floor broker ("FB") representing an order as agent.⁸ CBOE represents that the intent of CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C) when adopted was to ensure that FBs representing public customer orders would receive a quote of sufficient depth whenever they requested a market in open outcry. CBOE believes that the plain language of CBOE Rules 8.7(d)(i)(C) and d(ii)(C), however, is overbroad and could be interpreted to apply to broker-dealer ("BD") orders represented by FBs. Accordingly, the Exchange proposes to amend these two rule provisions to: (a) Limit the applicability of the 10-up size guarantee to public customer orders represented by FBs; and (b) provide that MMs must provide a one-up market to BD orders represented by FBs. This proposed change only affects Hybrid classes and, as such, has no applicability to non-Hybrid classes.

CBOE represents that the proposed changes do not affect the operation of

CBOE's Quote Rule (CBOE Rule 8.51), which allows the responsible BD to provide separate quote sizes to public customers and broker-dealers.⁹ FBs representing a public customer order in a Hybrid class will be able to request a quote on behalf of such public customer from MMs in the crowd and will be guaranteed to receive a firm quote for at least ten contracts. At the same time, a FB representing a BD order in a Hybrid class will be able to request a quote on behalf of a BD and will be guaranteed to receive a firm quote for at least one contract. Accordingly, allowing MMs to provide 1-up open outcry markets to BD orders is consistent with their obligations under the CBOE Quote Rule because the BD firm quote requirement, which is one contract, is satisfied.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act¹⁰ in general, and furthers the objectives of section 6(b)(5) of the Act¹¹ in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file

Division, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

⁵ See Exchange Act Release 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (approving File No. SR-CBOE-2002-05).

⁶ Telephone conversation between Steve Youhn, Legal Division, CBOE, and Kelly M. Riley, Senior Special Counsel, Division, on August 20, 2003.

⁷ *Id.* Pursuant to CBOE Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction would be one to buy or sell.

⁸ CBOE Rule 8.7(d) only applies to Hybrid classes.

⁹ The BD firm quote requirement on CBOE is one contract. See CBOE Rule 8.51.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

the proposed rule change at least five business days prior to the date of filing of the proposed rule change,¹² it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

CBOE has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is substantially similar to existing Pacific Exchange, Inc. ("PCX") Rule 6.37(b)(5) and Interpretation .05 to PCX Rule 6.37 approved by the Commission.¹⁵ As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.¹⁶

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

¹² On July 3, 2003, CBOE provided the Commission with written notice of its intent to file the proposed rule change. See letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 2, 2003.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ See Securities Exchange Act Release No. 47211 (January 17, 2003), 68 FR 3924 (January 27, 2003) (approving File No. SR-PCX-2002-55).

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-28 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22230 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48411; File No. SR-GSCC-2002-04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Institute Informal Hearing Procedures for Fine Disputes

August 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 28, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC's current rules provide procedures whereby a member can dispute any fine through a formal hearing process. GSCC's rules also permit GSCC to establish procedures for a hearing not otherwise provided for in its rules. The proposed rule change would allow GSCC to institute informal hearing procedures for disputed fines.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1998, GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines.³ GSCC Rule 37 contains procedures whereby a member can dispute any fine assessment through a formal hearing process. Rule 37 also permits GSCC to establish procedures for a hearing not otherwise provided for in the rules.⁴ With this proposed rule filing, GSCC seeks authority to specifically incorporate into its rules informal hearing procedures with respect to disputed fines.

Pursuant to GSCC's new procedures, when a formal hearing is requested to dispute a fine, an informal hearing will automatically take place prior to a formal hearing occurring. Thus, if a member disputes a fine and asks for a formal hearing in the manner already specified in the rules, GSCC's management will automatically conduct a review of the disputed fine. Based on the documentation already required in the rules and/or a meeting arranged with the member, management may determine to waive the fine. If management determines to waive the fine, it must inform the Membership and Risk Management Committee of the waiver and management's reasons for granting the waiver. The Committee has the ability to accept or reject management's determination. If the Committee accepts management's determination, the fine will be waived. However, if the Committee chooses not to accept management's determination or if management initially determined not to waive the fine after conducting its review, the member has the right to the formal hearing already provided for in Rule 37.

GSCC also seeks to change its rules to reflect that if a fine is assessed, the member must pay the fine within 30 calendar days after it receives the fine

² The Commission has modified the text of the summaries prepared by OCC.

³ Securities Exchange Act Release No. 39746 (March 12, 1998), 63 FR 13439 (March 19, 1998) [File No. SR-GSCC-97-04].

⁴ Government Securities Clearing Corporation Rule 37, Section 7.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

imposition letter unless the member has requested a hearing to dispute the fine. Currently, GSCC's rules require that fines be paid within 90 days. If a hearing has been requested, the fine is waived until the dispute is resolved.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act⁵ and the rules and regulations thereunder applicable to GSCC because it will promote the prompt and accurate clearance and settlement of securities transactions by clearly setting forth in GSCC's rules its procedures for conducting a review with respect to disputed fines, which procedures afford members a fair and less burdensome method for resolving fine disputes than is currently set forth in the rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-GSCC-2002-04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR-GSCC-2002-04 and should be submitted by September 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22232 Filed 8-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48405; File No. SR-ISE-2003-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to the Establishment of Trading Rules for Index Options and Generic Listing and Maintenance Standards for Narrow-Based Index Options

August 25, 2003.

I. Introduction

On February 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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 enable the ISE to trade index options on the Exchange. The ISE filed Amendment No. 1 to the proposed rule change on April 17, 2003.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2003.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Introduction

The ISE proposes to establish trading rules to enable Members to trade index options on the Exchange. In addition, the ISE proposes to establish generic listing standards and maintenance standards for "narrow-based" index options pursuant to Rule 19b-4(e) under the Act.⁵ The ISE represents that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.⁶ Many of the new trading rules and generic listing standards will comprise the new Chapter 20 in the ISE Rules.

B. Index Options Trading Rules

The proposed rules, among other things, establish general rules that will govern the trading sessions for index options, including the days and hours of business, the rules governing trading rotations at the opening, and the rules related to the trading halts or suspensions.⁷ The proposed rules further provide for the procedures Members must follow with respect to the exercise of American-style, cash settled index options.⁸ The proposed rules also provide for position limit and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Katherine Simmons, Vice President and Associate General Counsel, ISE to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 16, 2003. In Amendment No. 1, the ISE submitted a new Form 19b-4, which replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 13348.

⁵ 17 CFR 240.19b-4(e). The term "narrow-based index" is defined as an index designed to be representative of a particular industry or a group of related industries. See Proposed ISE Rule 2001(i). Narrow-based indices listed and traded on the ISE pursuant to generic listing and maintenance standards, among other characteristics, must consist of ten or more component securities. See Proposed ISE Rule 2002(b)(2).

⁶ See, e.g., CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

⁷ See Proposed ISE Rule 2008.

⁸ See Proposed ISE Rule 418(a)(3) and 1100(h).

⁵ 15 U.S.C. 78q-1.

⁶ 17 CFR 200.30-3(a)(12).

exercise limits for index options.⁹ In addition, the proposed rules provide for exemption standards from position limits and procedures for requesting exemptions from those proposed rules.¹⁰ The proposed position limits and exercise limits, as well as the proposed exemptions, are different for broad-based index options and narrow-based index options.¹¹ The proposed rules establish standards for when a member seeking to sell short a Nasdaq NMS security included in an index underlying an index option listed and traded on the Exchange is exempt from the NASD short sale rule.¹²

C. Generic Listing Standards and Maintenance Standards for Narrow-Based Index Options

The ISE further proposes to establish generic listing and maintenance standards in Proposed ISE Rule 2002 to enable the Exchange to list and trade new narrow-based index options pursuant to Rule 19b-4(e) under the Act.¹³ Proposed ISE Rule 2002 addresses both initial listing and maintenance standards for narrow-based index options.¹⁴ The generic listing and maintenance standards are modeled after standards that the Commission originally approved for streamlined listing and trading pursuant to Section 19(b)(3)(A) of the Act.¹⁵ The options

exchange subsequently filed proposed rule changes with the Commission to eliminate the Section 19(b)(3)(A) rule filing requirement from their existing SRO rules, after the Commission indicated that products meeting the listing criteria approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order qualified for filing pursuant to Rule 19b-4(e) under the Act.¹⁶

Notwithstanding the generic listing standards for options on narrow-based indexes, the Exchange will need to file additional proposed rule changes with the Commission when the Exchange identifies specific products because the rules related to trading options on indices are product specific in many areas. For purposes of this proposed rule change, certain rules indicate that they apply to "specified" indices. ISE Rules 2001(l), 2004(a), 2006(a), 2007(a), 2009, and 2011 all contain provisions that are dependant upon the Exchange identifying specific index products in the rule. Accordingly, proposed ISE Rule 2000 states that where the rules in Chapter 20 indicate that particular indices or requirements with respect to particular indices will be "Specified," the ISE shall file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act¹⁷ and Rule 19b-4 thereunder¹⁸ to specify such indices or requirements.

III. Commission Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act¹⁹ and the rules and regulations thereunder applicable to a national securities exchange.²⁰ The Commission believes that the ISE's proposal to establish trading rules and procedures applicable to index options and establish generic listing and maintenance standards for narrow-based index options strikes a reasonable

balance between the Commission's mandates under section 6(b)(5) of the Act²¹ to remove impediments to and perfect the mechanisms of a free and open market and a national market system while protecting investors and the public interest.

A. Index Options Trading Rules

The Commission believes that trading options on an index of securities (including a narrow-based index) permits investors to participate in the price movements of the index's underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading options on an index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component stocks. In making this finding the Commission notes that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.²²

B. Generic Listing and Maintenance Standards for Narrow-Based Index Options

In approving the generic listing and maintenance standards for narrow-based index options, the Commission considered the structure of these securities, their usefulness to investors and to the markets and the ISE rules that govern their trading. The proposal to establish generic standards for narrow-based index options should reduce the ISE's regulatory burden, as well as benefit the public interest, by enabling the ISE to bring qualifying products to the market more quickly. Furthermore, the Commission notes that it has previously approved similar proposals by the Amex, CBOE, NYSE, PSE, and the Phlx to establish generic listing and maintenance standards for narrow-based index options.²³

The Commission finds that adopting generic listing and maintenance standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those index option products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b-4(e) for these products potentially reduces the time frame for listing and

⁹ See Proposed ISE Rules 2004, 2005, and 2007.

¹⁰ See Proposed ISE Rule 2006.

¹¹ See Proposed ISE Rules 2004 to 2007.

¹² See Proposed ISE Rule 1407(d)(1)(ii).

¹³ 17 CFR 240.19b-4(e). Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that includes the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

¹⁴ The proposed generic listing standards approved herein do not apply to the listing of options on broad-based indices.

¹⁵ In 1994, the Commission approved a proposed rule change submitted by the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "options exchanges"), which permitted the options exchanges to list and trade options on narrow-based indexes thirty days after submitting a filing pursuant to Section 19(b)(3)(A) of the Act. The Commission found that such filings would constitute a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, pursuant to Section 19(b)(3)(A) of the Act, relieving the Exchange of the former

requirement of obtaining specific Commission approval of such narrow-based index options pursuant to Section 19(b)(2) of the Act. See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30622 (June 10, 1994) (SR-Amex-92-35) (SR-CBOE-93-59) (SR-NYSE-94-17) (SR-PSE-94-07) and (SR-Phlx-94-10) (the "1994 Generic Narrow-Based Index Options Approval Order").

¹⁶ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

¹⁷ See note 1 *supra*.

¹⁸ See note 2 *supra*.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ See note 19 *supra*.

²² See, e.g., CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

²³ See note 15 *supra*.

trading these securities, and thus enhances investors' opportunities. The Exchange, however, must maintain regulatory oversight over any products listed under the generic listing standards through adequate surveillance. ISE represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of narrow-based index options pursuant to the generic listing and maintenance standards. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of the narrow-based index options.

The Commission believes that the listing and maintenance standards set forth herein are consistent with the listing and maintenance standards for narrow-based index options that the Amex, CBOE, PCX and the Phlx have developed and are reasonably designed to ensure the protection of investors and the public interest. Specifically, the Commission finds that the generic standards covering minimum capitalization, monthly trading volume, and relative weightings of component stocks are designed to ensure that the trading markets for component stocks are adequately capitalized and sufficiently liquid, and that no one stock or stock group dominates the index. Thus, the Commission believes that the satisfaction of these requirements significantly minimizes the potential for manipulation of the index.

Two other important requirements included in the proposal are that at least 90 percent of the component securities, by weight, and 80 percent of the total number of component securities, must be eligible individually for options trading, and that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement. The Commission believes that these standards are necessary to ensure that index options are not used as surrogate instruments to trade options on stocks and/or ADRs that otherwise are not eligible for options trading.

The Commission also believes that the number of securities required to constitute the narrow-based index is large enough to ensure that an index is not created for the purpose of obtaining more favorable regulatory treatment, e.g., with respect to position and exercise limits, as compared with the trading of options in the underlying stocks.

The Commission also finds the requirements that all securities comprising the index be "reported

securities," as defined in Rule 11Aa3-1 under the Act,²⁴ and that the index value be disseminated at least once every 15 seconds during trading hours of the index, will contribute significantly to the transparency of the market for such index options. The Commission further believes that basing the settlement value of expiring index options upon the opening prices of the component securities on the primary market on which they are listed and traded may help contain the volatility of related markets upon their expiration.

The Commission further notes that ISE's rules that are applicable to narrow-based index options, including provisions addressing sales practices, floor trading procedures, position and exercise limits, margin requirements, and trading halts and suspensions, will continue to apply to any narrow-based index listed pursuant Rule 19b-4(e) under the Act.

The Commission believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. The Commission believes that such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. When a new derivative securities product based upon domestic securities is listed and traded on an exchange pursuant to Rule 19b-4(e) under the Act, the exchange should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"),²⁵ which provides information relevant to the surveillance of the trading of securities on other market centers.²⁶ In this regard, all of the registered national securities exchanges, including the ISE, as well as the National Association of Securities Dealers, Inc. ("NASD"), are members of the ISG.

For new derivative securities products based on securities from a foreign market, the SRO should have a comprehensive Intermarket Surveillance Agreement with the market for the securities underlying the new securities

product.²⁷ Accordingly, the Commission finds that the requirement that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement between the particular U.S. exchange and the primary market of the underlying security will continue to ensure that the Exchanges have the ability to adequately surveil trading in the narrow-based index options and the ADR components of the index.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁸ that the proposed rule change, as amended, (File No. SR-ISE-2003-05) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22236 Filed 8-29-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48407; File No. SR-NASD-00-08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Margin Requirements

August 25, 2003.

I. Introduction

On March 3, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposal to amend NASD Rule 2520, "Margin Requirements." The NASD's proposal was published for comment in the **Federal Register** on May 26, 2000.³ The Commission received one comment

²⁴ 17 CFR 240.11Aa3-1.

²⁵ ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

²⁶ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98).

²⁷ *Id.*

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 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. 42801 (May 19, 2000), 65 FR 34240 ("2000 Release").

letter regarding the proposal,⁴ and the NASD responded to the comment.⁵

The NASD filed Amendment Nos. 1 and 2 to the proposal on June 2, 2000, and July 30, 2003, respectively. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act⁶ authorizes the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to establish requirements for the purchase or carrying of securities on margin. Pursuant to this authority, the Federal Reserve Board promulgated Regulation T,⁷ which sets minimum initial margin requirements. Regulation T provides that transactions in non-equity securities are subject to either "good faith" margin requirements⁸ or the level set by the rules of a self-regulatory organization ("SRO"), whichever is higher.⁹ Accordingly, the maintenance margin requirements established by the NASD or another SRO set the minimum margin levels for non-equity securities.¹⁰

As described more fully below, the proposal amends NASD Rule 2520 to: (1) lower the customer maintenance margin requirements for certain non-equity securities; and (2) permit good faith margin treatment for certain non-equity securities held in "exempt accounts," as defined in the proposal.

B. Reduced Customer Maintenance Margin for Non-Equity Securities Not Held in Exempt Accounts

With respect to non-equity securities that are not held in exempt accounts, the proposal: (1) Reduces the customer maintenance margin requirement for highly rated foreign sovereign debt¹¹

from 20% of current market value to 1% to 6% of current market value, depending on the time to maturity; (2) reduces the customer maintenance margin requirement for exempted securities other than U.S. government obligations from 15% of current market value to 7% of current market value; (3) reduces the customer maintenance margin requirement for investment grade non-equity securities¹² from 20% of current market value to 10% of current market value; and (4) establishes a customer maintenance margin requirement of 20% of current market value for all other marginable non-equity securities.¹³

C. Good Faith Margin Treatment for Certain Non-Equity Securities Held in Exempt Accounts

1. Good Faith Margin Treatment

The proposal will permit broker-dealers to effect transactions in "exempt accounts" without being required to collect either margin or marked to the market losses¹⁴ on exempted securities, mortgage-related securities,¹⁵ or major foreign sovereign debt securities.¹⁶ However, a broker-dealer must take a capital charge for any uncollected marked to the market losses on exempt account positions in these securities.¹⁷

For transactions in exempt accounts involving highly rated foreign sovereign debt¹⁸ and investment grade debt,¹⁹ the proposal establishes margin requirements of 0.5% and 3%,

or guaranteed by the government of a foreign country, its provinces, states or cities, or a supranational entity that are assigned a rating in one of the two top rating categories by at least one nationally recognized statistical rating organization. See NASD Rule 2520(a)(9).

¹² The proposal defines "investment grade debt" as any debt securities assigned a rating in one of the top four rating categories by at least one nationally recognized statistical rating organization. See NASD Rule 2520(a)(10).

¹³ The proposal defines "other marginable non-equity securities" to include debt securities not traded on a national securities exchange that meet certain requirements and private pass-through securities not guaranteed by a U.S. government agency that meet certain requirements. See NASD Rule 2520(a)(16).

¹⁴ Marked to the market losses are unrealized losses on a position in securities resulting from a decline in the position's market value.

¹⁵ The proposal defines "mortgage related securities" to mean securities that fall within the definition in Section 3(a)(41) of the Exchange Act. See NASD Rule 2520(a)(12).

¹⁶ The proposal defines "major foreign sovereign debt securities" as debt securities issued or guaranteed by the government of a foreign country or supranational entity that are assigned a rating in the top rating category by at least one nationally recognized statistical rating organization. See NASD Rule 2520(a)(11).

¹⁷ See NASD Rule 2520(e)(2)(F).

¹⁸ See note 11, *supra*.

¹⁹ See note 12, *supra*.

respectively.²⁰ Although a broker-dealer is not required to collect this margin, it must take a capital charge for any uncollected margin and for any uncollected marked to the market losses.²¹

2. Limitation on Capital Charges

The proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses.²² Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital²³ on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. The broker-dealer also must notify the NASD that it has reached the 5% or 25% threshold.

D. Amendment No. 1

Under the proposal, a broker-dealer must maintain a written risk analysis methodology for managing the credit risk associated with extending good faith margin on securities transactions in "exempt accounts."²⁴ Amendment No. 1 provides a draft Notice to Members ("NTM") that addresses the written risk analysis methodology that members must establish and maintain. Specifically, the NTM states that a member's written risk analysis methodology should include the following:

- Procedures for obtaining and reviewing the appropriate customer account documentation and the customer financial information necessary to determine exempt account status for the extension of credit under the Rule;
- Procedures and guidelines for the determination, review and approval of credit limits to customers and across all customers who qualify as exempt accounts under the Rule;
- Procedures and guidelines for monitoring credit risk exposure to the organization relating to exempt account customers;
- Procedures and guidelines for the use of stress testing of exempt accounts in order to monitor market risk exposure

²⁰ See NASD Rule 2520(e)(2)(G).

²¹ See NASD Rule 2520(e)(2)(G).

²² See NASD Rule 2520(e)(2)(H).

²³ Generally, tentative net capital is a broker-dealer's net worth after deducting most illiquid assets but before making haircut deductions.

²⁴ See NASD Rule 2520(e)(2)(H)(i).

⁴ See letter from Wendy Fried, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Jonathan Katz, Secretary, Commission, dated June 30, 2000 ("TBMA Letter").

⁵ See letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2000 ("NASD Letter"). The TBMA Letter, and the NASD's response, are discussed below.

⁶ 12 U.S.C. 78(g).

⁷ 12 CFR 220 *et seq.*

⁸ Regulation T defines "good faith" margin as the amount of margin that a broker-dealer would require in exercising sound credit judgment.

⁹ 12 CFR 220.12(b).

¹⁰ See NASD Rule 2520(c).

¹¹ The proposal defines "highly rated foreign sovereign debt securities" as debt securities issued

from exempt accounts individually and in the aggregate; and

- Procedures providing for the regular review and testing of these risk management procedures by an independent unit such as internal audit, risk management, or other comparable group.

E. Amendment No. 2

Amendment No. 2 revises the proposal by modifying the definition of "exempt account" in proposed NASD Rule 2520(a)(13). The proposed changes to proposed NASD Rule 2520(a)(13), as published in the 2000 Release,²⁵ appear below. Proposed additions are in *italics*; proposed deletions are in [brackets].

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

(1) through (12). No change.

(13) The term "exempt account" means: [a member, non-member broker/dealer registered as a broker or dealer under the Act, "designated account," or any person having net worth of at least forty-five million dollars and financial assets of at least forty million dollars.]

(A) *a member, non-member broker/dealer registered as a broker or dealer under the Act, a "designated account," or*

(B) *any person that:*

(i) *has a net worth of at least forty-five million dollars and financial assets of at least forty million dollars for purposes of subparagraphs (e)(2)(F) and (e)(2)(G), and*

(ii) *either:*

a. has securities registered pursuant to Section 12 of the Act, has been subject to the reporting requirements of Section 13 of the Act for a period of at least 90 days and has filed all the reports required to be filed thereunder during the preceding 12 months (or such shorter period as it was required to file such reports), or

b. has securities registered pursuant to the Securities Act of 1933, has been subject to the reporting requirements of Section 15(d) of the Act for a period of at least 90 days and has filed all the reports required to be filed thereunder during the preceding 12 months (or such shorter period as it was required to file such reports), or

c. if such person is not subject to Section 13 or 15(d) of the Act, it is a person with respect to which there is publicly available the information specified in paragraphs (a)(5)(i) to (xiv),

inclusive, of Rule 15c2-11 under the Act, or

d. furnishes information to the Securities and Exchange Commission as required by Rule 12g3-2(b) of the Act, or

e. makes available to the member such current information regarding such person's ownership, business, operations and financial condition (including such person's current audited statement of financial condition, statement of income and statement of changes in stockholder's equity or comparable financial reports), as reasonably believed by the member to be accurate, sufficient for the purposes of performing a risk analysis in respect of such person.

III. Summary of Comments

The Commission received one comment letter regarding the proposal.²⁶ The commenter generally supported the proposal, which is substantially identical to a proposal by the New York Stock Exchange, Inc. ("NYSE") that the Commission approved.²⁷ However, the commenter maintained that the written risk analysis methodology included in the NASD's proposal was not required under the NYSE's proposal and was unnecessary because NASD members already are subject to sophisticated external and internal oversight of credit practices. The NASD responded by noting that the written risk analysis methodology was in fact proposed to be required by the NYSE.²⁸

In addition, the commenter referenced its comment letter regarding the NYSE's similar proposal.²⁹ Specifically, the

²⁶ See TBMA Letter, *supra* note 4.

²⁷ See Securities Exchange Act Release No. 48365 (August 19, 2003) (order approving File No. SR-NYSE-98-14) ("NYSE Order"). See also Securities Exchange Act Release Nos. 40278 (July 29, 1998), 63 FR 41822 (August 5, 1998) (notice of File No. SR-NYSE-98-14); and 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (notice of Amendment Nos. 1, 2, and 3 to File No. SR-NYSE-98-14) ("2003 Release").

²⁸ See NASD Letter, *supra* note 5. The NYSE proposed the requirement that members maintain a written risk analysis methodology in Amendment No. 1 to its proposal, which was filed on January 5, 1999, and published for comment on July 14, 2003. The NYSE subsequently filed an Information Memo providing guidelines for a member's written risk analysis methodology. Amendment No. 1 to the NASD's proposal, set forth in Section II.D., *supra*, contains an NTM with written risk analysis methodology guidelines identical to the guidelines established in the NYSE's Information Memo.

²⁹ See letter from Paul Saltzman, Senior Vice President and General Counsel, TBMA, and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 ("TBMA 1998 Letter"). The TBMA 1998 Letter, and the NYSE's response, are discussed in the 2003 Release, *supra* note 27. As noted in the NYSE Order, *supra* note 27, the Commission believes that

commenter requested clarification that: (1) the NYSE's proposed definition of "exempt account" would not supersede the existing definition of "exempt account" in NYSE Rule 431(f)(2)(D)(iv); and (2) existing extensions of credit to accounts that met the current requirements for exempt account status, but that would not meet the proposal's higher financial threshold for exempt accounts, would be "grandfathered" and maintained based on exempt account status even after the increased financial threshold became effective. In this regard, the NASD confirmed that the proposal's definition of "exempt account" does not replace the current definition of "exempt account" contained in NASD Rule 2520(f)(2)(D)(iv). With respect to an extension of credit to an account that currently qualifies as exempt but that would not qualify as an exempt account under the proposal, the NASD indicates that an account's exempt status will be determined as of the date of the initial extension of credit. Accordingly, accounts that meet the current requirements for exempt account status would be "grandfathered" on their existing credit transactions, and the proposal's requirements for exempt account status would apply to any new credit transactions or "roll-overs" of existing credit extensions.

IV. Discussion

Section 15A(g)(3)(A) of the Exchange Act³⁰ provides, among other things, that a national securities association may condition membership privileges on compliance with the association's own financial responsibility rules. Pursuant to this authority, the NASD is authorized to promulgate rules governing the financial responsibility requirements of its members. In addition, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association.³¹ In particular, as described above, for positions not maintained in exempt accounts, the proposal reduces the customer maintenance margin requirement for certain non-equity securities and establishes a customer maintenance margin requirement of 20% of current market value for other marginable non-equity securities. The Commission believes that these

the NYSE sufficiently addressed the questions raised in the TBMA 1998 Letter.

³⁰ 15 U.S.C. 78o-3(g)(3)(A).

³¹ In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ See note 3, *supra*.

requirements are consistent with the extension of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least \$40 million and financial assets of at least \$45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,³² which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 strengthen the proposal by providing guidelines for the written risk analysis methodology that

NASD members must develop and maintain, and by requiring a person seeking exempt account status to meet specific registration and reporting requirements, or to provide certain current information concerning the person's ownership, business, operations, and financial condition. In addition, Amendment Nos. 1 and 2 conform the NASD's proposal to an NYSE proposal that the Commission approved previously.³³ Accordingly, the Commission finds that there is good cause, consistent with sections 15A(b)(6) and 19(b) of the Exchange Act, to approve Amendment Nos. 1 and 2 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-08 and should be submitted by September 23, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,³⁴ that the proposed rule change (SR-NASD-00-08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22229 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

³³ See NYSE Order, *supra* note 27.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48395; File No. SR-NASD-2003-124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.³ Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,⁴ and paragraph (f)(6) of Rule 19b-4 under the Act,⁵ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.⁶ Nasdaq proposes to implement the proposed rule change thirty days after August 6, 2003.⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On August 12, 2003, Nasdaq filed an amendment to the proposed rule change, which it subsequently withdrew. Telephone conversation between John M. Yetter, Associate General Counsel, Nasdaq, and Frank N. Genco, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ This filing applies to persons that are not NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for NASD members. See File No. SR-NASD-2003-123.

⁷ In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of

³² 15 U.S.C. 78o-3(b)(6).

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.]

* * * * *

7000. Charges for Services and Equipment

7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq.

Workstation II Service:

Service Charge	\$2,035/month per service delivery platform (“SDP”)
Display Charge	\$525/month per logon for the first 150 logons \$200/month for each additional logon
Additional Circuit/SDP Charge.	\$3,235/month[*]
<i>PD and SDP Maintenance:</i>	
<i>Monthly maintenance agreement.</i>	\$55/presentation device (“PD”) logon or SDP/month
<i>Hourly fee for maintenance provided without monthly maintenance agreement.</i>	\$195 per hour (two hour minimum), plus cost of parts

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface (“API”) shall be assessed the Service Charge for each of the subscriber’s SDPs and shall be assessed the Display Charge for each of the subscriber’s logons, including logons of an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP(s) i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by

placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(2) No change.

[* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each “underutilized” SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.]

(g)–(u) No change.

* * * * *

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NWII service allows market participants to access SuperMontage and other Nasdaq facilities through Nasdaq’s Enterprise Wide Network II (“EWN II”). Each NWII subscriber location has at least one service delivery platform (“SDP”) that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Workstations may be either Nasdaq Workstation presentation devices (“PDs”) provided by Nasdaq, or workstations and software supplied by the subscriber (often referred to as an “application programming interface” device, or an “NWII substitute”).

Nasdaq currently allows subscribers to contract with Nasdaq for maintenance of their NWII PDs and SDPs on a monthly basis, at the rate of \$55 per PD logon or SDP per month. Maintenance is provided by Nasdaq personnel in the New York metropolitan area and by a contractor in other areas of the country. Nasdaq is now proposing to supplement this monthly maintenance option with an hourly maintenance option for subscribers that may not wish to commit to a monthly maintenance agreement. The fee for maintenance provided without a monthly maintenance agreement will be \$195 per hour, with a two-hour minimum charge for all service calls, plus the cost of parts supplied.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁸ in general, and section 15A(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

the rule to improve the clarity of the rule’s presentation in the NASD Manual.

⁸ 15 U.S.C. 78o–3.

⁹ 15 U.S.C. 78o–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder,¹¹ because the proposal does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,¹² or such shorter time as designated by the Commission.

At any time within 60 days of August 6, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-124 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22231 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48397; File No. SR-Phlx-2003-15]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Specialists Accepting Discretionary Orders on the Limit Order Book

August 22, 2003.

On March 13, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to codify the prohibition against specialists accepting discretionary orders on the limit order book. On June 5, 2003, the Phlx amended the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ 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 clarify for Exchange specialists the types of orders that they may, and may not, accept onto the limit order book.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Phlx-2003-15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22294 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2003, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2004. See 68 FR 39173 (July 1, 2003). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² On July 28, 2003, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change. See letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 28, 2003.

¹³ See 15 U.S.C. 78(b)(3)(C).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48160 (July 17, 2003), 68 FR 42452.

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).

amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2004. While the Commission intends to address these priority issues, it recognizes that other factors, such as the enactment of legislation requiring Commission action, may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2004. The Commission may address any unfinished policy work from this agenda during the amendment cycle ending May 1, 2005.

For the amendment cycle ending May 1, 2004, and possibly continuing into the amendment cycle ending May 1, 2005, the Commission has identified the following policy priorities:

(1) Implementation of the PROTECT Act, Pub. L. 108-21, including guideline amendments addressing the directives to the Commission in (A) section 401 pertaining to downward departures; (B) sections 401, 504, 512, and 513 pertaining to new and existing sex offenses and offenses involving virtual pornography; and (C) section 608 pertaining to increased penalties for offenses involving the trafficking of GHB;

(2) consideration and implementation of recommendations made by the Commission's Organizational Guidelines Advisory Group;

(3) consideration and implementation of recommendations made by the Commission's Native American Advisory Group;

(4) continuation of its work implementing the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, including guideline amendments pertaining to (A) assaulting or threatening Federal judges or other officials described in 18 U.S.C. 111 or 115; and (B) a new offense, at 18 U.S.C. 931, prohibiting violent felons from purchasing, owning, or possessing body armor;

(5) consideration of guideline amendment proposals related to the public corruption guidelines in Chapter Two, Part C (Offenses Involving Public Officials);

(6) continuation of its work on the 15 Year Study, which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2);

(7) continuation of its policy work related to manslaughter, particularly consideration of guideline amendment proposals providing specific offense

characteristics in 2A1.4 (Involuntary Manslaughter), and other homicide offenses;

(8) continuation of its policy work related to immigration offenses, including offenses under 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States);

(9) continuation of its work with Congress and other interested parties on cocaine sentencing policy consistent with the recommendations made by the Commission in its 2002 report to Congress, *Cocaine and Federal Sentencing Policy*;

(10) consideration of guideline amendment proposals pertaining to terrorism, including terrorism offenses involving man-portable air defense systems (MANPADS) and other similar weapons and the illegal transportation of hazardous materials;

(11) consideration of guideline amendment proposals pertaining to compassionate release programs;

(12) other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (A) offenses involving the unlawful sale or transportation of drug paraphernalia; and (B) offenses involving the receipt or possession of stolen mail;

(13) implementation of other crime legislation enacted during the first session of the 108th Congress warranting a Commission response;

(14) review of the limitation on the base offense level (*i.e.*, not more than level 30) provided in subsection (a)(3) of 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit these Offenses); Attempt or Conspiracy); and

(15) continuation of its multiyear research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (A) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (B) assessment of the criminal history rules for minor offenses, juvenile offenses, and expunged convictions; (C) assessment of the criminal history rules for related cases; and (D) consideration of other application issues relating to simplifying the operation of Chapter Four.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 03-22250 Filed 8-29-03; 8:45 am]

BILLING CODE 2210-40-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3534]

State of Ohio (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 25, 2003, the above numbered declaration is hereby amended to include Franklin and Jefferson counties as disaster areas due to damages caused by tornadoes, flooding, severe storms and high winds occurring on July 21, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Belmont, Delaware, Fairfield, Licking, Madison, Pickaway and Union in the State of Ohio; and Brooke and Ohio counties in the State of West Virginia may be filed until the specified date at the previously designated location. 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 30, 2003, and for economic injury the deadline is May 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 26, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03-22321 Filed 8-29-03; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) will be hosting a meeting of the National Advisory Councils (NAC). The meeting will be held from Wednesday, September 17th through Thursday, September 18th, 2003, at the Washington Hilton located at 1919 Connecticut Avenue, Washington, DC 20009.

Anyone wishing to attend and make an oral presentation to the Board must contact Kimberly Mace, no later than

Tuesday, September 2, 2003, via e-mail or fax. Kimberly Mace, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; (202) 401-8525 phone or (202) 481-2974 fax or e-mail kimberly.mace@sba.gov.

Sincerely,

Scott Morris,

Deputy Chief of Staff.

[FR Doc. 03-22226 Filed 8-29-03; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2003-52]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 22, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA-200X-XXXXX] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA-2003-15751.

Petitioner: JetBlue Airways, Inc.

Section of 14 CFR Affected: 14 CFR 91.107 and 121.311.

Description of Relief Sought: To permit JetBlue Airways, Inc., to operate Airbus A-320 aircraft equipped with a child restraint device, in addition to the aircraft's lap belt. The restraint device holds the upper torso of a child who is between 22 and 44 pounds, to the seat back in its own airplane seat. In addition, the device is being evaluated to determine if it will meet all occupant safety requirements established by the Los Angeles Aircraft Certification Office during the Supplemental Type Certificate process.

Docket No.: FAA-2003-14780.

Petitioner: Ronald DiGiovanni.

Section of 14 CFR Affected: 14 CFR 61.113(c).

Description of Relief Sought: To permit members of Ronald DiGiovanni's family to cover all of his operating expenses when being carried as passengers on an airplane that he is operating as pilot in command under his private pilot certificate.

[FR Doc. 03-22211 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Additional Requirements: Aquila GmbH Engine Mount Connection Design Criteria and Winglets for the Aquila GmbH AT01 JAR-VLA Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed design criteria and request for comments.

SUMMARY: This notice announces the availability of and requests comments on the proposed design criteria for fire protection of the connection between the metal structure of an engine mount and composite airframe on an Aquila GmbH AT01 single-engine aircraft with winglets on the wings. This airplane will be certified under the requirements of JAR-VLA (Joint Aviation Requirements—Very Light Aircraft) Amendment VLA/92/01 as developed by the Joint Aviation Authority, and under Title 14 of the Code of Federal Regulations. Additional provisions addressing JAR-VLA parts 865, 1191, and 445 were issued by the airworthiness authority for Germany, the Luftfahrt-Bundesamt (LBA). The FAA is issuing the same additional requirements.

DATES: Comments must be received on or before October 2, 2003.

ADDRESSES: Send all comments on the proposed design criteria to: Federal Aviation Administration, Attention: Mr. Karl Schletzbaum, Project Support Office, ACE-112, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, 816-329-4146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed policy by submitting such written data, views, or arguments as they may desire. Commenters should identify the proposed design criteria on the Aquila GmbH engine mount and winglets, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final design criteria.

Discussion*Proposed Design Criteria*

This airplane will be certified under the requirements of JAR-VLA (Joint Aviation Requirements—Very Light Aircraft) Amendment VLA/92/01 as developed by the Joint Aviation Authority and 14 CFR 21.17.

Additional Requirements: Engine Mount Connection Design Criteria

The Aquila AT01 is a full composite single-engine aircraft with the engine mount fitted to the glass fiber composite fuselage. The airplane will be certified to the requirements of JAR/VLA 865 (Fire protection of flight controls and other flight structure) and JAR/VLA 1191 (Firewalls). However, tests must be performed that demonstrate that the interface between the metallic engine mount and the glass fiber reinforced plastic fuselage withstand a fire for 15 minutes while carrying loads under the following conditions:

(a) With one lost engine mount fitting the loads are distributed over the remaining 3 engine mount fittings. The most critical of these fittings must be chosen for the test.

(1) The loads are:

(i) in Z-direction the mass of the propulsion unit multiplied by a maneuvering load factor resulting from a 30° turn for 15 minutes, superimposed by a maneuvering load of 3 seconds representing the maximum positive limit maneuvering load factor of $n=3.8$ arising from JAR/VLA 337(a).

(ii) in X-direction the engine propulsion force at maximum continuous power for 5 minutes.

(b) The flame to which the component test arrangement is subjected must provide a temperature of 500° C within the target area.

(c) The flame must be large enough to maintain the required temperature over the entire test zone, *i.e.*, the fitting on the engine compartment side.

(d) It must be shown that the test equipment, *e.g.*, burner and instrumentation are of sufficient power, size, and precision to yield the test requirements arising from paragraphs (a) to (c) above. Guidance will be drawn from advisory material AC 20-135 to AC 23-2.

Additional Requirements: Winglets

Since winglets, as a specific structural element, are not addressed in the JAR/VLA requirements, the following is required:

Compliance must be demonstrated to the requirements of JAR 23.445—Outboard fins or winglets.

Issued in Kansas City, Missouri, on August 15, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22209 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Final Policy Statement, Propeller Testing V_d Versus V_{NE} , PS-ACE100-2002-008**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This notice announces the issuance of policy PS-ACE100-2002-008, Final Policy Statement, Propeller Testing V_d Versus V_{NE} . The purpose of this policy statement is to clarify the flight testing requirements for vibration and flutter when a different propeller is installed on an aircraft. The installation of a different propeller model, whether by supplemental, amended, or new type certification, is a significant design change, as defined in Order 8100.5, chapter 1, paragraph 103, subparagraph j, section 2 f:

DATES: PS-ACE100-2002-008 was issued by the Acting Manager of the Small Airplane Directorate on July 23, 2003.

How to Obtain Copies: A paper copy of the policy PS-ACE100-2002-008 may be obtained by contacting Mr. Pete Rouse, (816) 329-4135 Small Airplane Directorate, Standards Office (ACE-110), Aircraft Certification Office, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106, or by faxing your request to (816) 329-4090. The policy will also be available on the Internet at <http://www.airweb.faa.gov/policy>.

Issued in Kansas City, Missouri on August 15, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-22210 Filed 8-29-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Investment Securities (12 CFR 1)." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by October 2, 2003.

ADDRESSES: You should direct comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0205-2, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874-4448, or by e-mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR 1).

OMB Number: 1557-0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Dated: August 26, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03-22288 Filed 8-29-03; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Thrift Financial Report and Monthly Cost of Funds

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995.

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to Joseph.F.Lackey.Jr@omb.eop.gov; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. Commenters should be aware that there may be unpredictable and lengthy delays in postal deliveries to the Washington, D.C. area and may prefer to make their comments via facsimile, e-mail, or hand delivery. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at marilyn.burton@ots.treas.gov, (202) 906-6467, or facsimile number (202) 906-6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. You can obtain a copy of the March 2004 Thrift Financial Report form from the OTS Internet Site at <http://www.ots.treas.gov>.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not

required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Thrift Financial Report (TFR) and Monthly Cost of Funds

OMB Number: 1550-0023.

Form Number: OTS 1313.

Description: OTS collects financial data from OTS-regulated savings associations and their subsidiaries and holding companies in order to assure their safety and soundness as depositories of the personal monies of the general public. OTS monitors the association's financial position and interest-rate risk so that adverse conditions can be identified promptly.

Discussion of Comments and Requested Form Changes: After publishing in the **Federal Register** on January 23, 2003 (68 FR 3318) notice of its intent to make certain changes to the Thrift Financial Report (TFR) effective March 2004 and reviewing and analyzing all comments, OTS has made the following changes to its information collection request to OMB:

Acceleration of Due Dates: Because the majority of the commenters opposed accelerating the filing due date for the TFR and since OTS does not want to impose additional reporting burden on the industry, OTS will not change the TFR filing due date. OTS will retain the same filing due date that the other banking agencies have for the Call Report, which is 30 days after the end of the quarter. Additionally, the filing due date for Schedules HC (Holding Company) and CMR (Consolidated Maturity/Rate) will remain at 45 days after the close of the quarter.

Average Balance Sheet Data: OTS will collect the average balance sheet data proposed, but at the request of several commenters, OTS will allow all institutions regardless of their asset size to use month-end data in their calculations, rather than requiring the use of daily or weekly balances. The averages will be included in Schedule SI and will be publicly available.

Transactions with Affiliates: Due to public response, OTS will combine its proposed items into two line items: (1) Outstanding balances of covered transactions with affiliates that are subject to quantitative limits (Transactions under section 23A of the Federal Reserve Act) and (2) Activity during the quarter of other covered transactions with affiliates, not subject to quantitative limits (Transactions under section 23B of the Federal Reserve Act). This information will be

confidential and will not be released to the public. These two data items will be included on Schedule SI and will be due 30 days after the close of the quarter.

Holding Company Data: OTS will expand the holding company data collected in Schedule HC as proposed. Clarifications will be made to the TFR instructions to address comments regarding the scope of some of the supplemental questions. For instance, OTS has narrowed which subsidiaries must be included to those determined to be significant based on consolidated assets, consolidated gross revenues, or the volume of affiliate transactions. Additionally, effective with 2004 reporting, OTS will revise Form H-b(11) to reduce duplicative reporting requirements.

Federal Home Loan Bank Dividends: As proposed, OTS will add a line in Schedule SO (Statement of Operations) for Federal Home Loan Bank dividend income. As requested by commenters, OTS will include FHLB dividends in net interest income, conforming to the presentation in the commercial bank Call Report. In Schedule SO (Statement of Operations), OTS will add a new section following Interest Income for Dividend Income on Equity Investments Not Subject to FASB Statement No. 115, which will include Federal Home Loan Bank dividend income. This new section will be included in net interest income. OTS will also revise Schedule SC (Statement of Condition) to include Federal Home Loan Bank stock under the section for equity investments not subject to FASB Statement No. 115.

Refinancing Loans: OTS will change the definition of CF360, Refinancing Loans, to include any mortgage loan that is not a purchase money mortgage.

Schedule CSS (Subsidiary Schedule): In response to comments, OTS will leave the collection frequency of Schedule CSS as annual and, additionally, will require reporting only of those subsidiaries that meet any one of the following criteria: (1) The gross revenue of the consolidated subsidiary is 5% or more of the gross revenue of the consolidated thrift; or (2) the total assets of the consolidated subsidiary are 5% or more of the consolidated thrift assets; or (3) the consolidated subsidiary is regulated by a state insurance department, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or (4) the Regional Director deems there is a supervisory reason for requiring the reporting of the subsidiary. Institutions may continue to report subsidiaries that are not required to be reported if they choose.

All Other Revisions: OTS will adopt as proposed the remaining changes to the 2004 TFR published in the **Federal Register** on January 23, 2003 (68 FR 3318).

Type of Review: Revision of a previously approved collection.

Affected Public: Savings Associations.

Estimated Number of Respondents: 925.

Estimated Frequency of Response: Variable depending on the schedule—Monthly, Quarterly, or Annually.

Estimated Burden Hours per Response: 35.42 hours average for quarterly schedules, 2.5 hours average for schedules required annually, and 0.5 hours for the monthly schedule, plus recordkeeping of an average of one hour per quarter.

Estimated Total Burden: 142,608 hours. Because some of these proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above may vary from institution to institution.

Clearance Officer: Marilyn K. Burton, (202) 906-6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

[FR Doc. 03-22246 Filed 8-29-03; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Loan Application Register (HMDA)

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of

Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to Joseph_F_Lackey_Jr@omb.eop.gov; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at marilyn.burton@ots.treas.gov, (202) 906-6467, or facsimile number (202) 906-6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Loan Application Register (HMDA).

OMB Number: 1550-0021.

Form Number: N/A.

Regulation requirement: 12 CFR 203.

Description: The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801, requires this collection of information. In accordance with the HMDA, the Board of Governors of the Federal Reserve System (FRB) promulgates and administers HMDA regulations, which are prescribed as part of the FRB's Regulation C (12 CFR 203), implementing the HMDA (12 U.S.C. 2801-2810). HMDA forms as well as collection and recordkeeping requirements are approved under OMB Control No. 7100-0247. The FRB supporting statement forms the decisional basis for the OMB action. This submission discusses the burden imposed by Regulation C on the institutions OTS regulates.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 718 (loan application registers (LARs)).

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 0.03 hours per application (approximately 7,064 applications per LAR).

Estimated Total Burden: 152,159 hours.

Clearance Officer: Marilyn K. Burton, (202) 906-6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 2003

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03-22334 Filed 8-29-03; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0073]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 2, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-8030, FAX (202) 273-5981 or e-mail: denise.mclamb@mail.va.gov. Please refer to "OMB Control No. 2900-0073."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7316.

Please refer to "OMB Control No. 2900-0073" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Enrollment Certification, VA Form 22-1999.

(**Note:** A reference to VA Form 22-1999 also includes VA Forms 22-1999-1, 22-1999-2, 22-1999-3, 22-1999-4, 22-1999-5, and 22-1999-6 which contains the same information as VA Form 22-1999.)

OMB Control Number: 2900-0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job establishments use VA Form 22-1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. VA is authorized to make payments in advance if the trainee requests an advance payment. In certain instances, VA is authorized to make a lump sum payment of a claimant's tuition and fees if the trainee requests an accelerated payment. The form serves as the trainee's request for an advance or accelerated payments as well as the educational institutions report to the trainee's enrollment. The information collected on the form is used to determine the amount of educational benefits payable to the trainee during the period of enrollment or training. Without the information, VA would not have a basis upon which to make payment.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33227.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or Tribal government.

Estimated Annual Burden: 137,424 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 916,160.

Estimated Number of Respondents: 8,180.

Dated: August 21, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03-22197 Filed 8-29-03; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0569]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Lynne R. Heltman, Veterans Benefits Administration (245), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail lynne.heltman@mail.va.gov. Please refer to "OMB Control No. 2900-0569" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lynne R. Heltman at (202) 273-5440.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Benefits Administration Customer Satisfaction Surveys.

OMB Control Number: 2900-0569.

Type of Review: Extension of a currently approved collection.

Abstract: VBA administers integrated programs of benefits and services,

established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VBA uses customer satisfaction surveys to gauge customer perceptions of VA

services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VBA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households and, Businesses or other for-profits.

NATIONAL SURVEY ACTIVITIES

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction with the VA Compensation and Pension Claims Process			
2004	24,000	7,290	One-time.
2005	24,000	7,290	One-time.
2006	24,000	7,290	One-time.
Survey of Veterans'/Dependents' and Servicemembers' Satisfaction with the VA Education Claims Process			
2004	2,968	979	One-time.
2005	2,968	979	One-time.
2006	2,968	979	One-time.
Survey of Educational Institution Certifying Officials			
2004	1,000	330	One-time.
2005	1,000	330	One-time.
Survey of Veterans' Satisfaction with the VA Home Loan Guaranty Process			
2004	7,560	1,262	One-time.
2005	7,560	1,262	One-time.
2006	7,560	1,262	One-time.
VA Loan Guaranty Lender Satisfaction Survey			
2004	1,992	498	One-time.
2005	1,992	498	One-time.
2006	1,992	498	One-time.
VA Survey of Veterans' Satisfaction with the Vocational Rehabilitation & Employment Program			
2004	3,300	1,089	One-time.
2005	3,300	1,089	One-time.
2006	3,300	1,089	One-time.
Insurance Customer Surveys			
2004	2,800	280	One-time.
2005	2,800	280	One-time.
2006	2,800	280	One-time.
Undetermined Focus Groups (Targeted population groups are to be decided)			
2004	500	1,000	One-time.
2005	500	1,000	One-time.
2006	500	1,000	One-time.
Telephone Survey			
2004	7,200	1,224	One-time.
2005	7,200	1,224	One-time.
2006	7,200	1,224	One-time.
VA Regional Office-Based Survey Activities—Customer Satisfaction Focus Groups			
2004	600	1,800	One-time.
2005	600	1,800	One-time.

NATIONAL SURVEY ACTIVITIES—Continued

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
2006	600	1,800	One-time.
VA Regional Office-Specific Service Improvement Initiatives (Comment Card)			
2004	80,000	6,640	One-time.
2005	80,000	6,640	One-time.
2006	80,000	6,640	One-time.

Most customer satisfaction surveys will be recurring so that VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VBA's performance. VBA expects to conduct an estimated 100 focus groups and receive up to 80,000 comment cards involving a total of 6,640 hours each year for 2004, 2005, and 2006. In addition, VBA expects to distribute written surveys with a total annual burden of approximately 16,052 hours in 2004, 16,382 hours in 2005, and 16,382 hours in 2005. The grand totals for both focus groups, comment cards, and written surveys are: 22,692 hours in 2004, 23,022 hours in 2005, and 23,022 hours in 2006.

Anyone may view the results of previously administered surveys on the internet by going to the following VBA surveys Web site: <http://www.vba.va.gov/surveys/>.

The areas of concern to VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys, focus groups and to send out comment cards. Participation in the surveys, focus groups, and comment cards will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VBA will consult with OMB regarding each specific information collection during this approval period.

Dated: August 15, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03-22198 Filed 8-29-03; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0154]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine veterans, servicepersons and members of the selected reserve eligibility for education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0154" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for VA Education Benefits, VA Form 22-1990.

OMB Control Number: 2900-0154.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, servicepersons and members of the selected reserve must complete VA Form 22-1990 to apply for education benefits under chapters 30 and 32 of title 38 U.S.C., chapter 1606 of title 10 U.S.C., and section 903 of Public Law 96-342. The information requested on VA Form 22-1990 is used to determine the applicant's eligibility to education benefits. The form was modified to enact the transfer of chapter 30 benefits to dependents. Under Public Law 107-107, a veteran's spouse or child can apply for chapter 30 benefits that the veteran has transferred to the spouse or child.

Affected Public: Individuals or households.

Estimated Annual Burden: 72,000 hours.

Estimated Average Burden Per Respondent: 54 minutes.

Frequency of Response: Only once.

Estimated Number of Respondents: 80,000.

Dated: August 21, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03-22199 Filed 8-29-03; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on October 15, 2003, from 9 a.m. to 2 p.m. The meeting will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Room 830, Washington, DC. The meeting is open to the public.

The purpose of the Special Medical Advisory Group is to advise the Secretary and Under Secretary for Health on matters relating to the care and treatment of veterans, and other matters pertinent to the Veterans Health Administration such as research, education and training, and VA/DOD

contingency planning. The agenda for the meeting will include discussions of strategic clinical issues of research, education and training of health care professionals, health manpower, and long term care.

Any member of the public wishing to attend should contact Ms. Sylvia Best, Office of the Under Secretary for Health, Department of Veterans Affairs, at (202) 273-5806. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be filed before the meeting or within 10 days after the meeting.

Dated: August 20, 2003.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 03-22196 Filed 8-29-03; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 68, No. 169

Tuesday, September 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04011]

Grants for Injury Control Research Centers; Notice of Availability of Funds

Correction

In notice document 03-21514 beginning on page 50778 in the issue of

Friday, August 22, 2003, make the following correction:

On page 50778, in the first column, under the heading *Application* *Deadline*: “September 22, 2003” should read “November 20, 2003”.

[FR Doc. C3-21514 Filed 8-29-03; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

Tuesday,
September 2, 2003

Part II

Federal Communications Commission

47 CFR Part 51

**Review of the Section 251 Unbundling
Obligations of Incumbent Local Exchange
Carriers; Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996;
Deployment of Wireline Services Offering
Advanced Telecommunications Capability;
Final Rule and Proposed Rule**

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 51**

[CC Docket Nos. 01–338; CC Docket No. 96–98; CC Docket No. 98–147; FCC 03–36]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules which establish a new standard for determining the existence of impairment under section 251(d)(2) of the Act, sets forth a new list of unbundled network elements (UNEs), and creates a specifically defined role for the states in the unbundling inquiry. The new interpretation of the “impair” standard in section 251(d)(2) finds a requesting carrier to be impaired when lack of access to a facility in the incumbent LEC’s network poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. The Commission reaffirms that the “at a minimum” language of section 251(d)(2) permits the Commission to take into account factors other than the “impair” and “necessary” standards, particularly important goals of the 1996 Act, when making unbundling determinations. The Commission applies its unbundling analysis to individual elements in a more granular manner than before. Under this more granular approach, the Commission determines whether impairment varies by geographic location, customer class, and service, including a consideration of the type and capacity of the facilities to be used.

DATES: Effective October 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580 or via the Internet at jmiller@fcc.gov. The complete text of this Report and Order and Order on Remand is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline

Competition Bureau’s TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order and Order on Remand in CC Docket No. 01–338, CC Docket No. 96–98, and CC Docket No. 98–147; FCC 03–36, adopted February 20, 2003, and released August 21, 2003. The full text of this document may 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. It is also available on the Commission’s Web site at http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications.

Synopsis of the Report and Order and Order on Remand

1. *Background.* In the *Notice of Proposed Rulemaking (NPRM)* (67 FR 1947, Jan. 15, 2002), the Commission sought comment on many issues concerning the unbundling obligations of incumbent local exchange carriers (LECs) under section 251(c)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). After the Commission issued the *NPRM*, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *United States Telecom Association v. FCC (USTA)*, in which it vacated and remanded the Commission’s prior unbundling rules. The Commission issues this *Report and Order and Order on Remand (Order)* to complete the rulemaking it began with the *NPRM* and respond to the D.C. Circuit’s concerns regarding the prior rules.

2. Section 251(c)(3) of the Act requires that incumbent LECs provide UNEs to other telecommunications carriers. Section 153(29) of the Act defines “network element” as “a facility or equipment used in the provision of a telecommunications service,” specifying that “[s]uch term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provisions of a telecommunications service.” Section 251(d)(2) of the Act establishes a general federal standard for use in determining the UNEs that must be made available by the incumbent LECs pursuant to section 251. Section 251(d)(2) provides that “[i]n

determining what network elements should be made available for purposes of section (c)(3), the Commission shall consider, at a minimum, whether “(A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”

3. In addition, the Act preserves a state role in addressing unbundling issues. First, section 252 authorizes states to review and to arbitrate interconnection agreements for compliance with the requirements of sections 251 and 252 and this Commission’s implementing rules. Second, section 251(d)(3) also preserves states’ independent state law authority to address unbundling issues to the extent that the exercise of that authority does not conflict with federal law.

4. *Definition of Network Element.* The Commission interprets the definition of “network element” in section 153(29) to refer to an element of the incumbent’s network that is capable of being used to provide a telecommunications service.

5. *Impair Standard.* The Commission finds a requesting carrier to be “impaired” under section 251(d)(2) when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. This granular analysis is informed by consideration of the relevant barriers to entry, as well as a careful examination of the evidence, especially marketplace evidence showing whether entry has already occurred in particular markets without reliance on the incumbent LEC’s networks but instead through self-provisioning or reliance on third-party sources.

6. Several types of barriers to entry inform the “impair” analysis. Scale economies, particularly when combined with sunk costs and first mover advantages, can pose a powerful barrier to entry. The Commission will consider the pervasiveness of scale economies to determine whether, in combination with other factors, they are likely to make entry uneconomic. For similar reasons, the Commission also examines scope economies to determine whether they, too, could contribute to a barrier to entry. Sunk costs, particularly when combined with scale economies, can pose a formidable barrier to entry. First mover advantages can contribute to the factors described above. First mover advantages can include preferential access to buildings, access to rights of way, the higher risk of a new entrants’

failure (often exacerbated by high sunk costs), the fact that the incumbent LEC has substantial sunk capacity, operational difficulties faced by an entrant that have already been worked out by the incumbent LEC when it built out its network as a monopolist, consumers' reluctance to switch carriers, and advertising and brand name preference. The Commission also examines those barriers to entry that are solely or primarily within the control of the incumbent LEC. The Commission looks to these barriers because it is within the control of the incumbent LEC to eliminate them or mitigate their effects, which could eliminate the need to unbundle network elements to overcome them.

7. *Evidence of Impairment.* Actual marketplace evidence is the most persuasive and useful kind of evidence submitted to show that impairment does not exist, in particular granular evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities. The Commission gives substantial weight to evidence of alternative deployment, but will not find it conclusive or presumptive of no impairment without additional information. On the other hand, if the marketplace evidence shows that new entrants have not widely deployed a particular kind of facility, the Commission will consider the facts as some evidence that barriers to entry in that market for that element are preventing the deployment, but will not presume from lack of entry or lack of deployment, however, that there are barriers to entry in the relevant market, or that any barriers cannot be overcome through means other than unbundling without further analysis. The Commission also gives weight to evidence that intermodal alternatives can be used to provide telecommunications service.

8. The application of the "impair" standard does not change depending on whether a new entrant is providing retail or wholesale services. The Commission also reaffirms its prior conclusion in the *UNE Remand Order*, 65 FR 2367 (Jan. 14, 2000) to afford little weight to evidence that requesting carriers are using incumbent LEC tariffed services.

9. *Granularity of the Impairment Analysis.* In the *NPRM*, the Commission asked many questions about whether and how to make the unbundling analysis more granular by considering such factors as specific services, specific geographic locations, the different types and capacities of facilities, and customer and business considerations.

Subsequently, the *USTA* decision directed the Commission to approach the section 251(d)(2) impairment analysis by considering market-specific variations in impairment. The Commission applies several types of granularity in the unbundling analysis, including considerations of customer class, geography, and service. In addition, within discussions of specific network elements, the Commission injects granularity into the analysis by considering types and capacities of facilities.

10. In particular, with regard to customer class, the Commission finds that the economic characteristics of the mass market and enterprise market can be sufficiently different that they constitute major market segments. With regard to geographic granularity, the Commission considers whether impairment varies geographically throughout the country. In those instances where the record permits the Commission to create unbundling rules that apply nationally, it does so. In other instances, the Commission may delegate authority to state commissions to ensure that the unbundling rules are implemented on the most accurate level possible while still preserving administrative practicality.

11. Finally, with regard to the different services that competitors may wish to offer using UNEs, the Commission adopts an approach that obligates incumbent LECs to provide access to UNEs only when requesting carriers seek to use those elements to compete against those services that traditionally have been the exclusive domain of incumbent LECs, or "qualifying services." "Qualifying services" include, for example, local exchange service, such as POTS, and access services, such as special access using high-capacity circuits. Once a requesting carrier has obtained access to a UNE to provide a "qualifying service," the carrier may use that UNE to provide any additional services, including non-qualifying telecommunications and information services. In order to gain access to a UNE under section 251(c)(3), a requesting carrier must provide a "telecommunications service," and specifically a qualifying telecommunications service, over that UNE. The Commission has interpreted "telecommunications services" to mean services offered on a common carrier basis.

12. *Implicit Support Flows.* In the *USTA* decision, the D.C. Circuit addressed the question of implicit support flows and their relationship to the Commission's decision making under section 251. The court concluded,

among other things, that the Commission had not adequately explained its decision to adopt nationwide unbundling requirements in light of the implicit support flows found in telecommunications rates. In reaching this conclusion, the court expressed concerns about the Commission's approach to unbundling both in areas where the incumbent LEC's retail rates may exceed its costs (presumably referring to historic costs) and in areas where incumbent LEC retail rates may be below cost. By focusing on the economic and operational viability of entry in different market segments, the revised impairment standard addresses the issue of implicit support flows in a manner that is responsive to the concerns raised by the D.C. Circuit. At the same time, the Commission concludes that the statute is best interpreted as giving it considerable discretion to address the relationship between implicit support flows and its impairment analysis. In general terms, the new impairment standard provides that a requesting carrier is deemed to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. The impairment standard is unlikely to result in unwarranted unbundling in the case of areas and services for which local exchange rates generally exceed the incumbent LEC's costs. In addition, were the impairment standard to require unbundling for services and areas with "below cost" rates where actual competitive entry does not take place, little harm would result. The statute contains an exemption from the unbundling requirements for rural carriers and provides for state modification or suspension of the unbundling requirements for incumbent carriers serving, in the aggregate, less than two percent of the nation's access lines. This allows the states to prevent any problems that they believe might result from unbundling requirements in these circumstances.

13. *The "Necessary" Standard.* Section 251(d)(2) requires the Commission, in making its unbundling determination, to consider whether "access to such network elements as are proprietary in nature is necessary." The Commission determines to readopt the interpretation of "necessary" that it gave in the *UNE Remand Order*: a proprietary network element is "necessary" if, taking into consideration the availability of alternative elements outside the

incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, preclude a requesting carrier from providing the services it seeks to offer.

14. "At a Minimum". Section 251(d)(2) provides that "the Commission shall consider, at a minimum, whether * * * the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." While this phrase permits the Commission to take factors other than "necessary" and "impair" into account in making the unbundling determination, the Commission applies "at a minimum" with restraint. In this Order, the Commission has not required the unbundling of any network element in the absence of impairment. But it has used this authority to inform its consideration of unbundling in contexts where some level of impairment may exist, but unbundling appeared likely to undermine important goals of the 1996 Act, such as in the analyses of fiber-to-the-home and hybrid loops.

15. *Role of the States*. The 1996 Act—specifically sections 251(d)(3) and 252(e)(3)—preserves the states' authority to establish unbundling regulations pursuant to state law as long as the exercise of state authority does not conflict with the Act and its purposes or substantially prevent the Commission's implementation. In addition, sections 261(b) and (c) generally preserve state authority to take action pursuant to state law, provided that such action is consistent with the Act and the federal framework. The Communications Act assigns the Commission the responsibility for establishing a framework to implement the unbundling requirements of section 251(d)(2). In this Order, the Commission creates rules for UNEs based on the impairment standard and marketplace developments over the past three years. The Commission recognizes that competition has evolved at a different pace in different geographic markets and for different market segments. Thus, to ensure that the proper degree of unbundling occurs, the Commission relies, in certain instances when such analysis is necessary, on market-by-market fact-finding determinations made by the states.

16. While the Commission delegates to the states a role in the implementation of the federal unbundling requirements for certain network elements that require this more

granular approach, the Commission makes clear that any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations set forth herein. The Commission also finds that the 1996 Act preserved the states' authority to prescribe access obligations pursuant to state law in section 251(d)(3), but only to the extent that state laws or regulations do not conflict with or frustrate the Act and its purposes or substantially prevent the federal implementation regime.

17. If a state commission fails to perform the granular inquiry this Commission delegates to it, any aggrieved party may petition this Commission to step into the state's role. Any carrier seeking Commission review of a state commission's failure to act shall file a petition with this Commission that explains with specificity the bases for the petition and information that supports the claim that the state has failed to act. The Commission will issue a public notice seeking comment on the petition and rule on the petition within ninety days from this public notice. If the Commission agrees that the state has failed to act, it will assume responsibility for the proceeding and make any findings in accordance with the rules set forth herein. These findings will be made nine months from the time the Commission has assumed responsibility for the proceeding.

18. Parties that believe that a particular state unbundling obligation (imposed pursuant to state law) is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission. If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits in section 251(d)(2)—or otherwise declined to require unbundling on a national basis, it is unlikely that such decision would fail to conflict with, and thus would "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C).

19. *Mass Market Loops*. The Commission finds that requesting carriers are impaired on a national basis without unbundled access to an incumbent LEC's local loops used to provide narrowband services to the mass market. The Commission thus requires that incumbent LECs provide unbundled access to the complete transmission path comprised of a copper local loop between the central

office and the customer's premises, including all intermediate devices (e.g., repeaters, load coils) used to establish the transmission path. This network element includes all local loops comprised of copper cable, whether in active service or deployed as spares. Incumbent LECs also must provide the requesting carriers with nondiscriminatory access to the same detailed loop information that is available to the incumbent LEC in the same time intervals it is provided to the incumbent LEC's retail operations.

20. The Commission reaffirms the existing rules that require incumbent LECs to permit competing carriers to engage in line splitting where a competing carrier purchases the whole loop and provides its own splitter. For purposes of clarity and regulatory certainty, however, the Commission also adopts line splitting-specific rules, including the requirement that incumbent LECs modify their OSS to facilitate line splitting.

21. The Commission requires incumbent LECs to provide unbundled access to their copper subloops, i.e., the distribution plant consisting of the copper transmission facility between a remote terminal and the customer's premises, including inside wire. To facilitate competitive LEC access to the copper subloop UNE, the Commission requires incumbent LECs to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals. Unlike the Commission's previous subloop unbundling rules, the Commission does not require incumbent LECs to provide unbundled access to their feeder loop plant as stand-alone UNEs. The Commission expects, however, that incumbent LECs will develop wholesale service offerings for access to their fiber feeder, which would be subject to sections 201 and 202 of the Act.

22. The Commission finds that unbundled access to conditioned, stand-alone copper loops is sufficient to overcome impairment for the provision of broadband services. Consequently, the Commission finds that, subject to the grandfather provision and transition period, incumbent LECs do not have to unbundle the high-frequency portion of the local loop (HFPL) for requesting telecommunications carriers.

23. The Commission adopts an interim grandfathering rule to help alleviate the impact of the elimination of the HFPL UNE on competitive LECs and end user customers. Until the next biennial review, the Commission grandfathers all existing line sharing arrangements unless the respective competitive LEC discontinues providing

xDSL service to the particular end user customer. During this interim period, the Commission directs incumbent LECs to charge the same price for access to the HFPL for those grandfathered customers as the incumbent LECs charged prior to the effective date of this Order.

24. The Commission also adopts a three-year transition period for new line sharing arrangements of requesting carriers. During the first year, which begins on the effective date of this Order, competitive LECs may obtain new line sharing customers using the HFPL at recurring charge equal to 25 percent of the state-approved rates or the agreed-upon rates in existing interconnection agreements for stand-alone copper loops for that location. During the second year, the recurring charge for access to the HFPL for customers acquired after the effective date of this Order will increase to 50 percent of the state-approved rate or the agreed-upon rate in existing interconnection agreements for a stand-alone copper loop for that location. In the last year of the transition period, the recurring charge for access to the HFPL for those customers obtained after the effective date of this Order will increase to 75 percent of the state-approved rate or the agreed-upon rate for a stand-alone loop for that location. After the transition period, any new customer must be served through a line splitting arrangement, through use of a stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. If line sharing obligations are imposed by a state law decision after the effective date of this Order, any party that believes such decision is inconsistent with the limits of sections 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission.

25. In addition, incumbent LECs are only required to provide access to the HFPL if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the loop over which the requesting carriers seeks access to provide ADSL service. In the event that the customer ceases purchasing voice service from the incumbent LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service. Incumbent LECs may also maintain control over the loop and splitter equipment and functions.

26. The Commission concludes that the level of impairment without access to fiber to the home (FTTH) loops varies depending on whether such loops are

new loops or replacements of a pre-existing copper loops. The Commission does not require incumbent LECs to provide unbundled access to new FTTH loops for either narrowband or broadband services. Regarding "overbuild" deployment in which an incumbent LEC constructs fiber transmission facilities parallel to or in replacement of its existing copper plant, the Commission must ensure continued access to an unbundled transmission path suitable for providing narrowband services to customers served by FTTH loops. In this situation, incumbent LECs have the option to either (1) keep the existing copper loop connected to a particular customer location after deploying FTTH; or (2) provide unbundled access to a 64 kbps transmission path over its FTTH loop. Incumbent LECs do not have to offer unbundled access to overbuilt fiber loops for competing carriers to provide broadband services.

27. The Commission finds that a blanket prohibition on the ability of incumbent LECs to retire any copper loops or subloops they have replaced with FTTH loops is unnecessary at this time because existing rules, with minor modifications, serve as adequate safeguards. Because the retirement of copper loop plant is a network modification that affects the ability of competitive LECs to provide service, the Commission clarifies that incumbent LECs must provide notice of such retirement in accordance with our rules. The Commission revises its network modification rules with respect to the retirement of copper loops to allow parties to file objections to the incumbent LEC's notice of such retirement on the basis that competitors will be denied access to the loop facilities required under our rules. This process does not preempt the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure that such retirement complies with any applicable state requirements.

28. In making our unbundling determination for hybrid loops, the Commission considers both impairment and, through our section 251(d)(2) "at a minimum" authority, additional factors. The Commission declines to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market. The Commission concludes that applying section 251(c) unbundling obligations to these next-generation network elements would blunt the deployment of advanced

telecommunications infrastructure in direct opposition to the express statutory goals authorized in section 706 of the Telecommunications Act of 1996. Further, a primary benefit of unbundling hybrid loops—to spur competitive deployment of broadband services to the mass market—appears to be obviated to some degree by the existence of cable broadband service competitors, which have a leading position in the marketplace. The Commission thus does not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information. Moreover, the Commission does not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market.

29. The Commission requires incumbent LECs to provide unbundled access to the entire non-packetized transmission path capable of voice-grade service between the central office and customer's premises. This unbundling obligation for narrowband services is limited to the TDM-based features, functions, and capabilities of these hybrid loops. Incumbent LECs may elect, instead, to provide homerun copper loops rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities. The Commission further requires incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems.

30. The Commission retains competitive LECs' existing right to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service. Incumbent LECs remain obligated to comply with the nondiscrimination requirements of section 251(c)(3) in their provision of loops to requesting carriers, including stand-alone spare copper loops, copper subloops, and the features, functions, and capabilities for TDM-based services over their hybrid loops. The Commission prohibits incumbent LECs from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs (either hybrid loops or stand-alone copper loops) provided to competitive LECs.

31. *Enterprise Market Loops.* The Commission concludes that different economic characteristics affect alternative loop deployment according to whether the loop facility is dark fiber or "lit" fiber, as well as the loop capacity level. The Commission finds that incumbent LECs are no longer required to unbundle OCn loops, nationwide. Incumbent LECs must continue to offer, on a nationwide basis, unbundled access to dark fiber loops, DS3 loops (limited to two DS3 loops per requesting carrier per customer location) and DS1 loops, except at specified customer locations where state commissions have found no impairment based on federally-defined triggers within nine months of the effective date of this Order.

32. Specifically, a state commission must determine that unbundling is no longer required at a specific customer location for dark fiber or DS3 loops when two or more unaffiliated competitive LECs have self-provisioned their own transmission facilities at the same loop capacity level to that customer location. A state commission must determine that unbundling is no longer required at a specific customer location for DS3 loops or DS1 loops when two or more unaffiliated competitive providers offer wholesale loops at the same capacity level to competitive LECs at that customer location. State commissions have a continuing responsibility to conduct periodic granular reviews of impairment, which must be completed within six months of a petition to initiate each subsequent review.

33. *Subloops for Multiunit Premises Access.* The Commission concludes that competitive carriers are impaired on a nationwide basis without access to unbundled subloops used to access customers in multiunit premises. Based on evidence in the record, the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to customers typically associated with the enterprise market residing in such premises but extend to all customers residing therein, including residential or other tenants typically associated with the mass market. Similarly, impairment is also not limited by the type or capacity of the loop the requesting carrier will provide. The Commission finds that incumbent LECs must offer unbundled access to subloops necessary to access wiring at or near multiunit customer premises, including the Inside Wire Subloop, *i.e.*, all incumbent LEC loop plant between the minimum point of entry (MPOE) at a multiunit premise and the point of demarcation, regardless of the capacity

level or type of loop the requesting carrier will provision to its customer. Unbundled access must be provided at any technically feasible accessible terminal at or near the multiunit premise, including but not limited to, a pole or pedestal, a network interface device (NID), the MPOE, the single point of interconnection (SPOI) or a feeder distribution interface. Upon notification by a requesting carrier that interconnection at a multiunit premise is required through a SPOI, an incumbent LEC is required to provide a SPOI at that multiunit premise if the incumbent LEC owns, controls or leases the wiring at such premise. A requesting carrier accessing a subloop on the incumbent LEC's network side of the NID obtains the NID functionality as part of that subloop.

34. *Network Interface Device (NID).* The Commission concludes that the NID must remain available as a stand-alone unbundled network element as the means to enable a competitive LEC to connect its loop to customer premise inside wiring. The NID is the gateway to the consumer and thus a key element to local competition. The record shows that the NID may often be the only means through which a competitive LEC can provide facilities-based service to customers, particularly those located in multiunit premises. The NID is defined as any means of interconnecting the incumbent LEC's loop distribution plant to wiring at a customer premises location. Incumbent LECs must offer unbundled access to the NID on a stand alone basis to carriers requesting only stand-alone NID access. An incumbent LEC shall permit a requesting carrier to connect its loop facilities through the incumbent LEC's NID.

35. *Dedicated Transport.* Pursuant to the approach of the *NPRM*, the Commission adopts in this Order a more granular unbundling analysis for transport facilities. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 67 FR 1947 (2002) (proposed Jan. 15, 2002). As an initial matter, the Commission limits its definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers as this provides a reasonable interpretation of an incumbent LEC's unbundling obligations. The Commission makes findings regarding impairment by evaluating the attributes of each capacity of transport and the effect of barriers to entry on each. It believes that its analysis of transport will create market certainty and provide incentives for competitive LECs to develop and utilize alternate facilities.

Specifically, based on the evidence in the record, the Commission makes the following determinations. First, due to the ability to self-deploy or utilize unbundled dark fiber or multiple unbundled DS3 circuits, the Commission finds on a national level that requesting carriers are not impaired without access to unbundled OCn transport facilities. Second, due to barriers to entry, including high sunk costs, and the general lack of alternatives in most areas, it finds on a national level that requesting carriers are impaired without access to unbundled dark fiber, DS3, and DS1 transport facilities. However, the record indicates that competitive dark fiber, DS3, and DS1 transport facilities are available on a wholesale basis in some areas, and that competing carriers have deployed their own transport networks in some areas. Because the record is not sufficiently detailed concerning exactly where these facilities have been deployed, and because the nature of transport facilities requires a highly granular impairment analysis, the Commission establishes specific triggers for states to apply in conducting such an analysis. It establishes two ways for states to identify where requesting carriers are not impaired without unbundled transport: (1) By identifying specific point-to-point routes where carriers have the ability to use two or more alternatives to the incumbent's network, or (2) by identifying specific point-to-point routes where three or more competing carriers have self-deployed transport facilities. The Commission delegates to state regulators the authority to make findings of fact within the scope of these triggers to identify on a more granular scale where carriers are not impaired without access to incumbent LEC unbundled transport. In addition to allowing a more precise finding of impairment, the Commission's analysis provides a roadmap for deregulation where regulation does not serve the goals of the Act.

36. *Local Circuit Switching.* The Commission finds that, on the national level, competitive LECs are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. DS1 enterprise customers are served using DS1 and above capacity facilities, or served by a sufficient number of DS0 lines that state commissions have determined they could be served using DS1 and above capacity facilities. The record reveals widespread switch deployment by competing carriers to serve the DS1 enterprise market and

establishes that, in most areas, competitive LECs can overcome barriers to serving enterprise customers in an economic manner using their own switching facilities in combination with unbundled loops. The Commission recognizes, however, that in particular markets special circumstances might give rise to impairment without access to unbundled local circuit switching for carriers serving DS1 enterprise customers. The Commission thus allows states 90 days from the effective date of this Order to petition the Commission to waive the finding of no impairment in individual markets based on specific operational and economic factors. State commissions have a continuing responsibility to conduct periodic reviews of impairment for carriers serving the DS1 enterprise market.

37. The Commission further concludes that, on the national level, competitive LECs are impaired without access to unbundled local circuit switching when serving mass market customers. The record indicates that there has been only minimal deployment of competitive LEC-owned switches to serve mass market customers, and that the characteristics of the mass market give rise to significant barriers to competitive LECs' use of self-provisioned switching to serve mass market customers. In particular, inherent difficulties arise from the incumbent LEC hot cut process for transferring DS0 loops, typically used to serve mass market customers, to competing carriers' switches. This national finding of impairment is subject to a more granular review by state commissions within nine months of the effective date of this Order. The state commission must find that competing LECs are not impaired in a particular market if either of two triggers are met: (1) Three or more competing carriers, unaffiliated with the incumbent carrier, each are using their own switches to serve mass market customers in the market or (2) two or more competing carriers, unaffiliated with the incumbent carrier, offer wholesale local circuit switching to carriers serving mass market customers in the market. If the triggers are not satisfied, the state commissions shall examine evidence of the potential for switch self-provisioning in the particular market, taking into account current switch deployment, revenues, costs, processes, network architecture, and the other factors that the Commission identified as potentially giving rise to impairment. If a state commission makes a finding of impairment in a particular market as a

result of such a review, it must consider whether this impairment could be addressed by a narrower rule making unbundled switching temporarily available for a minimum of 90 days for customer acquisition purposes, rather than making unbundled switching available for an indefinite period of time. State commissions have a continuing responsibility to conduct periodic reviews of impairment for carriers serving the mass market.

38. The Commission also requires state commissions to take steps to help mitigate the causes of impairment with respect to the mass market. Specifically, within nine months of the effective date of this Order, state commissions must approve and implement a seamless, low-cost process for transferring large volumes of mass market customers or issue detailed findings that such a "batch cut" process is unnecessary in a particular market.

39. On an interim basis, pending state commission determinations pursuant to the framework described above, the Commission retains the rule that incumbent LECs are not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more DS0 loops in density zone one of the top fifty MSAs. Retaining this rule on a temporary basis minimizes the potential service disruptions that could occur from the changes adopted regarding local circuit switching if carriers were free to accumulate more DS0 customers while states pursued their inquiries, only to risk losing those customers after the states had made their determinations.

40. The Commission also establishes a transition plan to migrate the embedded customer base served using unbundled switching to an alternative service arrangement when unbundled local circuit switching is no longer made available. Competitive carriers must transfer their embedded base of enterprise customers to an alternative service arrangement within 90 days from the end of the 90-day state commission consideration period, unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.

41. To the extent a state commission finds that competing LECs are not impaired without unbundled local circuit switching in serving mass market customers in a particular market, the Commission requires mass market carriers to commit to an implementation plan with the incumbent LEC within 2 months from the finding of no impairment. Within 5 months after a

finding of no impairment, competitive LECs may no longer request access to unbundled local circuit switching. Competitive LECs are required to submit the necessary orders to transition their embedded base of unbundled local circuit switching customers, except rolling use customers, in accordance with the following schedule: (1) 13 months after a finding of no impairment: Each competitive LEC must submit orders for one-third of all its unbundled local circuit switching end users; (2) 20 months after a finding of no impairment: Each competitive LEC must submit orders for half of its remaining unbundled local circuit switching end users; and (3) 27 months after a finding of no impairment: Each competitive LEC must submit orders for its remaining unbundled local circuit switching end users.

42. *Shared Transport.* The Commission finds that shared transport and switching are inextricably linked. Therefore, the Commission finds that requesting carriers are impaired without access to unbundled shared transport to the extent that they are impaired without access to unbundled local circuit switching. Thus, state commissions in identifying impairment for unbundled circuit switching should also incorporate into their analyses the economic characteristics of shared transport.

43. *Packet Switching.* Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The Order eliminates the current limited requirement for unbundling of packet switching.

44. *Signaling Networks.* The Commission finds that, in the instances in which incumbent LECs will be required to provide access to switching as a UNE, carriers purchasing the switching UNE must also gain access to incumbent LEC signaling. In all other cases, however, the Commission determines that there are sufficient alternatives in the market available and competitive LECs are no longer impaired without access to signaling networks as UNEs for all markets. The Commission concludes that, in the last several years, the market for signaling networks has matured. The Commission explains that multiple alternative providers are available to provide rival signaling services to competitive LECs, and that several competitive carriers are building their own signaling network capabilities. Accordingly, the Commission finds that, for competitive carriers deploying their own switches, there are no barriers to obtaining signaling or self-provisioning signaling

capabilities. The Commission further finds that the appropriate level of granularity for its analysis to be at the national level and its conclusions apply equally to the mass market and the enterprise market.

45. *Call-Related Databases.* The Commission finds that, competitive carriers deploying their own switches are not impaired in any market without access to incumbent LEC call-related databases, with the exception of the 911 and E911 databases. The Commission concludes that, for carriers deploying their own switches, there is evidence in the record of substantial numbers of competitive suppliers that competitive LECs can reliably utilize as an alternative to the incumbent LECs' services. In such instances where switching remains a UNE, however, the Commission finds that competitive carriers purchasing the switching UNE must be able to have access to signaling and the call-related databases that the signaling networks permit carriers to access, and if the incumbent LEC does not provide customized routing, to operator service and directory assistance. As with signaling, the Commission finds that the appropriate level of granularity for its analysis to be at the national level. The alternative call-related database networks are national and regional networks that competitive LECs will be able to use throughout the country. In addition, the Commission states that its conclusions apply equally to the mass market and the enterprise market.

46. With regard to the specific call-related databases, the Commission finds that carriers deploying their own switches are not impaired without access to the incumbent LECs' CNAM and LIDB databases. The Commission concludes that carriers can either self provision or use alternative providers to obtain CNAM and LIDB database services. The Commission similarly concludes that carriers deploying their own switches are not impaired without access to the Toll-Free and LNP databases. Like CNAM and LIDB, the Commission determines that there are third-party vendors available to provide competitive carriers access to Toll-Free and LNP databases. With regard to AIN databases, the Commission also concludes that competitive carriers are no longer impaired without unbundled access to those databases if the carrier deploys its own switches. However, the Commission determines that all competitive carriers continue to be impaired on a national basis without access to the 911 and E911 databases and, therefore, the Commission requires

that access to those databases continue to be unbundled.

47. *OSS Functions.* The Commission finds that competitive LECs providing qualifying services continue to be impaired on a national basis without access to OSS functions, including: pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. Accordingly, the Commission requires incumbent LECs to continue to provide unbundled access to OSS. The Commission states that this requirement includes an ongoing obligation on the incumbent LECs to make modifications to existing OSS as necessary to offer competitive carriers nondiscriminatory access and to ensure that the incumbent LEC complies with all of its network element, resale and interconnection obligations in a nondiscriminatory manner. In reaching this conclusion, the Commission finds that the systems, databases, and personnel that the incumbent LEC uses to provide OSS functions represent an extensive infrastructure that would be difficult, if not impossible, for competitors to duplicate. Accordingly, the Commission finds that competitive LECs are impaired without access to incumbent LECs' OSS. The Commission adopts an unbundling requirement for OSS functions on a national basis that applies equally to the mass market and the enterprise market.

48. *Combinations of Network Elements.* The Commission reaffirms its existing rules requiring incumbent LECs to provide UNE combinations upon request where such combinations are technically feasible and do not undermine the ability of other carriers to access UNEs or interconnect with the incumbent LEC's network, and prohibiting incumbent LECs from separating UNE combinations that are ordinarily combined except upon request. The Commission concludes that incumbent LECs shall make UNE combinations, including unbundled loop-transport combinations, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the applicable eligibility requirements. Apart from the applicable service eligibility criteria for high-capacity circuits, incumbent LECs may not impose additional conditions or limitations, such as pre-audits or a requirement to purchase special access services which are subsequently converted to UNE combinations, to obtaining access to EELs and other UNE combinations.

49. The Commission concludes that requesting carriers are permitted to commingle UNEs and combinations of UNEs with other wholesale facilities and services obtained from an incumbent LEC. Incumbent LECs, however, are not required to implement any changes to their systems to bill a single circuit at multiple rates in order to charge competitive LECs a single, blended rate.

50. The Commission concludes that competitive LECs may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the applicable eligibility criteria. To the extent a competitive LEC fails to meet the eligibility criteria for serving a particular customer, the incumbent LEC may convert the UNE or UNE combination to the equivalent wholesale service in accordance with the procedures established between the parties.

51. The Commission declines to require incumbent LECs to provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements governing loop-transport combinations. The Commission concludes, however, that incumbent LECs may not assess termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time because such charges deter legitimate conversions from wholesale services to UNEs or UNE combinations and unjustly enrich an incumbent LEC. Further, because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, the Commission concludes that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions, and that such charges unlawfully subject competitive LECs purchasing UNEs or UNE combinations to undue or unreasonable prejudice or disadvantage.

52. *Service Eligibility Criteria to Access UNEs.* The Order concludes that a carrier seeking access to an unbundled element of the incumbent LEC's network must provide qualifying service to a customer in order to obtain access to that facility pursuant to the Commission's section 251 unbundling rules. With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport only, the Commission adopts additional

eligibility criteria due to the potential for a provider of exclusively non-qualifying service to obtain access to these combinations at UNE prices.

53. The Commission does not, however, impose these additional requirements on access to UNEs other than high-capacity EELs. To ensure that the Commission's rules on service eligibility are not gamed in whole or in part, the Commission makes clear that the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled EEL).

54. *Service Eligibility Criteria for High-Capacity EELs.* The Order concludes that where a requesting carrier satisfies the following three categories of criteria, it is a bona fide provider of qualifying services and thus is entitled to order high-capacity EELs. Requesting carriers must certify to meeting all three criteria (authorization, local number and E911 assignment, and architectural safeguards) to qualify for the high-capacity circuit, subject to the separate certification and auditing requirements.

55. First, the Commission finds that each requesting carrier must have a state certification of authority to provide local voice service. Second, to demonstrate that it actually provides a local voice service to the customer over every DS1 circuit, the Commission finds that the requesting carrier must have at least one local number assigned to each circuit and must provide 911 or E911 capability to each circuit. To ensure the legitimacy of these assignments, the origination and termination of local voice traffic should not include a toll charge, and should not require dialing special digits beyond those normally required for a local voice call. Further, the Commission also clarifies that each DS1-equivalent circuit of a DS3 EEL must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it.

56. Third, the Commission finds additional circuit-specific architectural safeguards to prevent gaming are necessary. Each circuit must terminate into a collocation governed by section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises. In particular, for this collocation safeguard, the Order finds that termination of a circuit into a section 251(c)(6) collocation arrangement in an incumbent LEC central office is an effective tool to prevent arbitrage, because collocation is

a necessary building block for providing local voice services and is traditionally not used by interexchange carriers.

More specifically, because traditional interexchange configurations route long-distance traffic from a customer premises over tariffed channel termination and transport facilities directly to an interexchange point-of-presence, a section 251(c)(6) collocation requirement ensures that a carrier has set up an architecture that ensures that traffic can leave the incumbent network prior to hitting the POP. As further evidence that a carrier provides qualifying voice service, the collocation arrangement must be within the same LATA as the customer premises. The Commission determines that a requesting carrier can satisfy this prong through reverse collocation, and that any non-incumbent LEC collocation arrangement pursuant to section 251(c)(6) meets this test.

57. As an additional indicator of providing local voice service, the Commission concludes that each EEL circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL, and that for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 interconnection trunk for the exchange of local voice traffic. As a further safeguard against gaming, where a requesting carrier strips off the calling party number on calls exchanged over the interconnection trunk, that trunk shall not be counted towards meeting the trunk/EEL ratio. The costs and difficulties of network configuration necessary to satisfy the interconnection and collocation requirements minimize the potential for these safeguards to be gamed; only a bona fide provider of qualifying local services would undertake these measures, all of which are a necessary precondition to compete directly against the incumbent LEC's voice service. The 24-to-1 EEL to interconnection trunk ratio provides a reliable gauge that the competitive LEC exchanges local traffic with the incumbent LEC in a manner that indicates that it is a bona fide provider of local voice service. The Commission finds that this ratio therefore provides a reasonable proxy for the capacity of interconnection that a bona fide provider of local voice service competing against the incumbent LEC would require.

58. In addition, the Commission finds that each EEL circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. To ensure that the traffic carried over each EEL is not exclusively non-local, a

requesting carrier must certify that the switching equipment is either registered as Class 5 or that it can switch local voice traffic.

59. The Commission applies the service eligibility requirements on a circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria. For a requesting carrier to obtain a DS3 EEL as a UNE, the requesting carrier must satisfy the criteria for service eligibility for the DS1-equivalent circuit capacity of that DS3 EEL. The Commission is persuaded that while no single requirement can prevent gaming, the criteria the Commission adopts are collectively sufficient to restrict the availability of these UNE combinations to legitimate providers of local voice service.

60. *Certification and Auditing.* The Commission concludes that requesting carriers may self-certify to satisfying the qualifying service eligibility criteria for high-capacity EELs. The Order does not specify the form for such a self-certification, but re-adopts the Commission's prior findings that a letter sent to the incumbent LEC by a requesting carrier is a practical method. The Order concludes that incumbent LECs may obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria. The independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding the requesting carrier's compliance with the qualifying service eligibility criteria. To the extent the independent auditor's report concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis.

61. In addition, to the extent the independent auditor's report concludes that the competitive LEC failed to comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that the requesting carrier complied in all material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit.

The Commission also expects that requesting carriers will maintain the appropriate documentation to support their certifications.

62. *Modification of Existing Network.* The Commission concludes that incumbent LECs must make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed, meaning that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers. Routine modifications, however, do not include the construction of new wires for a requesting carrier. The Commission finds that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include rearrangement or splicing of cable, and deploying a new multiplexer or reconfiguring an existing multiplexer. The Commission also concludes that incumbent LECs must provide access, on an unbundled basis, to xDSL-capable stand-alone copper loops because competitive LECs are impaired without such loops. Such access may require incumbent LECs to condition the local loop for the provision of xDSL-capable services by removing bridge taps and similar devices as part of this obligation. The Commission concludes that incumbent LECs are not obligated to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates. However, the Commission also clarifies that an incumbent LEC's unbundling obligation includes all deployed transmission facilities in its network, unless specifically exempted in the Order. To ensure that no incumbent LEC is obligated to build out facilities at TELRIC pricing, the Commission clarifies that the tariffed termination liabilities for special construction apply to the conversion of special access circuits built to customer specification.

63. *Section 271 Issues.* The Commission concludes that BOCs have an independent obligation, under section 271(c)(2)(B), to provide access to each network element on section 271's "competitive checklist" even where that element is no longer required to be unbundled under section 251(c)(3). This conclusion follows from the plain language and structure of section 271(c)(2)(B) and is a reasonable interpretation of the Act. Sections 251, 252 and 271 do not establish standards for the rates, terms and conditions of offerings pursuant to section 271(c)(2)(B) alone. Rather, the offering of such network elements is governed

by the just, reasonable and nondiscriminatory rate standards of sections 201 and 202. The Commission further concludes that following a grant of section 271 authorization, the BOC must continue to comply with any conditions required for approval, subject to changes in the law. It would be inconsistent with public policy to impose different—and potentially out-of-date or vacated—rules on BOCs based solely on the date of section 271 entry.

64. *Clarification of TELRIC Rules.* The Order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the Order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The Order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation. In addition to these clarifications, the Order notes that the Commission plans to open a proceeding to consider issues related to its TELRIC pricing rules.

65. *Fresh Look.* The Commission retains the determination made in the *UNE Remand Order* that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to a UNE. Although "fresh look" has occurred in the past, this rare exercise of Commission discretion is not appropriate here because it would be unfair to both incumbent LECs and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest.

66. *Transition Period.* The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules.

67. *Periodic Review of National Unbundling Rules.* The Commission will evaluate these rules consistent with the biennial review mechanism

established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

68. *Duty to Negotiate in Good Faith.* The Commission amends its duty-to-negotiate rule 51.301(c)(8)(ii) to make the rule conform to the text of the *Local Competition Order*.

Final Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *NPRM*. The Commission sought written public comments on the proposals in the *NPRM*, including comments on the IRFA. Comments addressed the proposals contained in the *NPRM*, as well as the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) addresses comments on the IRFA and conforms to the RFA.

Need for, and Objectives of, the Rules

70. This Order fulfills the commitment the Commission undertook in its 1999 *UNE Remand Order* to reexamine, in three years, the list of network elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings that have been issued since the Commission last conducted a comprehensive review of its unbundling rules. More specifically, this Order refines the "impair" standard set forth in section 251(d)(2) of the Act, and applies the revised standard to an array of "transmission" and "intelligence" network elements. The revised "impair" standard is designed to reflect both the experience of the local service market during the seven years since the Act's market-opening provisions took effect and the legal guidance mentioned above. Applying this standard, which pays special attention to the requesting carrier's ability to self-provision the element or to obtain it from a source other than the incumbent LEC, this Order adopts a list of network elements that must be unbundled and sets forth the particular circumstances in which unbundling will be required. The approach adopted is substantially more granular than our earlier formulations of the "impair" standard, accounting for considerations of customer class, geography, and service. This Order also reaffirms a state commission's authority to establish unbundling requirements, as long as the unbundling obligations are consistent with the requirements of section 251(d)(3) and do not

substantially prevent implementation of the requirements of that section and the purposes of the Act, and authorizes state commissions to make certain factual determinations necessary to implementation of the granular analysis we adopt here.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

71. In this section, the Commission responds to various arguments raised by TeleTruth, the National Federation of Independent Businesses (NFIB), and the Office of Advocacy of the Small Business Administration (SBA Advocacy) relating to the IRFA presented in the *NPRM*. It also addresses concerns raised by Senator (then-Representative) James Talent in a letter submitted in response to the *UNE Remand Order*, which was later incorporated into this proceeding. To the extent the Commission received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order and are summarized in Part X.A.5, below.

72. As an initial matter, the Commission rejects the contention that it failed to consider the needs of small business customers of competitive LECs in fashioning the analysis set forth in this Order. It has grappled, throughout this proceeding and throughout this Order, with the consequences our determinations will have on all market participants, including small business providers and the small business end users about which TeleTruth, NFIB, SBA Advocacy, and Senator Talent express concern. The Commission has also considered various alternatives to the rules it adopts, and has stated the reasons for rejecting these alternative rules, as commenters have urged. A summary of our analysis regarding small business concerns, and of alternative rules that we considered in light of those concerns, is presented in subsection 5 of the FRFA, *infra*.

73. Many of the complaints raised regarding the Commission's IRFA hinge on the argument that in performing the analysis mandated by the RFA, an agency must analyze the effects its proposed rules will have on "customers" of the entities it regulates. But as the courts have made clear time and again, this is not the case. Indeed, the D.C. Circuit "has consistently held that the RFA imposes no obligation to conduct a small entity impact analysis of effects on entities which [the agency conducting the analysis] does not regulate." Thus, the RFA imposes no independent obligation to examine the

effects an agency's action will have on the customers of the companies it regulates unless those customers are, themselves, subject to regulation by the agency. In any event, as noted above, we have considered the needs of small business customers of competitive (and incumbent) LECs throughout this Order. Our analysis of small business concerns is summarized in Part X.A.5, below.

74. TeleTruth argues that the Commission has taken inadequate steps to notify small businesses of this and other proceedings, in violation of the RFA. The Commission disagrees. The RFA requires the Commission to "assure that small entities have been given an opportunity to participate in the rulemaking," and proposes as example five "reasonable techniques" that an agency might employ to do so. In this proceeding, the Commission has employed several of these techniques: it has published a "notice of proposed rulemaking in publications likely to be obtained by small entities"; has "includ[ed] * * * a statement that the proposed rule may have a significant economic effect on a substantial number of small entities" in the *NPRM*; has solicited comments over its computer network; and has acted "to reduce the cost or complexity of participation in the rulemaking by small entities" by, among other things, facilitating electronic submission of comments. The Commission thus concludes that it has satisfied its RFA obligation to assure that small companies were able to participate in this proceeding.

75. TeleTruth further contends that the Commission's IRFA was flawed by its use of "boilerplate" language that differed little from the language used in the IRFAs prepared for other proceedings. However, the only language it cites does not even appear in the IRFA prepared for this proceeding. Moreover, TeleTruth has suggested no reason why the use of similar language in several proceedings is at all problematic. Indeed, the particular language about which it complains merely describes the "number of telephone companies affected" by a given proceeding—a class that is likely to differ little, if at all, among industry-wide rulemakings such as this.

76. TeleTruth next complains that the IRFA used outdated census data from 1992 in estimating the number of small businesses that might be affected by the Commission's decisions here. While certain 1997 census data became available in late 2000 and were not incorporated into the previous *NPRM*, this updating would not, we believe, have affected a small entity's decisions

concerning IRFA. This more recent data are reflected in subsection 3 of the FRFA, *infra*.

77. TeleTruth also contends that "[a] true IRFA analysis about small business telecom competitors would conclude that the current FCC is in violation of the Telecom Act and all of its provisions" because the Commission purportedly has failed to enforce its local competition rules. Such an assertion falls outside the scope of this rulemaking proceeding and our analysis herein. Complaints regarding carriers' compliance with the Commission's Rules are properly addressed in other venues. For example, section 208 of the Communications Act specifically permits small businesses and other entities to lodge complaints regarding other carriers' activities, and to seek enforcement of Commission regulations. Also, to the extent an incumbent LEC's obligations under section 251 are implemented through interconnection agreements, those obligations are enforceable as a matter of contract law through the courts.

78. TeleTruth next argues the RFA requires "an impact study on how [an agency's regulations] will harm small businesses," and that "the FCC has not done anything of the sort for this proceeding." The Commission disagrees: the RFA requires us to provide precisely the information contained in this FRFA, but does not mandate a separate "impact study." The Commission has therefore satisfied its RFA obligations.

79. In a letter challenging the *UNE Remand Order*, Senator Talent argued that that Order violated section 3(a)(2)(C) of the Small Business Act. Specifically, Senator Talent noted that the *UNE Remand Order* differentiated between businesses that used fewer than four access lines and those that used four or more lines, in contravention of the Small Business Act's directive that "unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern," unless certain procedural requirements are satisfied. In the present Order, our action does not establish any special small business size standard.

80. TeleTruth and Senator Talent suggest that section 257 of the Act dictates a particular substantive result in this matter. Specifically, TeleTruth claims that this "Triennial Review is mandated in Section [257(c)]," and requires an outcome favorable to entrepreneurs and small businesses. Senator Talent argued that in limiting the class of elements subject to section

251(c), the *UNE Remand Order* “erected a new barrier to entry” by small business carriers, and consequently violated section 257 of the Communications Act. Section 257, however, did not mandate this proceeding and in no way cabins this Commission’s exercise of its authority to adopt rules implementing the Act. Section 257 required the Commission to conduct a proceeding designed to identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services” within 15 months of the enactment of the 1996 Act, and periodically to review its regulations and report to Congress on any such barriers. The Commission concluded the requisite proceeding in 1997 and issued its first subsequent section 257 Report to Congress in 2000. Thus, this proceeding is *not* mandated (or in any way governed) by section 257. Rather, as described above, this Order fulfills the Commission’s commitment—set forth in the *UNE Remand Order*—to reevaluate unbundling requirements, and responds to various judicial rulings regarding those requirements.

81. TeleTruth, the NFIB, and SBA Advocacy caution that this Order may stand in violation of Executive Order 13272. Setting aside the question of whether a multi-member independent agency such as the FCC must comply with that Executive Order, it notes that affected agencies must: (1) Comply with the RFA, (2) give SBA Advocacy advanced notice of any proposed rules that might substantially impact small businesses, and (3) give “appropriate consideration to” and provide a written response to “any comments provided by” SBA Advocacy. Here, the Commission did send SBA Advocacy a copy of the published *NPRM* (which pre-dated the Executive Order). Moreover, in this FRFA, we fully satisfy our obligations under the RFA. Finally, we address SBA Advocacy’s other comments below. Therefore, this proceeding stands in compliance with Executive Order 13272.

82. SBA Advocacy argues that the Commission’s IRFA “did not consider the impact of delisting unbundled network elements * * * on small competitive local exchange carriers.” While SBA Advocacy recommends that we issue a revised IRFA to account more fully for the impact our rules might have on competitive LECs, it recognizes that we might appropriately address any such impact in this FRFA instead. The Commission has adopted the latter course. It notes that we have considered the concerns of competitive LECs

throughout this Order, and those considerations are summarized in Part X.A.5, below. Moreover, in Part X.A.3, we attempt to estimate the number of competitive LECs that will be affected by the rules we adopt herein.

83. SBA Advocacy also claims that the proposals contained in the *NPRM* were not sufficiently specific to allow small businesses the opportunity to comment meaningfully. The Commission disagrees. This proceeding has elicited well over one thousand filings, submitted by scores of parties. These parties—which include numerous small businesses—found in the *NPRM* sufficient specificity to permit meaningful comment. SBA Advocacy notes its “particular concern” that the Commission “is considering removing elements from the list” of incumbent LECs’ unbundling obligations, whereas the *NPRM* purportedly gave no indication of this eventuality. The *NPRM* clearly explained that the Commission was considering “an unbundling analysis that is more targeted,” including approaches “that take into consideration specific services, facilities, and customer and business considerations.” It expressly sought comment “on applying the unbundling analysis to define the network elements” subject to unbundling, and indicated our intention to “probe whether and to what extent we should adopt a more sophisticated, refined unbundling analysis.” The Commission officially stated its intention to reexamine unbundling obligations with respect to loops, switching, interoffice transport, OSS, call-related signaling and call-related databases. It is thus not persuaded that the *NPRM* somehow failed to signal our intent to examine rules that might result in modification of the list of elements (including possible removal of elements) subject to section 251(c)(3)’s unbundling requirements.

Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

84. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 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 Small Business Administration (SBA).

85. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

86. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and “is not dominant in its field of operation.” SBA Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

87. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

88. *Incumbent LECs*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA

rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

89. *Competitive LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

90. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone

service providers are small entities that may be affected by the rules and policies adopted herein.

91. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to OSPs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the great majority of OSPs are small entities that may be affected by the rules and policies adopted herein.

92. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

93. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

94. *Wireless Service Providers.* The SBA has developed a small business

size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

95. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as

“small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

96. *Narrowband PCS*. To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

97. *220 MHz Radio Service—Phase I Licensees*. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

98. *220 MHz Radio Service—Phase II Licensees*. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction.

The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

99. *800 MHz and 900 MHz Specialized Mobile Radio Licenses*. The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the Small Business Act. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

100. *Common Carrier Paging*. In the *Paging Third Report and Order*, the Commission developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan

Economic Area 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. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

101. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

102. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

103. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

104. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

105. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At

present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category “Cellular and Other Telecommunications,” which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

106. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

107. *Wireless Communications Services (WCS).* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the WCS auction. A “small business” is an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as “very small business” entities, and one that

qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

108. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

109. *Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), and Instructional Television Fixed Service (ITFS).* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational

institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

110. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

111. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry-over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.

We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

112. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

113. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

114. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present FRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having \$21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this

total, 2,659 firms had annual receipts of \$9,999,999 or less, and an additional 67 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

115. Pursuant to sections 251(c) and (d) of the Act, incumbent LECs, including those that qualify as small entities, are required to provide nondiscriminatory access to UNEs. The only exception to this rule applies to qualifying rural carriers that have gone through the process of obtaining an exemption, suspension, or modification pursuant to section 251(f) of the Act. This Order represents, in large part, a fresh examination of the issues presented in implementing the unbundling requirements of section 251, based on comments from interested parties responding to the *NPRM*. This Order also interprets the necessary and impair standards of section 251(d)(2) in a manner that satisfies the D.C. Circuit's directives that (1) the Commission eschew broad national standards in favor of more granular analysis, and that, (2) in determining whether a carrier is "impaired" by diminished access to a given element, the Commission distinguish between "cost disparities that are universal as between new entrants and incumbents in any industry" and disparities resulting specifically from the conditions of natural monopoly that the Act is designed to redress.

116. In this Order, we determine that requesting carriers (1) are impaired without access to local circuit switching in providing service to mass market customers using DS0 capacity loops; (2) are not impaired without access to unbundled local circuit switching for the provision of service to enterprise customers using DS1 and higher capacity loops; (3) are not impaired without access to packet switching, including routers and DSLAMs; (4) are not impaired without access to incumbent LECs' signaling systems except where they are also impaired without access to the incumbent LEC's unbundled circuit switching; (5) are impaired without unbundled access to the incumbent LEC's 911 and e911 databases; (6) are not impaired without access to the incumbent LEC's other call-related databases if they deploy their own switches, but otherwise are impaired; (7) are impaired without access to incumbent LECs' OSS; (8) are impaired without access to copper loop or subloop facilities (and must

condition copper loops for provision of advanced services), but are not impaired without access to line-sharing (subject to a three-year transition) or hybrid loops; (9) are not impaired without access to new build/greenfield fiber-to-the-home (FTTH) loops for broadband or narrowband services or overbuild/brownfield FTTH loops for broadband services; (10) are not impaired without unbundled access to OCn capacity loop facilities, but are impaired, subject to certain triggers, without access to dark fiber loops, DS1 loops, and DS3 loops; (11) are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises and are also impaired without unbundled access to the incumbent LEC Inside Wire Subloops and NIDs, regardless of loop type; (12) are not impaired without unbundled access to OCn transport facilities, but are impaired, subject to certain triggers, without access to dark fiber transport facilities, DS1 transport facilities, and DS3 transport facilities; and (13) are impaired without access to unbundled shared transport only to the extent they are impaired without access to local circuit switching. The Order also affirms that incumbent LECs are obligated to provide access to UNE combinations.

117. In this Order, the Commission adopts rules to implement a congressionally-mandated scheme, embodied in section 251 of the Act, that imposes upon incumbent LECs an obligation to provide unbundled access to certain network elements. This Order articulates a new impairment standard to govern which network elements incumbent LECs must unbundle for competitors in accordance with the Act. While this Order imposes no general obligations on competitive LECs, the Order does require competitive LECs to satisfy certain reporting requirements in order to obtain as UNEs certain high-capacity network elements from incumbent LECs. We have attempted to keep the obligations imposed by this Order to the minimum necessary to implement the requirements of the Act.

118. In addition, this Order outlines procedures whereby states may conduct proceedings to determine whether certain network elements satisfy our impairment standard according to specific guidelines and triggers, as outlined in the Order. While this Order does not specifically impose any obligations on carriers in this regard, records regarding facility use may be necessary for these state proceedings.

119. The various compliance requirements contained in this Order will require the use of engineering,

technical, operational, accounting, billing, and legal skills. The carriers that are affected by these requirements already possess these skills. This Order contains new or modified information collections, which are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

120. 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.

121. In this Order, the Commission adopts rules regarding the unbundling of network elements. It has modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC. In adopting this interpretation, the Commission considered a variety of factors relating to the size of regulated entities and the customers they serve. It considered a number of barriers to competitive entry, including those faced by small competitors, as well as the importance of scale economies as they relate to small entities. Finally, the Commission considered and rejected a number of suggested approaches to impairment.

122. In applying its impairment analysis to specific network elements, the Commission adopts a more granular approach, including the considerations of customer class, geography, and service. The Commission found that conducting a more granular analysis permits it to distinguish, with more particularity, those situations for which there is impairment from those for which there is none. It also found that an even more granular analysis—loop by loop, for example—is neither

administratively feasible nor required by the courts. The Commission considered the differing needs of three classes of telecommunications customers: mass market customers (*i.e.*, residential customers and sometimes very small business customers), small and medium enterprise customers, and large enterprise customers. Mass market customers typically generate lower revenue and tighter profit margins than the other classes and therefore require service providers to minimize costs. Small and medium business customers typically are willing to pay higher prices but are more sensitive to reliability and quality of service. Large enterprise customers tend to demand extensive and sophisticated service packages, and reliability and quality of service are essential to these customers.

123. In addition, because requiring unbundling in the absence of impairment imposes unnecessary costs—including for small or rural incumbent LECs—we considered whether impairment varies geographically throughout the country. The Commission makes unbundling decisions on a national scale where the record permits us to, but delegate some determining role to the states where it appears that impairment might exist in some regions of the country but not others. In this regard, we note that Congress provided a mechanism—in section 251(f) of the Act—to exempt small and rural incumbent LECs from several of the Act's obligations. For example, unbundling rules shall not apply to a rural telephone company until it receives a bona fide request for interconnection and until the state commission determines that the request is technically feasible, not unduly economically burdensome, and consistent with section 254. Or, a LEC with fewer than two percent of the nation's subscriber lines may obtain relief from unbundling if the state commission decides, among other things, that relief is necessary to avoid imposing a economically burdensome requirement or other significant adverse economic impact.

124. Through our granular impairment analysis, the Commission has considered the resources and needs of various carriers, including small businesses, and have examined the state of the marketplace to determine whether it was economically feasible for competitors to self-provision network elements or obtain them from competitive sources other than incumbent LECs. This approach strikes the appropriate balance between the needs of competitors—including small competitors—to access certain network

elements, against the burdens unbundling imposes upon incumbent LECs—including small incumbents—and yields a more accurate picture of the state of competition for each of the varied network elements composing the local telephone network. For those network elements for which carriers may be impaired only in certain geographic markets, such as certain high capacity loops and transport, we adopt an approach that permits localized determination—with a role for the states—as to where and whether impairment exists. In this way, the Commission has sought to take a more specific view of the needs of differently situated competitors.

125. The Commission also has established service eligibility requirements for UNEs which are designed to ensure that carriers use UNEs primarily to provide local services in competition with incumbent LECs, “while avoiding burdensome administrative rules that serve as a drag on competitive entry.” While we recognize that regulatory requirements may disproportionately impact smaller entities, we have adopted the least burdensome of several available alternatives in requiring competitors to satisfy certain service eligibility criteria. For example, rather than requiring carriers to certify to be the sole provider of local service in order to access certain elements (*e.g.*, high capacity loops and transport)—an approach that might require frequent and costly assurance from a carrier's customers—the Commission permits carriers to certify that they are the primary providers of local service. In this regard, being certified as a competitive LEC is probative of providing qualifying service. The Commission also adopts collocation and local interconnection requirements as less burdensome ways of assuring service eligibility. By contrast, we have rejected a number of suggested approaches as unnecessarily burdensome, such as measuring minutes or traffic percentages, separately measuring voice and data use, or permitting UNEs only where a competitive carrier uses certain types of switches. It finds that our adopted indicia of service eligibility serve as adequate and less burdensome assurance that a carrier is using UNEs in a manner consistent with the local competition goals of the Act.

Ordering Clauses

126. Accordingly, pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, 303(r),

and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, the *Report and Order on Remand and Further Notice of Proposed Rulemaking* in CC Docket No. 01–338 is adopted, and that part 51 of the Commission's Rules, 47 CFR part 51, is amended as set forth in the rule changes.

127. The rules contained herein are effective October 2, 2003.

128. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Low Tech Designs, Inc. on February 15, 2000, and by the Telecommunications Resellers Association on February 18, 2000; the petition for partial reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Birch Telecom, Inc. on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by Sprint Corporation on February 17, 2000; the petition for clarification on reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98, 95–185 by MGC Communications, Inc.; d/b/a Mpower Communications, Corp. on February 17, 2000; the joint petition filed in CC Docket No. 96–98 by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon Telephone Companies on April 5, 2001; the petitions for waiver of the supplemental order clarification filed in CC Docket No. 96–98 by WorldCom, Inc. on September 12, 2000, and ITC^DeltaCom Communications, Inc. on August 16, 2001; the petition filed in CC Docket Nos. 01–338, 96–98, 98–147 by Promoting Active Competition Everywhere (PACE) Coalition on February 6, 2002; and the petition for declaratory ruling filed in CC Docket No. 01–338 by WorldCom, Inc. on August 8, 2002 are dismissed as moot.

129. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the joint petition for declaratory ruling filed in CC Docket No. 96–98 by AT&T Wireless Services, Inc. and VoiceStream Wireless, Corp. on November 19, 2001 is granted to the extent indicated herein and otherwise is moot.

130. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition for reconsideration/clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by BellSouth Corporation and BellSouth Telecommunications, Inc. on February 17, 2000 *is granted* to the extent indicated herein and otherwise *are denied*.

131. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket Nos. 96–98, 95–185 by Rhythms Netconnections Inc. and Covad Communications Co. on January 21, 2000, @Link Networks, Inc., DSL.net, Inc. and MGC Communications, Inc., d/b/a Mpower Communications Corp. on February 17, 2000, McLeodUSA Telecommunications Services, Inc. and the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by RCN Telecom Services, Inc. on February 17, 2000 *are denied*.

132. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition of the *UNE Remand Order* filed in CC Docket No. 96–98 by Competitive Telecommunications Association on November 26, 2001; and the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Intermedia Communications, Inc. and by MCI WorldCom, Inc. on February 17, 2000 *are denied* to the extent indicated herein and otherwise *are dismissed as moot*.

133. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition for clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by MCI WorldCom, Inc. on February 17, 2000; the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by the Competitive Telecommunications Association on February 17, 2000; the petition for reconsideration and clarification of the

UNE Remand Order filed in CC Docket No. 96–98 by Bell Atlantic on February 17, 2000; and the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by AT&T Corp. on February 17, 2000 *are granted* to the extent indicated herein and otherwise *are denied or dismissed as moot*.

134. The Public Notice, *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service*, CC Docket No. 96–98, DA 01–169 (rel. Jan. 24, 2001); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98–147, Fourth Report and Order on Reconsideration in CC Docket No. 96–98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98–147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96–98, 16 FCC Rcd 2101 (2001); *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket Nos. 96–98 and 95–185, 12 FCC Rcd 12460 (1997); and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96–98, 15 FCC Rcd 3696 (1999) *are terminated*.

135. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Order on Remand*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

125. 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. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for SBA Advocacy. The Order and FRFA, or summaries thereof, will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications carriers.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Final Rules

■ Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

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

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 *note*, unless otherwise noted.

■ 2. Section 51.5 is amended by adding six new definitions in alphabetical order and by revising the definition of “state commission” to read as follows:

§ 51.5 Terms and definitions.

* * * * *

Commingling. *Commingling* means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. *Commingle* means the act of commingling.

* * * * *

Enhanced extended link. An *enhanced extended link* or *EEL* consists of a combination of an unbundled loop and unbundled dedicated transport, together with any facilities, equipment, or functions necessary to combine those network elements.

* * * * *

Intermodal. The term *intermodal* refers to facilities or technologies other than those found in traditional telephone networks, but that are utilized to provide competing services. *Intermodal* facilities or technologies include, but are not limited to, traditional or new cable plant, wireless technologies, and power line technologies.

* * * * *

Non-qualifying service. A *non-qualifying service* is a service that is not a qualifying service.

* * * * *

Qualifying service. A *qualifying service* is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or

primary domain of incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone service, and access services, such as digital subscriber line services and high-capacity circuits.

* * * * *

State commission. A *state commission* means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes responsibility for a proceeding or matter, pursuant to section 252(e)(5) of the Act or § 51.320. This term shall also include any person or persons to whom the state commission has delegated its authority under sections 251 and 252 of the Act and this part.

* * * * *

Triennial Review Order. The *Triennial Review Order* means the Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01-338, 96-98, and 98-147.

* * * * *

■ 3. Section 51.301 is amended by revising paragraph (c)(8)(ii) to read as follows:

§ 51.301 Duty to negotiate.

* * * * *

- (c) * * *
- (8) * * *

(ii) Refusal by an incumbent LEC to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

■ 4. Section 51.305 is amended by removing paragraph (a)(4), redesignating paragraph (a)(5) as paragraph (a)(4), and revising paragraph (a)(3) to read as follows:

§ 51.305 Interconnection.

- (a) * * *

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and

* * * * *

■ 5. Section 51.309 is amended by revising paragraphs (a) and (b), and by

adding paragraphs (d) through (g) to read as follows:

§ 51.309 Use of unbundled network elements.

(a) Except as provided in § 51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

* * * * *

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251(c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

(e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

(g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:

- (1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or
- (2) Shares part of the incumbent LEC's network with access services or inputs for non-qualifying services.

■ 6. Section 51.311 is amended by revising paragraphs (a) and (b), removing paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d) to read as follows:

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers

requesting access to that network element.

(b) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

* * * * *

■ 7. Section 51.315 is amended by revising paragraphs (c) and (f) to read as follows:

§ 51.315 Combination of unbundled network elements.

* * * * *

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination:

- (1) Is technically feasible; and
- (2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

* * * * *

(f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

■ 8. Section 51.316 is added to read as follows:

§ 51.316 Conversion of unbundled network elements and services.

(a) Upon request, an incumbent LEC shall convert a wholesale service, or group of wholesale services, to the equivalent unbundled network element, or combination of unbundled network elements, that is available to the requesting telecommunications carrier under section 251(c)(3) of the Act and this part.

(b) An incumbent LEC shall perform any conversion from a wholesale service

or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

■ 9. Section 51.317 is revised to read as follows:

§ 51.317 Standards for requiring the unbundling of network elements.

Proprietary network elements. A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(a) Determine whether access to the proprietary network element is "necessary." A network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting telecommunications carrier from providing the services that it seeks to offer. If access is "necessary," the Commission may require the unbundling of such proprietary network element.

(b) In the event that such access is not "necessary," the Commission may require unbundling if it is determined that:

(1) The incumbent LEC has implemented only a minor modification to the network element in order to qualify for proprietary treatment;

(2) The information or functionality that is proprietary in nature does not differentiate the incumbent LEC's services from the requesting telecommunications carrier's services; or

(3) Lack of access to such element would jeopardize the goals of the Act.

■ 10. Section 51.318 is added to read as follows:

§ 51.318 Eligibility criteria for access to certain unbundled network elements.

(a) Except as provided in paragraph (b) of this section, an incumbent LEC shall provide access to unbundled network elements and combinations of unbundled network elements without regard to whether the requesting telecommunications carrier seeks access to the elements to establish a new circuit or to convert an existing circuit from a service to unbundled network elements.

(b) An incumbent LEC need not provide access to an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, unless the requesting telecommunications carrier certifies that all of the following conditions are met:

(1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

(2) The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link:

(i) Each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit;

(ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

(iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit;

(iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

(v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of paragraph (d) of this section;

(vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting

telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

(vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

(c) A collocation arrangement meets the requirements of this paragraph if it is:

(1) Established pursuant to section 251(c)(6) of the Act and located at an incumbent LEC premises within the same LATA as the customer's premises, when the incumbent LEC is not the collocater; and

(2) Located at a third party's premises within the same LATA as the customer's premises, when the incumbent LEC is the collocater.

(d) An interconnection trunk meets the requirements of this paragraph if the requesting telecommunications carrier will transmit the calling party's number in connection with calls exchanged over the trunk.

■ 11. Section 51.319 is revised to read as follows:

§ 51.319 Specific unbundling requirements.

(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network

lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (a)(5) of this section.

(i) *Line sharing.* Beginning on the effective date of the Commission's *Triennial Review Order*, the high frequency portion of a copper loop shall no longer be required to be provided as an unbundled network element, subject to the transitional line sharing conditions in paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section. Line sharing is the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop. The high frequency portion of the loop consists of the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions. This portion of the loop includes the features, functions, and capabilities of the loop that are used to establish a complete transmission path on the high frequency range between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the end-user customer premises, and includes the high frequency portion of any inside wire owned or controlled by the incumbent LEC.

(A) *Line sharing customers before the effective date of the Commission's Triennial Review Order.* An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop where, prior to the effective date of the Commission's *Triennial Review Order*, the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer and has not ceased providing digital subscriber line service to that customer. Until such end-user customer cancels or otherwise discontinues its subscription to the digital subscriber line service of the requesting telecommunications carrier, or its successor or assign, an incumbent LEC shall continue to

provide access to the high frequency portion of the loop at the same rate that the incumbent LEC charged for such access prior to the effective date of the Commission's *Triennial Review Order*.

(B) *Line sharing customers on or after the effective date of the Commission's Triennial Review Order.* An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop, between the effective date of the Commission's *Triennial Review Order* and three years after that effective date, where the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer on or before the date one year after that effective date. Beginning three years after the effective date of the Commission's *Triennial Review Order*, the incumbent LEC is no longer required to provide a requesting telecommunications carrier with the ability to engage in line sharing for this end-user customer or any new end-user customer. Between the effective date of the Commission's *Triennial Review Order* and three years after that effective date, an incumbent LEC shall provide a requesting telecommunications carrier with access to the high frequency portion of a copper loop in order to serve line sharing customers obtained between the effective date of the Commission's *Triennial Review Order* and one year after that effective date in the following manner:

(1) During the first year following the effective date of the Commission's *Triennial Review Order*, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 25 percent of the state-approved monthly recurring rate, or 25 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on that date.

(2) Beginning one year plus one day after the effective date of the Commission's *Triennial Review Order* until two years after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 50 percent of the state-approved monthly recurring rate, or 50 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's *Triennial Review Order*.

(3) Beginning two years plus one day after effective date of the Commission's *Triennial Review Order* until three years

after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 75 percent of the state-approved monthly recurring rate, or 75 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's *Triennial Review Order*.

(ii) *Line splitting.* An incumbent LEC shall provide a requesting telecommunications carrier that obtains an unbundled copper loop from the incumbent LEC with the ability to engage in line splitting arrangements with another competitive LEC using a splitter collocated at the central office where the loop terminates into a distribution frame or its equivalent. Line splitting is the process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

(A) An incumbent LEC's obligation, under paragraph (a)(1)(ii) of this section, to provide a requesting telecommunications carrier with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its own switching or obtains local circuit switching as an unbundled network element pursuant to paragraph (d) of this section.

(B) An incumbent LEC must make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

(iii) *Line conditioning.* The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop. If the incumbent LEC seeks compensation from the requesting telecommunications carrier for line conditioning, the requesting telecommunications carrier

has the option of refusing, in whole or in part, to have the line conditioned; and a requesting telecommunications carrier's refusal of some or all aspects of line conditioning will not diminish any right it may have, under paragraphs (a) and (b) of this section, to access the copper loop, the high frequency portion of the copper loop, or the copper subloop.

(A) Line conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

(B) Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e).

(C) Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

(D) Where the requesting telecommunications carrier is seeking access to the high frequency portion of a copper loop or copper subloop pursuant to paragraphs (a) or (b) of this section and the incumbent LEC claims that conditioning that loop or subloop will significantly degrade, as defined in § 51.233, the voiceband services that the incumbent LEC is currently providing over that loop or subloop, the incumbent LEC must either:

(1) Locate another copper loop or copper subloop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop or subloop, and provide the requesting telecommunications carrier with access to the high frequency portion of that alternative loop or subloop; or

(2) Make a showing to the state commission that the original copper loop or copper subloop cannot be conditioned without significantly degrading voiceband services on that loop or subloop, as defined in § 51.233, and that there is no adjacent or alternative copper loop or copper subloop available that can be conditioned or to which the end-user customer's voiceband service can be moved to enable line sharing.

(E) If, after evaluating the incumbent LEC's showing under paragraph

(a)(1)(iii)(D)(2) of this section, the state commission concludes that a copper loop or copper subloop cannot be conditioned without significantly degrading the voiceband service, the incumbent LEC cannot then or subsequently condition that loop or subloop to provide advanced services to its own customers without first making available to any requesting telecommunications carrier the high frequency portion of the newly conditioned loop or subloop.

(iv) *Maintenance, repair, and testing.*

(A) An incumbent LEC shall provide, on a nondiscriminatory basis, physical loop test access points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.

(B) An incumbent LEC seeking to utilize an alternative physical access methodology may request approval to do so from the state commission, but must show that the proposed alternative method is reasonable and nondiscriminatory, and will not disadvantage a requesting telecommunications carrier's ability to perform loop or service testing, maintenance, or repair.

(v) *Control of the loop and splitter functionality.* In situations where a requesting telecommunications carrier is obtaining access to the high frequency portion of a copper loop either through a line sharing or line splitting arrangement, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to the requesting telecommunications carrier loop and splitter functionality that is compatible with any transmission technology that the requesting telecommunications carrier seeks to deploy using the high frequency portion of the loop, as defined in paragraph (a)(1)(i) of this section, provided that such transmission technology is presumed to be deployable pursuant to § 51.230.

(2) *Hybrid loops.* A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

(i) *Packet switching facilities, features, functions, and capabilities.* An incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or

forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(ii) *Broadband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting telecommunications carrier with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between the incumbent LEC's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

(iii) *Narrowband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, the incumbent LEC may either:

(A) Provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (*i.e.*, equivalent to DS0 capacity), using time division multiplexing technology; or

(B) Provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis.

(3) *Fiber-to-the-home loops.* A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving a residential end user's customer premises.

(i) *New builds.* An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to a residential unit that previously has not been served by any loop facility.

(ii) *Overbuilds*. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to paragraph (a)(3)(iii) of this section.

(B) An incumbent LEC that maintains the existing copper loop pursuant to paragraph (a)(3)(ii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iii) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis.

(iii) *Retirement of copper loops or copper subloops*. Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and

(B) Any applicable state requirements.

(4) *DS1 loops*. (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in paragraph (a)(4)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS1 loop at a specific customer location. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

(ii) *Competitive wholesale facilities trigger for DS1 loops*. A state

commission shall find that a requesting telecommunications carrier is not impaired without access to a DS1 loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B) of this section:

(A) The competing provider has deployed its own DS1 facilities, and offers a DS1 loop over its own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider has access to the entire customer location, including each individual unit within that location.

(5) *DS3 loops*. Subject to the cap in paragraph (a)(5)(iii), an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis except where the state commission has found, through application of either paragraph (a)(5)(i) of this section or the potential deployment analysis in paragraph (a)(5)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS3 loop at a specific customer location. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

(i) *Triggers for DS3 loops*. A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled DS3 loops at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, satisfy either paragraph (a)(5)(i)(A) or paragraph (a)(5)(i)(B) of this section:

(A) *Self-provisioning trigger for DS3 loops*. To satisfy this trigger, a state commission must find that each competing provider has either deployed its own DS3 facilities at that specific customer location and is serving customers via those facilities at that location, or has deployed DS3 facilities by attaching its own optronics to activate dark fiber transmission facilities

obtained under a long-term indefeasible right of use and is serving customers via those facilities at that location.

(B) *Competitive wholesale facilities trigger for DS3 loops*. To satisfy this trigger, a state commission must find that each competing provider satisfies the conditions in paragraphs (a)(5)(i)(B)(1) and (a)(5)(i)(B)(2) of this section.

(1) The competing provider has deployed its own DS3 facilities, and offers a DS3 loop over its own facilities on a widely available wholesale basis to other competing providers seeking to serve customers at the specific customer location. For purposes of this paragraph, the competing provider's DS3 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(2) The competing provider has access to the entire customer location, including each individual unit within that location.

(ii) *Potential deployment of DS3 loops*. Where neither trigger in paragraph (a)(5)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled DS3 loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(iii) *Cap on unbundled DS3 circuits*. A requesting telecommunications carrier may obtain a maximum of two unbundled DS3 loops for any single customer location where DS3 loops are available as unbundled loops.

(6) *Dark fiber loops*. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a dark fiber loop on an unbundled basis except where a state commission has found, through application of the self-provisioning trigger in paragraph (a)(6)(i) of this section or the potential deployment analysis in paragraph

(a)(6)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a dark fiber loop at a specific customer location. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

(i) *Self-provisioning trigger for dark fiber loops.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to a dark fiber loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, have deployed their own dark fiber facilities at that specific customer location. For purposes of making this determination, a competing provider that has obtained those dark fiber facilities under a long-term indefeasible right of use shall be considered a competing provider with its own dark fiber facilities. Dark fiber purchased on an unbundled basis from the incumbent LEC shall not be considered under this paragraph.

(ii) *Potential deployment of dark fiber loops.* Where the trigger in paragraph (a)(6)(i) of this section is not satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled dark fiber loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(7) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (a)(4), (a)(5), and (a)(6) of this section in accordance with paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(i) *Initial review.* A state commission shall complete any initial review applying the triggers and criteria in paragraphs (a)(4), (a)(5), and (a)(6) of this section within nine months from the effective date of the Commission's *Triennial Review Order*.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(8) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

(9) *Engineering policies, practices, and procedures.* An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.

(b) *Subloops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to subloops on an unbundled basis in accordance with section 251(c)(3) of the Act and

this part and as set forth in paragraph (b) of this section.

(1) *Copper subloops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a copper subloop on an unbundled basis. A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises. A copper subloop includes all intermediate devices (including repeaters and load coils) used to establish a transmission path between a point of technically feasible access and the demarcation point at the end-user customer premises, and includes the features, functions, and capabilities of the copper loop. Copper subloops include two-wire and four-wire analog voice-grade subloops as well as two-wire and four-wire subloops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the subloops are in service or held as spares.

(i) *Point of technically feasible access.* A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal. The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.501 through 51.515.

(ii) *Rules for collocation.* Access to the copper subloop is subject to the Commission's collocation rules at §§ 51.321 and 51.323.

(2) *Subloops for access to multiunit premises wiring.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop that the requesting telecommunications carrier seeks to provision for its customer. The subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent

LEC's outside plant at or near a multiunit premises. One category of this subloop is inside wire, which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter.

(i) *Point of technically feasible access.* A point of technically feasible access is any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/distribution interface.

(ii) *Single point of interconnection.* Upon notification by a requesting telecommunications carrier that it requests interconnection at a multiunit premises where the incumbent LEC owns, controls, or leases wiring, the incumbent LEC shall provide a single point of interconnection that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligations, under paragraph (b)(2) of this section, to provide nondiscriminatory access to a subloop for access to multiunit premises wiring, including any inside wire, at any technically feasible point. If the parties are unable to negotiate rates, terms, and conditions under which the incumbent LEC will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under section 252 of the Act.

(3) *Other subloop provisions—(i) Technical feasibility.* If parties are unable to reach agreement through voluntary negotiations as to whether it is technically feasible, or whether sufficient space is available, to unbundle a copper subloop or subloop for access to multiunit premises wiring at the point where a telecommunications carrier requests, the incumbent LEC shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible to unbundle the subloop at the point requested.

(ii) *Best practices.* Once one state commission has determined that it is technically feasible to unbundle

subloops at a designated point, an incumbent LEC in any state shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

(c) *Network interface device.* Apart from its obligation to provide the network interface device functionality as part of an unbundled loop or subloop, an incumbent LEC also shall provide nondiscriminatory access to the network interface device on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. The network interface device element is a stand-alone network element and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.

(d) *Local circuit switching.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (d) of this section.

(1) *Definition.* Local circuit switching is defined as follows:

(i) Local circuit switching encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks.

(ii) Local circuit switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.

(2) *DSO capacity (i.e., mass market) determinations.* An incumbent LEC shall provide access to local circuit switching on an unbundled basis to a requesting telecommunications carrier serving end users using DSO capacity loops except where the state commission has found, in accordance with the conditions set forth in paragraph (d)(2) of this section, that requesting telecommunications carriers are not impaired in a particular market,

or where the state commission has found that all such impairment would be cured by implementation of transitional unbundled local circuit switching in a given market and has implemented such transitional access as set forth in paragraph (d)(2)(iii)(C) of this section.

(i) *Market definition.* A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. A state commission shall not define the relevant geographic area as the entire state.

(ii) *Batch cut process.* In each of the markets that the state commission defines pursuant to paragraph (d)(2)(i) of this section, the state commission shall either establish an incumbent LEC batch cut process as set forth in paragraph (d)(2)(ii)(A) of this section or issue detailed findings explaining why such a batch process is unnecessary, as set forth in paragraph (d)(2)(ii)(B) of this section. A batch cut process is defined as a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line-by-line basis.

(A) A state commission shall establish an incumbent LEC batch cut process for use in migrating lines served by one carrier's local circuit switch to lines served by another carrier's local circuit switch in each of the markets the state commission has defined pursuant to paragraph (d)(2)(i) of this section. In establishing the incumbent LEC batch cut process:

(1) A state commission shall first determine the appropriate volume of loops that should be included in the "batch."

(2) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices.

(3) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using

unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements. These rates shall reflect the efficiencies associated with batched migration of loops to a requesting telecommunications carrier's switch, either through a reduced per-line rate or through volume discounts as appropriate.

(B) If a state commission concludes that the absence of a batch cut migration process is not impairing requesting telecommunications carriers' ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis, that conclusion will render the creation of such a process unnecessary. In such cases, the state commission shall issue detailed findings regarding the volume of unbundled loop migrations that could be expected if requesting telecommunications carriers were no longer entitled to local circuit switching on an unbundled basis, the ability of the incumbent LEC to meet that demand in a timely and efficient manner using its existing hot cut process, and the non-recurring costs associated with that hot cut process. The state commission further shall explain why these findings indicate that the absence of a batch cut process does not give rise to impairment in the market at issue.

(iii) *State commission analysis.* To determine whether requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis, a state commission shall perform the inquiry set forth in paragraphs (d)(2)(iii)(A) through (d)(2)(iii)(C) of this section:

(A) *Local switching triggers.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to local circuit switching on an unbundled basis in a particular market where either the self-provisioning trigger set forth in paragraph (d)(2)(iii)(A)(1) of this section or the competitive wholesale facilities trigger set forth in paragraph (d)(2)(iii)(A)(2) of this section is satisfied.

(1) *Local switching self-provisioning trigger.* To satisfy this trigger, a state commission must find that three or

more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each are serving mass market customers in the particular market with the use of their own local circuit switches.

(2) *Local switching competitive wholesale facilities trigger.* To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each offer wholesale local circuit switching service to customers serving DS0 capacity loops in that market using their own switches.

(B) *Additional state authority.* If neither of the triggers described in paragraph (d)(2)(iii)(A) of this section has been satisfied, the state commission shall find that requesting telecommunications carriers are not impaired without access to unbundled local circuit switching in a particular market where the state commission determines that self-provisioning of local switching is economic based on the following criteria:

(1) *Evidence of actual deployment.* The state commission shall consider whether switches actually deployed in the market at issue permit competitive entry in the absence of unbundled local circuit switching. Specifically, the state commission shall examine whether, in the market at issue, there are either two wholesale providers or three self-provisioners of local switching not affiliated with each other or the incumbent LEC, serving end users using DS1 or higher capacity loops in the market at issue; or there is any carrier, including any intermodal provider of service comparable in quality to that of the incumbent LEC, using a self-provisioned switch to serve end users using DS0 capacity loops. If so, and if the state commission determines that the switch or switches identified can be used to serve end users using DS0 capacity loops in that market in an economic fashion, this evidence must be given substantial weight.

(2) *Operational barriers.* The state commission also shall examine the role of potential operational barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the incumbent LEC's performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects

in an incumbent LEC's wire center render entry uneconomic for requesting telecommunications carriers in the absence of unbundled access to local circuit switching.

(3) *Economic barriers.* The state commission shall also examine the role of potential economic barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the costs of migrating incumbent LEC loops to requesting telecommunications carriers' switches or the costs of backhauling voice circuits to requesting telecommunications carriers' switches from the end offices serving their end users render entry uneconomic for requesting telecommunications carriers.

(4) *Multi-line DS0 end users.* As part of the economic analysis set forth in paragraph (d)(2)(iii)(B)(3) of this section, the state commission shall establish a maximum number of DS0 loops for each geographic market that requesting telecommunications carriers can serve through unbundled switching when serving multiline end users at a single location. Specifically, in establishing this "cutoff," the state commission shall take into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served in an economic fashion by higher capacity loops and a carrier's own switching and thus be considered part of the DS1 enterprise market.

(C) *Transitional use of unbundled switching.* If the triggers described in paragraph (d)(2)(iii)(A) of this section have not been satisfied with regard to a particular market and the analysis described in paragraph (d)(2)(iii)(B) of this section has resulted in a finding that requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis in that market, the state commission shall consider whether any impairment would be cured by transitional ("rolling") access to local circuit switching on an unbundled basis for a period of 90 days or more. "Rolling" access means the use of unbundled local circuit switching for a limited period of time for each end-user customer to whom a requesting telecommunications carrier seeks to provide service. If the state commission determines that transitional access to unbundled local circuit switching would cure any impairment, it shall require incumbent LECs to make unbundled local circuit switching available to requesting telecommunications carriers for 90 days

or more, as specified by the state commission. The time limit set by the commission shall apply to each request for access to unbundled local circuit switching by a requesting telecommunications carrier on a per customer basis.

(iv) *DS0 capacity end-user transition.* If a state commission finds that no impairment exists in a market or that any impairment could be cured by transitional access to unbundled local circuit switching, all requesting telecommunications carriers in that market shall commit to an implementation plan with the incumbent LEC for the migration of the embedded unbundled switching mass market customer base within 2 months of the state commission determination. A requesting telecommunications carrier may no longer obtain access to unbundled local circuit switching 5 months after the state commission determination, except, where applicable, on a transitional basis as described in paragraph (d)(2)(iii)(C) of this section.

(A) *Transition timeline.* Each requesting telecommunications carrier shall submit the orders necessary to migrate its embedded base of end-user customers off of the unbundled local circuit switching element in accordance with the following timetable, measured from the day of the state commission determination. For purposes of calculating the number of customers who must be migrated, the embedded base of customers shall include all customers served using unbundled switching that are not customers being served with transitional unbundled switching pursuant to paragraph (d)(3)(iii)(C) of this section.

(1) *Month 13:* Each requesting telecommunications carrier must submit orders for one-third of all its unbundled local circuit switching end-user customers;

(2) *Month 20:* Each requesting telecommunications carrier must submit orders for half of its remaining unbundled local circuit switching end-user customers, as calculated pursuant to paragraph (d)(2)(iv)(A)(1) of this section; and

(3) *Month 27:* Each requesting telecommunications carrier must submit orders for its remaining unbundled local circuit switching end-user customers.

(B) *Operational aspects of the migration.* Requesting telecommunications carriers and the incumbent LEC shall jointly submit the details of their implementation plans for each market to the state commission within two months of the state commission's determination that

requesting telecommunications carriers are not impaired without access to local circuit switching on an unbundled basis. Each requesting telecommunications carrier shall also notify the state commission when it has submitted its orders for migration. Each incumbent LEC shall notify the state commission when it has completed the migration.

(3) *DS1 capacity and above (i.e., enterprise market) determinations.* An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops except where the state commission petitions this Commission for waiver of this finding in accordance with the conditions set forth in paragraph (d)(3)(i) of this section and the Commission grants such waiver.

(i) *State commission inquiry.* In its petition, a state commission wishing to rebut the Commission's finding should petition the Commission to show that requesting telecommunications carriers are impaired without access to local circuit switching to serve end users using DS1 capacity and above loops in a particular geographic market as defined in accordance with paragraph (d)(2)(i) of this section if it finds that operational or economic barriers exist in that market.

(A) In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross-connects in the incumbent LEC's wire center.

(B) In making this showing, the state commission shall consider the following economic characteristics: the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of the prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.

(ii) *Transitional four-line carve-out.* Until the state commission completes the review described in paragraph (b)(2)(iii)(B)(4) of this section, an

incumbent LEC shall comply with the four-line "carve-out" for unbundled switching established in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822-31, paras. 276-98 (1999), *reversed and remanded in part sub. nom. United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

(A) *DS1 capacity and above end-user transition.* Each requesting telecommunications carrier shall transfer its end-user customers served using DS1 and above capacity loops and unbundled local circuit switching to an alternative arrangement within 90 days from the end of the 90-day state commission consideration period set forth in paragraph (d)(5)(i), unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.

(4) *Other elements to be unbundled.* Elements relating to the local circuit switching element shall be made available on an unbundled basis as set forth in paragraphs (d)(4)(i) and (d)(4)(ii) of this section.

(i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission. These elements are defined as follows:

(A) *Signaling networks.* Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(B) *Call-related databases.* Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, an incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent

network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems are defined as computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, the incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service management systems by providing a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system, including access to design, create, test, and deploy advanced intelligent network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(3) An incumbent LEC shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment.

(C) *Shared transport.* Shared transport is defined as the transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier nondiscriminatory access to operator services and directory assistance on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission, if the incumbent LEC does not provide that requesting telecommunications carrier with customized routing, or a compatible signaling protocol, necessary to use either a competing provider's operator services and directory assistance platform or the requesting telecommunications carrier's own platform. Operator services are any automatic or live assistance to a customer to arrange for billing or

completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(5) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (d)(2) and (d)(3) of this section in accordance with paragraphs (d)(5)(i) and (d)(5)(ii) of this section.

(i) *Timing.* A state commission shall complete any initial review applying the triggers and criteria in paragraph (d)(2) of this section within nine months from the effective date of the Commission's *Triennial Review Order*. A state commission wishing to rebut the Commission's finding of non-impairment for DS1 and above enterprise switches must file a petition with the Commission in accordance with paragraph (d)(3) of this section within 90 days from that effective date.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(e) *Dedicated transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (e)(1) through (e)(5) of this section. As used in those paragraphs, a "route" is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

(1) *Dedicated DS1 transport.* (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS1 transport on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in paragraphs (e)(1)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS1 transport along a particular route. Dedicated DS1 transport consists of

incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

(ii) *Competitive wholesale facilities trigger for dedicated DS1 transport.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to dedicated DS1 transport along a particular route where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(D) of this section.

(A) The competing provider has deployed its own transport facilities and is operationally ready to use those facilities to provide dedicated DS1 transport along the particular route. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route.

(C) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(D) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and through a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(2) *Dedicated DS3 transport.* Subject to the cap in paragraph (e)(2)(iii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS3 transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(2)(i) of this section or the potential deployment analysis in paragraph (e)(2)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS3 transport along a particular route.

Dedicated DS3 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(i) *Triggers for dedicated DS3 transport.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route where either of the triggers in paragraphs (e)(2)(i)(A) or (e)(2)(i)(B) of this section is satisfied.

(A) *Self-provisioning trigger for dedicated DS3 transport.* To satisfy this trigger, a state must find that three or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(A)(1) and (e)(2)(i)(A)(2) of this section.

(1) The competing provider has deployed its own transport facilities and is operationally ready to use those transport facilities to provide dedicated DS3 transport along the particular route. For purposes of this paragraph, the competing provider's DS3 transport facilities may use dark fiber facilities that the competing provider has obtained on a long-term, indefeasible-right of use basis and that it has deployed by attaching its own optronics to activate the fiber.

(2) The competing provider's facilities terminate at a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) *Competitive wholesale facilities trigger for dedicated DS3 transport.* To satisfy this trigger, a state must find that two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(B)(1) through (e)(2)(i)(B)(4) of this section.

(1) The competing provider has deployed its own transport facilities, including transport facilities that use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber, and is operationally ready to use those facilities to provide dedicated DS3 transport along the particular route.

(2) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS3 transport along the particular route.

(3) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and through a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(ii) *Potential deployment of dedicated DS3 transport.* Where neither trigger in paragraph (e)(2)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(iii) *Cap on unbundled DS3 circuits.* A requesting telecommunications carrier may obtain a maximum of 12 unbundled dedicated DS3 circuits for any single route for which dedicated DS3 transport is available as unbundled transport.

(3) *Dark fiber transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dark fiber transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(3)(i) of this section or the potential deployment analysis in paragraph (e)(3)(ii) of this section, that requesting telecommunications carriers are not impaired without access to unbundled dark fiber transport along the particular route. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

(i) *Triggers for dark fiber transport.* A state commission shall find that a

requesting telecommunications carrier is not impaired without access to dark fiber transport along a particular route where either of the triggers in paragraph (e)(3)(i)(A) or paragraph (e)(3)(i)(B) of this section is satisfied.

(A) *Self-provisioning trigger for dark fiber transport.* To satisfy this trigger, a state commission must find three or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(A)(1) and (e)(3)(i)(A)(2) of this section.

(1) The competing provider has deployed its own dark fiber facilities, which may include dark fiber facilities that it has obtained on a long-term, indefeasible-right of use basis.

(2) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) *Competitive wholesale facilities trigger for dark fiber transport.* To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(B)(1) through (e)(3)(i)(B)(4) of this section. In applying this trigger, the state commission may consider whether competing providers have sufficient quantities of dark fiber available to satisfy current demand along that route.

(1) The competing provider has deployed its own dark fiber, including dark fiber that it has obtained from an entity other than the incumbent LEC, and is operationally ready to lease or sell those facilities for the provision of fiber-based transport along the particular route.

(2) The competing provider is willing immediately to provide, on a widely available basis, dark fiber along the particular route.

(3) The competing provider's dark fiber terminates in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's dark fiber through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and through a similar arrangement at each end of the transport route that is

not located at an incumbent LEC premises.

(ii) *Potential deployment of dark fiber transport.* Where neither trigger in paragraph (e)(3)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dark fiber transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(4) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (e)(1), (e)(2), and (e)(3) of this section in accordance with paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

(i) *Initial review.* A state commission shall complete any initial review applying the triggers and criteria in paragraphs (e)(1), (e)(2), and (e)(3) of this section within nine months from the effective date of the Commission's *Triennial Review Order*.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(5) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of

cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier.

(f) *911 and E911 databases.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to 911 and E911 databases on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part.

(g) *Operations support systems.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering function, shall provide the requesting telecommunications carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.

■ 12. Section 51.320 is added to read as follows:

§ 51.320 Assumption of responsibility by the Commission.

If a state commission fails to exercise its authority under § 51.319, any party seeking that the Commission step into the role of the state commission shall file with the Commission and serve on the state commission a petition that explains with specificity the bases for the petition and information that supports the claim that the state commission has failed to act. Subsequent to the Commission's issuing a public notice and soliciting comments on the petition from interested parties, the Commission will rule on the petition within 90 days of the date of the public notice. If it agrees that the state commission has failed to act, the Commission will assume responsibility for the proceeding, and within nine months from the date it assumed responsibility for the proceeding, make

any findings in accordance with the Commission's rules.

■ 13. Section 51.325 is amended by adding paragraph (a)(4) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops, as that term is defined in § 51.319(a)(3).

* * * * *

■ 14. Section 51.331 is amended by adding paragraph (c) to read as follows:

§ 51.331 Notice of network changes: Timing of notice.

* * * * *

(c) Competing service providers may object to incumbent LEC notice of retirement of copper loops or copper subloops and replacement with fiber-to-the-home loops in the manner set forth in § 51.333(c).

■ 15. Section 51.333 is amended by revising the section heading, paragraph (b), paragraph (c) introductory text, and by adding paragraph (f) to read as follows:

§ 51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops or copper subloops.

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices or notices of replacement of copper loops or copper subloops with fiber-to-the-home loops. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(i) *Short term notice.* Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(ii) *Replacement of copper loops or copper subloops with fiber-to-the-home loops.* Notices of replacement of copper loops or copper subloops with fiber-to-the-home loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC

provide less than 90 days notice of such a change.

(c) *Objection procedures for short term notice and notices of replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to an incumbent LEC's short term notice or to its notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the

Commission's public notice. All objections filed under this section must:

* * * * *
(f) *Resolution of objections to replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at

issue for replacement with fiber-to-the-home loops.

■ 16. Section 51.509 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 51.509 Rate structure standards for specific elements.

(a) *Local loop and subloop.* Loop and subloop costs shall be recovered through flat-rated charges.

* * * * *

(h) *Network interface device.* An incumbent LEC must establish a price for the network interface device when that unbundled network element is purchased on a stand-alone basis pursuant to § 51.319(c).

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 51**

[CC Docket No. 01–338; CC Docket No. 96–98; CC Docket No. 98–147; FCC 03–36]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document initiates an inquiry regarding proposed modifications to the Commission's existing rules implementing section 252(i) which requires local exchange carriers (LECs) to make available to other telecommunications carriers interconnection agreements approved under section 252.

DATES: Comments are due October 2, 2003 and Reply Comments are due October 23, 2003. It is also available on the Commission's Web site at <http://www.fcc.gov>.

FOR FURTHER INFORMATION CONTACT:

Robert Tanner, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580 or via the Internet at rtanner@fcc.gov. The complete text of this Notice of Proposed Rulemaking (NPRM) is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 01–338, FCC 03–36, adopted February 20, 2003, and released August 21, 2003. This full text may 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.

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. The Commission seeks comment on whether to alter its interpretation of section 252(i) to promote more meaningful commercial negotiations. The Commission tentatively concludes that modifying its current approach would better serve the goals of section 252(i) and sections 251–252 generally. The Commission also incorporates into this docket a related Petition for

Forbearance and Rulemaking filed by Mpower Communications (“Mpower Petition”) and the comments and *ex partes* filed in response to the Mpower Petition. See *Petition of Mpower Communications Corp. for Establishment of New Flexible Contract Mechanism Not Subject to “Pick-and-Choose”*, CC Docket No. 01–117, Petition for Forbearance and Rulemaking (May 25, 2001).

2. In the *Local Competition Order*, (61 FR 52706, October 8, 1996) the Commission adopted an interpretation of section 252(i) of the Act that required incumbent LECs to permit “third parties to obtain access under section 252(i) to any individual interconnection, service or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252.” This interpretation is often referred to as the “pick and choose” rule. See 47 CFR 51.809. In its petition, Mpower argues that the current rule “inhibit[s] innovative deal-making” and has led to “a great sameness and very little meaningful choice” in interconnection agreements. Mpower and several carriers filing comments in CC Docket 01–117 propose that carriers seeking to use section 252(i) be required to adopt the entire terms and conditions of an interconnection agreement approved under section 252 rather than allow adoption of individual terms as conditions.

3. The Commission seeks comment on its legal authority to alter its interpretation of the statute in view of the Supreme Court's characterization of the Commission's current rule as “the most readily apparent” reading of the statute. *Iowa Utils. Bd.*, 525 U.S. at 396. The Commission tentatively concludes that it may adopt a different rule pursuant to section 252(i), provided the Commission's modified rule is a reasonable interpretation of the statutory text. The Commission observes that the public record in response to the Mpower petition indicates that under the current rules incumbent LECs seldom make significant concessions in return for some trade-off for fear that third parties will obtain the equivalent benefits without making any trade-off at all. The Commission invites parties to submit concrete evidence to the contrary.

4. The Commission identifies two key concerns expressed by commenters in response to the proposal put forward by Mpower to create “FLEX” contracts that would provide an alternative form of interconnection agreement outside of section 252(i) and not subject to the “pick and choose” rule. First, incumbent LECs might insert “poison

pills” into such agreements to make them unsuitable for adoption by third parties. Second, commenters argue that there is not a valid basis for exempting “FLEX” contracts from the requirement to submit interconnection agreements to state commissions for approval or from other requirements in section 252.

5. The Commission seeks comment on a proposal described as follows: If an incumbent LEC does not file and obtain state approval for a statement of generally available terms and conditions (SGAT) the current pick and choose rule would continue to apply to all of that incumbent LEC's interconnection agreements. If an incumbent LEC does file and obtain state approval for an SGAT, the current pick and choose rule would apply solely to the SGAT and all other interconnection agreements entered into by that incumbent would be subject to an “all-or-nothing” rule requiring third parties to adopt the interconnection agreement in its entirety. The Commission notes that the Act only requires Bell Operating Companies (BOCs) to file SGATs and it seeks comment on whether it should apply the above approach to non-BOC incumbent LECs as well. The Commission also seeks comment on whether the SGAT condition, together with preservation of the Act's good faith obligation and non-discrimination safeguards be sufficient to prevent the above described proposal from eviscerating the obligation Congress imposed in section 252(i).

6. The Commission seeks comment on whether the above described proposal would be workable for all classes of carriers, including smaller competitive LECs. The Commission seeks comment on whether there are other means of restoring the Congressional goal of meaningful marketplace negotiations, including modifications to the above described proposal.

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are sought on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or

summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

8. The Commission initiates this NPRM to ensure that market-based incentives exist for incumbent and competitive LECs to negotiate innovative commercial interconnection arrangements. The current pick-and-choose rules implementing section 252(i) may discourage give-and-take negotiation because incumbent LECs may be reluctant to make significant concessions (in exchange for negotiated benefit) if those concessions become automatically available—without any tradeoff—to every potential market entrant. It therefore seeks comment on whether alternate approaches to implementing section 252(i), such as requiring third parties to opt into entire agreements, would promote more innovative and flexible arrangements between parties. Any changes to the current pick-and-choose rule, however, may raise concerns as to whether there is the potential for parties to interconnection agreements to include “poison pill” language that would deter third parties from opting into those agreements under section 252(i). This NPRM proposes an approach that would eliminate the current pick-and-choose regime for incumbent LECs wherever the incumbent LEC has filed and received state approval of a statement of generally available terms and conditions, and this NPRM seeks to build a record from which to judge the wisdom of this approach.

Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1, 3, 4, 201–205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, 303(r).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. 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 Small Business Administration (SBA).

11. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this FNPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Further, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted previously, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on its analyses and determinations in other, non-RFA contexts.

13. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

13. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the

Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

14. *Competitive Local Exchange Carriers (competitive LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers,” all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were “Other Local Exchange Carriers.” Of the 55 “Other Local Exchange Carriers,” an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Exchange Carriers” are small entities that may be affected by the rules and policies adopted herein.

15. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was

the provision of payphone services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

16. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

17. *Prepaid Calling Card Providers*. The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

18. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five

have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

19. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

20. *Broadband Personal Communications Service*. The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-

auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

21. *Narrowband Personal Communications Services*. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules.

The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

22. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

23. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first

auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

24. 800 MHz and 900 MHz Specialized Mobile Radio Licenses. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

25. Common Carrier Paging. In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals,

has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area 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. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

26. 700 MHz Guard Band Licensees. In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

27. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500

persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

28. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. It will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

29. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that

almost all of them qualify as "small" businesses under the above special small business size standards.

30. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

31. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

32. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of

\$15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

33. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

34. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts

of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

35. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

36. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes

(excluding any carry-over losses), has no more than \$2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

37. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross

revenues for the three preceding years not in excess of \$15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

39. *Internet Service Providers.* While internet service providers (ISPs) would only be indirectly affected by the proposed rules, and ISPs are therefore not formally included within this present IRFA, we address them informally to create a fuller record. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having \$21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of \$9,999,999 or less, and an additional 67 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

12. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r), this NPRM is adopted.

13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22194 Filed 8–29–03; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 2854/P.L. 108-74

To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108-75

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500-End	(869-050-00059-8)	63.00	Apr. 1, 2003
21 Parts:			
1-99	(869-050-00060-1)	40.00	Apr. 1, 2003
100-169	(869-050-00061-0)	47.00	Apr. 1, 2003
170-199	(869-050-00062-8)	50.00	Apr. 1, 2003
200-299	(869-050-00063-6)	17.00	Apr. 1, 2003
300-499	(869-050-00064-4)	29.00	Apr. 1, 2003
500-599	(869-050-00065-2)	47.00	Apr. 1, 2003
600-799	(869-050-00066-1)	15.00	Apr. 1, 2003
800-1299	(869-050-00067-9)	58.00	Apr. 1, 2003
1300-End	(869-050-00068-7)	22.00	Apr. 1, 2003
22 Parts:			
1-299	(869-050-00069-5)	62.00	Apr. 1, 2003
300-End	(869-050-00070-9)	44.00	Apr. 1, 2003
23	(869-050-00071-7)	44.00	Apr. 1, 2003
24 Parts:			
0-199	(869-050-00072-5)	58.00	Apr. 1, 2003
200-499	(869-050-00073-3)	50.00	Apr. 1, 2003
500-699	(869-050-00074-1)	30.00	Apr. 1, 2003
700-1699	(869-050-00075-0)	61.00	Apr. 1, 2003
1700-End	(869-050-00076-8)	30.00	Apr. 1, 2003
25	(869-050-00077-6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0-1-1.60	(869-050-00078-4)	49.00	Apr. 1, 2003
§§ 1.61-1.169	(869-050-00079-2)	63.00	Apr. 1, 2003
§§ 1.170-1.300	(869-050-00080-6)	57.00	Apr. 1, 2003
§§ 1.301-1.400	(869-050-00081-4)	46.00	Apr. 1, 2003
§§ 1.401-1.440	(869-050-00082-2)	61.00	Apr. 1, 2003
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501-1.640	(869-050-00084-9)	49.00	Apr. 1, 2003
§§ 1.641-1.850	(869-050-00085-7)	60.00	Apr. 1, 2003
§§ 1.851-1.907	(869-050-00086-5)	60.00	Apr. 1, 2003
§§ 1.908-1.1000	(869-050-00087-3)	60.00	Apr. 1, 2003
§§ 1.1001-1.1400	(869-050-00088-1)	61.00	Apr. 1, 2003
§§ 1.1401-1.1503-2A	(869-050-00089-0)	50.00	Apr. 1, 2003
§§ 1.1551-End	(869-050-00090-3)	50.00	Apr. 1, 2003
2-29	(869-050-00091-1)	60.00	Apr. 1, 2003
30-39	(869-050-00092-0)	41.00	Apr. 1, 2003
40-49	(869-050-00093-8)	26.00	Apr. 1, 2003
50-299	(869-050-00094-6)	41.00	Apr. 1, 2003
300-499	(869-050-00095-4)	61.00	Apr. 1, 2003
500-599	(869-050-00096-2)	12.00	⁵ Apr. 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
27 Parts:				86 (86.600-1-End)			
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003	(869-048-00149-2)	47.00	July 1, 2002	
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003	87-99	(869-048-00150-6)	57.00	July 1, 2002
28 Parts:				100-135	(869-048-00151-4)	42.00	July 1, 2002
*0-42	(869-050-00100-4)	61.00	July 1, 2003	136-149	(869-048-00152-2)	58.00	July 1, 2002
*43-End	(869-050-00101-2)	58.00	July 1, 2003	150-189	(869-048-00153-1)	47.00	July 1, 2002
29 Parts:				190-259	(869-048-00154-9)	37.00	July 1, 2002
*0-99	(869-050-00102-1)	50.00	July 1, 2003	260-265	(869-048-00155-7)	47.00	July 1, 2002
100-499	(869-048-00101-8)	21.00	July 1, 2002	266-299	(869-048-00156-5)	47.00	July 1, 2002
500-899	(869-048-00102-6)	58.00	July 1, 2002	300-399	(869-048-00157-3)	43.00	July 1, 2002
900-1899	(869-048-00103-4)	35.00	July 1, 2002	400-424	(869-048-00158-1)	54.00	July 1, 2002
1900-1910 (§§ 1900 to 1910.999)	(869-048-00104-2)	58.00	July 1, 2002	425-699	(869-048-00159-0)	59.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869-048-00105-1)	42.00	⁸ July 1, 2002	700-789	(869-048-00160-3)	58.00	July 1, 2002
1911-1925	(869-050-00108-0)	30.00	July 1, 2003	790-End	(869-048-00161-1)	45.00	July 1, 2002
*1926	(869-050-00109-8)	50.00	July 1, 2003	41 Chapters:			
1927-End	(869-048-00108-5)	59.00	July 1, 2002	1, 1-1 to 1-10	13.00	³ July 1, 1984	
30 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)	13.00	³ July 1, 1984	
1-199	(869-048-00109-3)	56.00	July 1, 2002	3-6	14.00	³ July 1, 1984	
200-699	(869-048-00110-7)	47.00	July 1, 2002	7	6.00	³ July 1, 1984	
700-End	(869-048-00111-5)	56.00	July 1, 2002	8	4.50	³ July 1, 1984	
31 Parts:				9	13.00	³ July 1, 1984	
0-199	(869-048-00112-3)	35.00	July 1, 2002	10-17	9.50	³ July 1, 1984	
200-End	(869-048-00113-1)	60.00	July 1, 2002	18, Vol. I, Parts 1-5	13.00	³ July 1, 1984	
32 Parts:				18, Vol. II, Parts 6-19	13.00	³ July 1, 1984	
1-39, Vol. I	15.00	² July 1, 1984		18, Vol. III, Parts 20-52	13.00	³ July 1, 1984	
1-39, Vol. II	19.00	² July 1, 1984		19-100	13.00	³ July 1, 1984	
1-39, Vol. III	18.00	² July 1, 1984		1-100	(869-048-00162-0)	23.00	July 1, 2002
1-190	(869-048-00114-0)	56.00	July 1, 2002	101	(869-048-00163-8)	43.00	July 1, 2002
191-399	(869-048-00115-8)	60.00	July 1, 2002	102-200	(869-048-00164-6)	41.00	July 1, 2002
400-629	(869-048-00116-6)	47.00	July 1, 2002	201-End	(869-048-00165-4)	24.00	July 1, 2002
630-699	(869-048-00117-4)	37.00	July 1, 2002	42 Parts:			
700-799	(869-048-00118-2)	44.00	July 1, 2002	1-399	(869-048-00166-2)	56.00	Oct. 1, 2002
800-End	(869-048-00119-1)	46.00	July 1, 2002	400-429	(869-048-00167-1)	59.00	Oct. 1, 2002
33 Parts:				430-End	(869-048-00168-9)	61.00	Oct. 1, 2002
1-124	(869-048-00120-4)	47.00	July 1, 2002	43 Parts:			
125-199	(869-048-00121-2)	60.00	July 1, 2002	1-999	(869-048-00169-7)	47.00	Oct. 1, 2002
200-End	(869-048-00122-1)	47.00	July 1, 2002	1000-end	(869-048-00170-1)	59.00	Oct. 1, 2002
34 Parts:				44	(869-048-00171-9)	47.00	Oct. 1, 2002
1-299	(869-048-00123-9)	45.00	July 1, 2002	45 Parts:			
300-399	(869-048-00124-7)	43.00	July 1, 2002	1-199	(869-048-00172-7)	57.00	Oct. 1, 2002
400-End	(869-048-00125-5)	59.00	July 1, 2002	200-499	(869-048-00173-5)	31.00	⁹ Oct. 1, 2002
35				500-1199	(869-048-00174-3)	47.00	Oct. 1, 2002
1-199	(869-048-00126-3)	10.00	⁷ July 1, 2002	1200-End	(869-048-00175-1)	57.00	Oct. 1, 2002
36 Parts				46 Parts:			
1-199	(869-048-00127-1)	36.00	July 1, 2002	1-40	(869-048-00176-0)	44.00	Oct. 1, 2002
200-299	(869-048-00128-0)	35.00	July 1, 2002	41-69	(869-048-00177-8)	37.00	Oct. 1, 2002
300-End	(869-048-00129-8)	58.00	July 1, 2002	70-89	(869-048-00178-6)	14.00	Oct. 1, 2002
37				90-139	(869-048-00179-4)	42.00	Oct. 1, 2002
1-199	(869-048-00130-1)	47.00	July 1, 2002	140-155	(869-048-00180-8)	24.00	Oct. 1, 2002
38 Parts:				156-165	(869-048-00181-6)	31.00	⁹ Oct. 1, 2002
*0-17	(869-050-00133-1)	58.00	July 1, 2003	166-199	(869-048-00182-4)	44.00	Oct. 1, 2002
18-End	(869-048-00132-8)	58.00	July 1, 2002	200-499	(869-048-00183-2)	37.00	Oct. 1, 2002
39				500-End	(869-048-00184-1)	24.00	Oct. 1, 2002
1-49	(869-048-00133-6)	40.00	July 1, 2002	47 Parts:			
40 Parts:				0-19	(869-048-00185-9)	57.00	Oct. 1, 2002
1-49	(869-048-00134-4)	57.00	July 1, 2002	20-39	(869-048-00186-7)	45.00	Oct. 1, 2002
50-51	(869-048-00135-2)	40.00	July 1, 2002	40-69	(869-048-00187-5)	36.00	Oct. 1, 2002
52 (52.01-52.1018)	(869-048-00136-1)	55.00	July 1, 2002	70-79	(869-048-00188-3)	58.00	Oct. 1, 2002
52 (52.1019-End)	(869-048-00137-9)	58.00	July 1, 2002	80-End	(869-048-00189-1)	57.00	Oct. 1, 2002
53-59	(869-050-00140-3)	31.00	July 1, 2003	48 Chapters:			
60 (60.1-End)	(869-048-00139-5)	56.00	July 1, 2002	1 (Parts 1-51)	(869-048-00190-5)	59.00	Oct. 1, 2002
60 (Apps)	(869-048-00140-9)	51.00	⁸ July 1, 2002	1 (Parts 52-99)	(869-048-00191-3)	47.00	Oct. 1, 2002
61-62	(869-048-00141-7)	38.00	July 1, 2002	2 (Parts 201-299)	(869-048-00192-1)	53.00	Oct. 1, 2002
63 (63.1-63.599)	(869-048-00142-5)	56.00	July 1, 2002	3-6	(869-048-00193-0)	30.00	Oct. 1, 2002
63 (63.600-63.1199)	(869-048-00143-3)	46.00	July 1, 2002	7-14	(869-048-00194-8)	47.00	Oct. 1, 2002
63 (63.1200-End)	(869-048-00144-1)	61.00	July 1, 2002	15-28	(869-048-00195-6)	55.00	Oct. 1, 2002
64-71	(869-048-00145-0)	29.00	July 1, 2002	29-End	(869-048-00196-4)	38.00	⁹ Oct. 1, 2002
72-80	(869-048-00146-8)	59.00	July 1, 2002	49 Parts:			
81-85	(869-048-00147-6)	47.00	July 1, 2002	1-99	(869-048-00197-2)	56.00	Oct. 1, 2002
86 (86.1-86.599-99)	(869-048-00148-4)	52.00	⁸ July 1, 2002	100-185	(869-048-00198-1)	60.00	Oct. 1, 2002
				186-199	(869-048-00199-9)	18.00	Oct. 1, 2002
				200-399	(869-048-00200-6)	61.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
400-999	(869-048-00201-4)	61.00	Oct. 1, 2002
1000-1199	(869-048-00202-2)	25.00	Oct. 1, 2002
1200-End	(869-048-00203-1)	30.00	Oct. 1, 2002
50 Parts:			
1-17	(869-048-00204-9)	60.00	Oct. 1, 2002
18-199	(869-048-00205-7)	40.00	Oct. 1, 2002
200-599	(869-048-00206-5)	38.00	Oct. 1, 2002
600-End	(869-048-00207-3)	58.00	Oct. 1, 2002
CFR Index and Findings			
Aids	(869-050-00048-2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
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Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

⁹ No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Sept 2	Sept 17	Oct 2	Oct 17	Nov 3	Dec 1
Sept 3	Sept 18	Oct 3	Oct 20	Nov 3	Dec 2
Sept 4	Sept 19	Oct 6	Oct 20	Nov 3	Dec 3
Sept 5	Sept 22	Oct 6	Oct 20	Nov 4	Dec 4
Sept 8	Sept 23	Oct 8	Oct 23	Nov 7	Dec 8
Sept 9	Sept 24	Oct 9	Oct 24	Nov 10	Dec 8
Sept 10	Sept 25	Oct 10	Oct 27	Nov 10	Dec 9
Sept 11	Sept 26	Oct 14	Oct 27	Nov 10	Dec 10
Sept 12	Sept 29	Oct 14	Oct 27	Nov 12	Dec 11
Sept 15	Sept 30	Oct 15	Oct 30	Nov 14	Dec 15
Sept 16	Oct 1	Oct 16	Oct 31	Nov 17	Dec 15
Sept 17	Oct 2	Oct 17	Nov 3	Nov 17	Dec 16
Sept 18	Oct 3	Oct 20	Nov 3	Nov 17	Dec 17
Sept 19	Oct 6	Oct 20	Nov 3	Nov 18	Dec 18
Sept 22	Oct 7	Oct 22	Nov 6	Nov 21	Dec 22
Sept 23	Oct 8	Oct 23	Nov 7	Nov 24	Dec 22
Sept 24	Oct 9	Oct 24	Nov 10	Nov 24	Dec 23
Sept 25	Oct 10	Oct 27	Nov 10	Nov 24	Dec 24
Sept 26	Oct 14	Oct 27	Nov 10	Nov 25	Dec 26
Sept 29	Oct 14	Oct 29	Nov 13	Nov 28	Dec 29
Sept 30	Oct 15	Oct 30	Nov 14	Dec 1	Dec 29
