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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–3 FR]

Irish Potatoes Grown in Colorado; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Area No. 2 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 11, 2003.

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

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate established herein would be applicable to all assessable potatoes beginning on September 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2003, and recommended 2003–2004 expenditures of $85,695 and an assessment rate of $0.0051 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $74,643. The assessment rate of $0.0051 is $0.0016 higher than the rate currently in effect. The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $54,520 for salaries, $9,925 for office expenses, and $7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were $41,703, $9,700, and $7,650, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 17,000,000 hundredweight which should provide $86,700 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve

(estimated at $14,025 as of August 31, 2003) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 948.78).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

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

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

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

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $85,695 and an assessment rate of $0.0051 per hundredweight. The assessment rate is $0.0016 higher than the current rate. The quantity of assessable Area No. 2 Colorado potatoes for the 2003–2004 fiscal period is estimated at 17,000,000 hundredweight. Thus, the $0.0051 rate should provide $86,700 in assessment income and be adequate to meet this fiscal period's expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $54,520 for salaries, $9,925 for office expenses, and $7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were $41,703, $9,700, and $7,650, respectively.

The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.0051 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 17,000,000 hundredweight for the 2003–2004 fiscal period. This is approximately $1,005 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $2.95 and $9.65 per hundredweight of Colorado fall potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.05 and 0.17 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 2 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 21, 2003 (68 FR 43031). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending August 20, 2003, was provided for interested persons to respond to the proposal. No comments were received.

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

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth,

will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period begins on September 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

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

PART 948—IRISH POTATOES GROWN IN COLORADO

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

Authority: 7 U.S.C. 601–674.

■ 2. Section 948.216 is revised to read as follows:

§ 948.216 Assessment rate.

On and after September 1, 2003, an assessment rate of $0.0051 per hundredweight is established for Colorado Area No. 2 potatoes.

Dated: September 4, 2003

A.J. Yates

Administrator, Agricultural Marketing Service

[FR Doc. 03–22951 Filed 9–9–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Regulation F; Docket No. R-1161]

Interbank Liabilities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final, technical amendments to its Regulation F that remove an obsolete section of the rule and correct several typographical errors.

DATES: The amendments are effective September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Adrianne G. Threatt, Counsel (202/452–3554), Legal Division, or John Connolly, Supervisory Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: As required by the Regulatory Flexibility Act, the Board periodically reviews each of its regulations that has a significant economic impact on a substantial number of small entities to determine whether the regulation should continue without change or be amended or rescinded to minimize the economic impact on small entities (*see* 5 U.S.C. 610). In addition, it is the Board's policy to review each of its regulations at least once every five years (*see* the Board Policy Statements on the Board's Rules of Procedure, Federal Reserve Regulatory Service ¶ 8–040).

The Board has completed its review of Regulation F and determined that the substantive requirements of that rule should continue unchanged. However, the Board has adopted several technical amendments designed to update the regulation. Most notably, the Board has removed § 206.7, which contained transition provisions that have not applied since June 1995.

The final rule also corrects several typographical errors in the text of rule. The term ''Basle Capital Accord'' has been changed to ''Basel Capital Accord'' to be consistent with international practice. In several cases, the word ''of'' has been changed to the word ''or.'' The Board also has revised several references to federal statutes and redesignated three paragraphs of Regulation F so that citations and paragraph designations within the regulation will be internally consistent.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments. The Board for good cause determined that public participation is unnecessary because there is no substantive change on which the public could provide meaningful comment. For that same reason, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is revising 12 CFR part 206 to read as follows:

PART 206—INTERBANK LIABILITIES (REGULATION F)

■ 1. The authority citation for part 206 is revised to read as follows:

Authority: 12 U.S.C. 371b–2.

§ 206.1 [Amended]

■ 2. In § 206.1(a), remove the phrase ''to implement section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Act), 12 U.S.C. 371b–2'' in the first sentence and add the phrase ''under authority of section 23 of the Federal Reserve Act (12 U.S.C. 371b–2)'' in its place.

§ 206.2 [Amended]

■ 3. In § 206.2(f), remove ''(q)'' each place it appears.

■ 4. In § 206.2(g), remove the word ''Basle'' wherever it appears and add the word ''Basel'' in its place.

§ 206.3 [Amended]

■ 5. In § 206.3(c)(1), remove the word ''of'' between the words ''form'' and ''maturity'' in the first sentence and add the word ''or'' in its place, and remove the word ''of'' between the words ''amount'' and ''flexible'' in the third sentence and add the word ''or'' in its place.

§ 206.4 [Amended]

■ 6. In § 206.4(b), remove the word ''of'' between the words ''principal'' and ''other'' in the last sentence and add the word ''or'' in its place.

§ 206.5 [Amended]

■ 7. In § 206.5(a), footnote 1, remove the phrase ''subpart B'' and add the phrase ''subpart D'' in its place.

■ 8. In § 206.5(f), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively, and remove the word ''Basle'' wherever it appears and add the word ''Basel'' in its place.

§ 206.7 [Removed]

■ 9. Remove § 206.7.

By order of the Board of Governors of the Federal Reserve System, September 3, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22862 Filed 9–9–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–306–AD; Amendment 39–13298; AD 2003–18–07]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, –300, –320, and –500 Series Airplanes; and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; that currently requires revising the Airplane Flight Manual (AFM) to modify procedures for calculating takeoff performance when Type II or IV de-icing or anti-icing fluids have been used. This amendment requires revising the existing AFM revision to correct the performance values for Model ATR–72 series airplanes and to provide an additional method of compliance for all airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a civil aviation authority. The actions specified by this AD are intended to ensure that the flightcrew is advised of the potential effects of Type II or IV de-icing or anti-icing fluids on the airplane's performance during takeoff, and to ensure that the flightcrew is advised of the revised performance calculations for takeoff to address these effects.

DATES: Effective October 15, 2003.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–16–10, amendment 39–12379 (66 FR 44032, August 22, 2001), which is applicable to all Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; was published in the **Federal Register** on February 24, 2003 (68 FR 8555). The action proposed to require revising the Airplane Flight Manual (AFM) to modify procedures for calculating takeoff performance when Type II or IV de-icing or anti-icing fluids have been used.

Comments

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

Request To Change Paragraph (b)

The commenter does not agree that the follow-on procedures for Type II or Type IV de-icing fluid use, as specified in paragraph (b) of the proposed rule, are adequate. The commenter states that using these types of fluid on the subject airplanes can cause higher-than-normal stick forces during rotation. The commenter notes that a lightly loaded ATR airplane typically has a rotation speed of under 100 knots, and due to the shearing dynamics of the de-icing fluid, there may be fluid on the tail during rotation. The commenter adds that it objects to the solutions for these problems, as specified in the proposed rule and recommended by the airplane manufacturer and the Direction Générale de l'Aviation Civile (which is the airworthiness authority for France). The commenter states that Compliance Method Number 1 would result in a flightcrew aborting the takeoff after V_1 (takeoff decision speed), which negates the procedures the flightcrews have been trained to use and would seriously jeopardize safety of flight. The commenter adds that Compliance Method Number 2 should be used only in a dire emergency, because both crew members should not be manipulating the controls during a critical phase of flight, such as takeoff.

The FAA does not agree that a potential unsafe condition could occur should an operator choose to use Compliance Method Number 1. This compliance method necessitates an increase in required runway length in order to provide the necessary margins in a case of late rotation or an aborted takeoff after V_1. This should not be interpreted as a reconsideration of the concept of V_1 as a decision speed, or as an incentive to abort takeoff after V_1. Flightcrews should be trained to continue the takeoff after V_1, even in the case of increased pitch control forces. However, despite published procedures and training, the possibility that a flightcrew would consider the pitch control forces so high that takeoff is impossible, and decide to abort the takeoff after V_1, cannot be excluded. In such a case, the AFM procedures specified in this final rule would provide an additional margin for accelerate-stop distance.

In addition, we do not agree that implementation of Compliance Method Number 2 would cause an unsafe condition. The use of this procedure would include a mandatory pre-takeoff briefing between the flightcrew members regarding the need for assistance in rotating the airplane if necessary. Thus, the co-pilot would be prepared for such a request should the pilot decide to ask for assistance. No change to the final rule is necessary in this regard.

The commenter previously requested an alternative method of compliance (AMOC) for AD 2001–16–10, amendment 39–12379. (The requirements of that AD are restated in paragraph (a) of the proposed rule.) After receiving the AMOC, the commenter implemented new training procedures for its flightcrews to teach them to anticipate the additional stick forces that may be required when using Type II or Type IV de-icing fluid. The training procedures have been added to the training manuals and training curriculum, and the commenter notes that following those procedures is safer than following those specified in the proposed rule. The commenter does not make a specific request; however, we infer that the commenter wants its procedures to be used by all operators.

Although the commenter has an FAA-approved AMOC allowing the use of other training procedures, we do not agree that those training procedures can be used by all operators. Since 1991, there have been five incidents of aborted takeoff after V_1 following the use of Type II or Type IV de-icing fluid. Analysis of in-service experience has shown that following inadequate procedures for the use and application of Type II and Type IV de-icing fluids could lead to high control forces during rotation. If combined with the lack of flightcrew awareness or insufficient

training, high control forces could result in delayed rotation and significantly lower rotation rates, and in some cases, the decision of the flightcrew to abort the takeoff after V_1. We evaluate flightcrew training on a case-by-case basis, therefore, we cannot allow all operators to use the suggested training procedures, as these AMOCs are issued after validation of supporting technical data submitted by the operator. However, we have added a new paragraph (d)(2) to this final rule to specify that AMOCs approved for AD 2001–16–10 are approved for compliance with the requirements of this AD.

Conclusion

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

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 (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. 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 159 airplanes of U.S. registry that will be affected by this AD.

The AFM revision currently required by AD 2001–16–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required revision of the AFM on U.S. operators is estimated to be $10,335, or $65 per airplane.

The new AFM revision that is required in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $10,335, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing amendment 39–12379 (66 FR 44032, August 22, 2001), and by adding a new airworthiness directive (AD), amendment 39–13298, to read as follows:

2003–18–07 Aerospatiale: Amendment 39–13298. Docket 2001–NM–306–AD. Supersedes AD 2001–16–10, Amendment 39–12379.

Applicability: All Model ATR42–200, –300, –320, and –500 series airplanes; and all Model ATR72 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of the potential effects of Type II or IV de-icing or anti-icing fluids on the airplane's performance during takeoff, and to ensure that the flightcrew is advised of the revised performance calculations for takeoff to address these effects, accomplish the following:

Restatement of Requirements of AD 2001–16–10

Revision of the Airplane Flight Manual (AFM)

(a) Within 15 days after September 26, 2001 (the effective date of AD 2001–16–10, amendment 39–12379), revise the Appendices and Supplements chapter of the AFM by including either the following manufacturer's Appendix ''Takeoff after use of Fluid Type II or IV'' or a copy of this AD in the AFM.

''Takeoff after use of fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

1. General

The general information in section 1 is applicable.

2. Limitations

The limitations in section 2 are applicable.

3. Normal Procedures

The normal procedures in section 3 are applicable.

4. Emergency Procedures

The emergency procedures in section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in section 5 are applicable.

6. Performances

The performances in section 6 for dry runways and in section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

—Determine VR for the lowest available V_2,
—Assume V_1=VR,
—Increase TOR, TOD, ASD by 20%.

7. Appendices and Supplements

Data of Section 7 are applicable by adding what follows:

For the dispatch cases:

—Apply takeoff penalties due to the system failure,
—Then apply takeoff penalties due to the use of fluids Type II or IV.

Dispatch is not authorized in the following cases:

—Takeoff with flaps retracted.''

New Requirements of This AD

AFM Revision: Model ATR 42–200, –300, –320, and –500 Series Airplanes

(b) For Model ATR 42–200, –300, –320, and –500 series airplanes: Within 15 days after the effective date of this AD, revise the Appendices and Supplements chapter of the AFM by removing the AFM revision required by paragraph (a) of this AD and inserting the following procedures in the AFM (this may be accomplished by inserting a copy of this AD into the AFM):

''Takeoff after use of fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

Compliance Method Number 1

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable.

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable.

6. Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

- Determine VR for the lowest available V_2,
- Assume V_1=VR,
- Increase TOR, TOD, ASD by 20%.

7. Appendices and Supplements

Data of Section 7 are applicable by adding what follows:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted.

Compliance Method Number 2

Crew Training Required

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable with the addition of the following:

The Captain must be the pilot flying and the pre-takeoff briefing must include the following takeoff procedure (refer to point 5).

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable with the addition of the following:

Takeoff Sequence

In case of difficulties to rotate, the Captain (CPT) should request the non-flying pilot's (NFP's) assistance. In that case, on CPT order, NFP pulls the control column until 5° pitch attitude is reached, then NFP releases the controls.

Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

Increase TOD by 70 m for ATR 42–300.

Increase TOD by 80 m for ATR–42–400/–500.

6. Appendices and Supplements

Data of Section 7 are applicable with the addition of the following:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted.

AFM Revision: Model ATR 72 Series Airplanes

(c) For Model ATR 72 series airplanes: Within 15 days after the effective date of this AD, revise the Appendices and Supplements chapter of the AFM by removing the AFM revision required by paragraph (a) of this AD and inserting the following procedures in the AFM (this may be accomplished by inserting a copy of this AD into the AFM):

''Takeoff after use of fluid Type II or IV

This appendix applies only to aircraft de-iced or anti-iced before takeoff, using fluid Type II or IV.

These types of fluid may lead to an increase in control forces necessary to rotate, and then to a modification of takeoff performance.

Therefore, this flight manual must be modified as follows:

Compliance Method Number 1

Crew Training Required

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable.

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable.

6. Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

- Determine VR for the lowest available V_2,
- Assume V_1=VR,
- Increase TOR, TOD, ASD by 25%.

7. Appendices and Supplements

Data of Section 7 are applicable by adding what follows:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted.

Compliance Method Number 2

Crew Training Required

1. General

The general information in Section 1 is applicable.

2. Limitations

The limitations in Section 2 are applicable.

3. Normal Procedures

The normal procedures in Section 3 are applicable with the addition of the following:

The Captain must be the pilot flying and the pre-takeoff briefing must include the following takeoff procedure (refer to point 5).

4. Emergency Procedures

The emergency procedures in Section 4 are applicable.

5. Procedures Following Failures

The procedures following failures in Section 5 are applicable with the addition of the following:

Takeoff Sequence

In case of difficulties to rotate, the Captain (CPT) should request the non-flying pilot's (NFP's) assistance. In that case, on CPT order, NFP pulls the control column until 5° pitch attitude is reached, then NFP releases the controls.

Performances

The performances in Section 6 for dry runways and in Section 7.03 for non-dry runways (advisory materials) are applicable with the addition of the following for takeoff computations:

Increase TOD by 70 m.

6. Appendices and Supplements

Data of Section 7 are applicable with the addition of the following:

For the dispatch cases:

- Apply takeoff penalties due to the system failure,
- Then apply takeoff penalties due to the use of fluid Type II or IV.

Dispatch is not authorized in the following cases:

- Ferry flight with pitch elevators disconnected,
- Take-off with flaps retracted.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously per AD 2001–16–10, amendment 39–12379, are approved as alternative methods of compliance with this AD.

Note 1: 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

(e) 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.

Note 2: The subject of this AD is addressed in French airworthiness directives 2000–448–053(B) R2 and 2000–449–082(B) R2, both dated September 19, 2001.

Effective Date

(f) This amendment becomes effective on October 15, 2003.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22703 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30386; Amdt. No. 3074]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 10, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

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

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this 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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on August 29, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC number	Subject
08/15/03	NM	Taos	Taos Regional	3/7388	NDB Rwy 4, Amdt 1
08/15/03	NM	Hobbs	Lea County Regional	3/7444	LOC/DME BC Rwy 21, Amdt 5B
08/15/03	NM	Hobbs	Lea County Regional	3/7445	ILS Rwy 3, Amdt 5A
08/15/03	NM	Hobbs	Lea County Regional	3/7446	VOR/DME or TACAN Rwy 21, Amdt 8A
08/15/03	NM	Hobbs	Lea County Regional	3/7447	GPS Rwy 3, Orig-A
08/15/03	NM	Hobbs	Lea County Regional	3/7448	GPS Rwy 21, Orig-A
08/15/03	NM	Hobbs	Lea County Regional	3/7449	GPS Rwy 30, Orig-A
08/15/03	NM	Hobbs	Lea County Regional	3/7450	VOR or TACAN Rwy 3, Amdt 20A
08/18/03	TX	Lubbock	Lubbock Intl	3/7616	ILS Rwy 26, Amdt 2
08/18/03	TX	Plainview	Hale County	3/7631	VOR Rwy 4, Amdt 9A
08/19/03	NY	Albany	Albany Intl	3/7320	Copter ILS Rwy 1, Orig-B
08/19/03	TN	Smyrna	Smyrna Intl	3/7503	ILS Rwy 32, Amdt 5A
08/19/03	CA	Chico	Chico Muni	3/7641	GPS Rwy 13L, Orig
08/19/03	AK	Ambler	Ambler	3/7644	NDB Rwy 36, Amdt 2
08/20/03	TX	Dallas-Fort Worth ...	Dallas-Fort Worth Intl	3/7671	NDB Rwy 35C, Amdt 10A
08/20/03	TX	San Angelo	San Angelo Regional/Mathis Field	3/7690	RNAV (GPS) Rwy 3, Orig
08/20/03	TX	Lubbock	Lubbock Intl	3/7691	NDB Rwy 26, Amdt 2A
08/21/03	LA	Slidell	Slidell	3/7731	NDB Rwy 36, Orig-B
08/21/03	LA	Slidell	Slidell	3/7735	NDB Rwy 18, Amdt 1B
08/26/03	VT	Rutland	Rutland State	3/7869	VOR/DME Rwy 19, Orig
08/25/03	TX	Midland	Midland Intl	3/7868	RNAV (GPS) Rwy 10, Orig
08/26/03	SD	Sioux Falls	Joe Foss Field	3/7879	Radar Minimums, Amdt 10
08/26/03	SD	Sioux Falls	Joe Foss Field	3/7877	VOR/DME or TACAN Rwy 33, Amdt 12
08/26/03	SD	Sioux Falls	Joe Foss Field	3/7876	ILS Rwy 21, Amdt 9A
08/26/03	SD	Sioux Falls	Joe Foss Field	3/7874	ILS Rwy 3, Amdt 27A
08/27/03	OH	Athens (Albany)	Ohio University Snyder Field	3/7924	NDB Rwy 25, Amdt 8A

[FR Doc. 03–22795 Filed 9–9–03; 8:45 am]
BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8255A; 34–48204A; 35–27700A; 39–2409A; IC–26103A]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the IC Release number to a final rule published in the **Federal Register** of July 31, 2003, regarding the Adoption of Updated EDGAR Filer Manual.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux at (202) 942–8800; for questions concerning Investment Management company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Senior Counsel, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2940.

SUPPLEMENTARY INFORMATION: In FR Document No. 03–19087 beginning on page 44876 for Thursday, July 31, 2003, the IC Release number was incorrectly stated. The correct number is IC–26103.

Dated: September 4, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22980 Filed 9–9–03; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–246F]

Schedules of Controlled Substances: Extension of Temporary Placement of N-Benzylpiperazine (BZP), 1-(3-Trifluoromethylphenyl)piperazine (TFMPP) and 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of N-benzylpiperazine (BZP), 1-(3-trifluoromethylphenyl) piperazine (TFMPP) and 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) in Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of BZP, TFMPP and 2C-T-7 is due to expire on September 19, 2003. This document will extend the temporary scheduling of BZP, TFMPP and 2C-T-7 to March 19, 2004 or until rulemaking proceedings are completed, whichever occurs first.

EFFECTIVE DATES: September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: On September 20, 2002, the Deputy Administrator of the DEA published two separate final rules in the **Federal Register** (67 FR 59161 and 67 FR 59163) amending §1308.11(g) of title 21 of the Code of Federal Regulations to temporarily place BZP, TFMPP and 2C-T-7 into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). These final rules, which became effective on the date of publication, were based on findings by the Deputy Administrator that the temporary scheduling of BZP, TFMPP and 2C-T-7 was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services, or on the petition of any interested party. Such proceedings regarding BZP, TFMPP and 2C-T-7 have been initiated by the Administrator of the DEA.

The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse and the relative potential for abuse for BZP, TFMPP and 2C-T-7. The Administrator has submitted these data to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Administrator has also requested a scientific and medical evaluation and a scheduling recommendation for BZP, TFMPP and 2C-T-7 from the Assistant Secretary for Health. Therefore, the temporary scheduling of BZP, TFMPP and 2C-T-7 which is due to expire on September 19, 2003, may be extended until March 19, 2004, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of BZP, TFMPP and 2C-T-7 be extended until March 19, 2004, or until the proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

The Administrator of the DEA hereby certifies that extension of the temporary placement of BZP, TFMPP and 2C-T-7 in Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the extension of temporary control of substances with no currently accepted medical use in the United States.

The six-month extension of BZP, TFMPP, and 2C-T-7 in Schedule I of the CSA is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12866, section 3(d)(1). This action responds to an emergency situation posing an imminent hazard to the public safety and is essential to the criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: September 2, 2003.

Karen P. Tandy,

Administrator.

[FR Doc. 03–22964 Filed 9–9–03; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR PART 1310

[Docket No. DEA–203F]

RIN 1117–AA52

Establishment of a Threshold for Gamma-Butyrolactone

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: On October 24, 2001, DEA published a Notice of Proposed Rulemaking titled ''Establishment of a Threshold for Gamma-Butyrolactone'' (66 FR 53746) that proposed a zero kilogram threshold and the exemption of transactions of 16,000 kilograms (net weight) or more in a single container. This final rule establishes a zero kilogram threshold for domestic, export, and import transactions of gamma-butyrolactone (GBL) and excludes from the definition of a ''regulated transaction'' all transactions of 4,000 kilograms (net weight) or more in a single container. The DEA is reducing the weight required for exclusion from what was proposed in response to a comment that showed that transactions of 4,000 kilograms or more in a single container are not likely to be diverted.

EFFECTIVE DATE: This final rule is effective October 10, 2003.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

SUPPLEMENTARY INFORMATION:

I. Background

Action Being Taken in This Rulemaking

This rulemaking amends Title 21 of the Code of Federal Regulations (CFR) 1310.04(g)(1) by adding a new paragraph to establish that GBL is not assigned a threshold. In addition, 21 CFR 1310.08 is being amended by adding a new paragraph to identify as an ''excluded transaction,'' transactions in GBL of 4,000 kilograms (net weight) or more in a single container. This rulemaking applies to import, export, and domestic (including retail) transactions. All transactions in GBL, unless defined in 21 CFR 1310.08, are regulated transactions. Persons who handle GBL must be registered with DEA, even if their distributions are excluded from the definition of a ''regulated transaction.'' Regulated persons include manufacturers who distribute, distributors, importers, and exporters of GBL.

Illicit Use of GBL

Law enforcement authorities have identified GBL in gamma-hydroxybutyric acid (GHB) clandestine laboratories and documented its use as a GHB precursor. GBL is a necessary chemical precursor in the clandestine synthesis of GHB because, to date, no other chemical has been substituted for GBL in this process. Congress recognized this and controlled GBL as a List I chemical upon enactment of Pub. L. 106–172 on February 18, 2000.

GBL is a unique chemical precursor. It can be converted to GHB by a simple chemical reaction or it can be ingested directly, without running a chemical reaction. That is, the body efficiently converts GBL to GHB when ingested. Because GBL is converted to GHB by the body's own action, GBL is routinely substituted for GHB to obtain the same type of intoxication. Congress recognized this and adopted in Pub. L. 106–172 a new subparagraph to 21 U.S.C. 802(32), the section of the Controlled Substances Act (CSA) that defines a ''controlled substance analogue.'' The subparagraph maintains that the placement of GBL, or any other chemical, as a listed chemical does not preclude a finding that the chemical is a controlled substance analogue. DEA recognizes this concern of Congress that GBL is being used as a direct substitute for a Schedule I controlled substance. Although GBL is a chemical commodity when used by legitimate industry, diversion of GBL can be tantamount to diversion of a Schedule I controlled substance when it is intended for human consumption.

Steps Leading to This Rulemaking

GBL was placed in the CSA as a List I chemical effective February 18, 2000, by enactment of Pub. L. 106–172, the ''Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999'' (65 FR 21645, April 24, 2000). That law, however, did not establish a threshold. Consequently, all transactions in GBL are regulated transactions as described in 21 CFR 1300.02(b)(28) until publication of this final rule.

The final rule titled, ''Placement of Gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))'' was published in the **Federal Register** on April 24, 2000 (65 FR 21645). It amended 21 CFR 1310.02(a) (List I chemicals) to reflect the status of GBL as a List I chemical. For regulatory purposes, DEA had no discretion in taking this action. Therefore, 21 CFR 1310.02(a) was amended as a final rule. Since it was published as a final rule, a threshold was not established because the process of notice and comment would have been circumvented.

A Notice of Request for Information was published in the **Federal Register** on October 23, 1998, at 63 FR 56941. The Notice was published in anticipation of GBL becoming a listed chemical. In response to that Notice, DEA received information on how GBL is distributed. In a Notice of Proposed Rulemaking, published in the **Federal Register** on October 24, 2001 (66 FR 53746), a zero threshold was proposed along with a means to exclude large scale industrial-type transactions from the definition of a ''regulated transaction.'' DEA learned of these large-scale transactions by comment in response to the Notice of Request for Information.

Thresholds and How They Are Used

Transactions involving listed chemicals that are not exempt by statute may be removed from the definition of ''regulated transaction'' (21 U.S.C. 802(39)) if regulation of such transactions is determined to be unnecessary for purposes of law enforcement. One option for doing so includes the establishment of a quantity threshold under 21 U.S.C. 802(39)(A).

DEA determined that it is necessary for purposes of law enforcement that no threshold be established for GBL. In the Notice of Proposed Rulemaking (NPRM) published at 66 FR 53746, DEA gave reasons why no threshold should be established. These included the small weights of GBL diverted for production of GHB and the fact that GBL is substituted directly, without chemical conversion, for GHB. No comments were received objecting to a zero threshold. Therefore, 21 CFR 1310.04(g)(1) is being modified to add a new paragraph to include GBL, thus finalizing that no threshold is established. This means that all transactions in GBL, except those defined at 21 CFR 1310.08(k), are regulated transactions. If the transaction is considered a regulated transaction, recordkeeping and reporting requirements as specified in 21 CFR Part 1310 apply.

Exclusions and How They Are Used

DEA is authorized to remove certain categories of transactions from the definition of a ''regulated transaction.'' Under 21 U.S.C. 802(39)(A)(iii) the agency may, by regulation, exempt ''any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by

regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this subchapter or subchapter II of this chapter.'' DEA is amending 21 CFR 1310.08 to exclude from the definition of a ''regulated transaction,'' transactions involving 4,000 kilograms (net weight) or more in a single container. This amendment is in response to a comment to the NPRM and is different than what the DEA originally proposed. Adopting the suggestion in the comment is expected to give more comprehensive regulatory relief to industry without significantly increasing the risk of diversion.

DEA would like to emphasize that the exclusion applies only to transactions of one or more single containers holding 4,000 kilograms (net weight) or more of GBL. That is, in multi-container shipments, it is a regulated transaction if any container has less than 4,000 kilograms or if the 4,000 kilograms is reached only by combining the weight of GBL in each container.

II. Comments

DEA received one comment in response to the Notice of Proposed Rulemaking ''Establishment of a Threshold for Gamma-Butyrolactone'' published at 66 FR 53746. The comment generally supported the proposal and offered comments on specific issues.

The comment informed DEA that some tank truck shipments of bulk chemicals are made by single segmented compartments. The minimum weight of GBL distributed by these bulk shipments is 9,000 pounds or 4,086 kilograms. Therefore, under the proposed exclusion of bulk distributions of 16,000 kilograms (net weight), these 4,086 kilogram shipments would be regulated. DEA was not aware of the lower minimum bulk shipment at the time the exclusion was proposed. DEA determined that this lower net weight for bulk shipments would not pose a greater risk of diversion and, therefore, based on the comment received, is providing an exclusion for domestic, import, and export distributions of gamma-butyrolactone weighing 4,000 kilograms (net weight) or more in a single container. This action will eliminate all industrial distributions identified by DEA that are not at significant risk of diversion.

The commenter requested clarification as to whether a DEA Form 486 will continue to be required for bulk export shipments. A DEA Form 486 is necessary only for exports involving regulated transactions. If the transaction is excluded from the definition of a ''regulated transaction'' pursuant to 21 CFR 1310.08, a DEA Form 486 is not necessary. If the export does not meet the conditions in 21 CFR 1310.08, a DEA Form 486 is necessary.

The commenter requested clarification of the definition of ''non-regulated transaction.'' A non-regulated transaction is specified in 21 CFR 1310.08 as an ''excluded transaction'' pursuant to 21 U.S.C. 802(39)(A)(iii). An excluded transaction is not subject to the recordkeeping or reporting requirements of 21 U.S.C. 830(a) and (b) except that 21 U.S.C. 830(b)(1)(C) applies to all regulated persons. That is, all regulated persons are required to report any unusual or excessive loss or disappearance of a listed chemical.

The definition of a ''regulated person'' is given at 21 U.S.C. 802(38) to include anyone who manufactures, distributes, imports, or exports a listed chemical, or acts as a broker or trader for an international transaction involving a listed chemical. Except for persons acting as brokers or traders for an international transaction, regulated persons handling any List I chemical are required to register pursuant to 21 U.S.C. 822. This registration requirement also applies to those regulated persons who are involved in only ''excluded transactions.'' In the case of this final rule, persons who only distribute 4,000 kilograms (net weight) or more of GBL in a single container are not subject to recordkeeping and reporting requirements but are required to register. A regulated person does not include someone who receives a listed chemical and consumes it by making a chemical mixture, as defined at 21 U.S.C. 802(40), or changes the listed chemical into a non-listed chemical by means of a chemical reaction.

Regulatory Flexibility and Small Business Concerns

This final rule will not have a significant economic impact on small business. Pub. L. 106–172 amended the CSA to make GBL a List I chemical effective February 18, 2000. Regulatory impact due to registration requirements was addressed in the final rule ''Placement of gamma-butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802(34))'' (65 FR 21645). In that final rule, DEA concluded that making GBL a List I chemical would not have a significant economic impact. That conclusion was based on an estimated number of new registrants and that all distributions in GBL are regulated. This final rule does not add new regulatory controls. In fact, it eliminates some large-scale industrial transactions from the definition of ''regulated transaction,'' thus, granting additional relief to industry. DEA identified 4,000 kilograms as the minimum amount available by tank-truck. DEA determined that clandestine operations will have difficulty handling tank-truck shipments but will be able to divert self-contained shipments of GBL, *i.e.,* containers of 55-gallons or less. Therefore, DEA is exempting tank-truck sized shipments (4,000 kilograms or more, net weight) from the requirements of this regulation.

New 21 CFR 1310.04(g)(1)(v) and 1310.08(k) are being added in this final rule. The designations of these new paragraphs are different than what was originally proposed because the CFR has been modified since the proposal was published.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, Section 1(b), Principles of Regulation. DEA has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1310 is amended to read as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

■ 2. Section 1310.04 is amended by adding a new paragraph (g)(1)(v), to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(v) gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2–Butanolide; 1,4–Butanolide; 4–Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone)

* * * * *

■ 3. Section 1310.08 is amended by adding a new paragraph (k) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(k) Domestic, import, and export distributions of gamma-butyrolactone weighing 4,000 kilograms (net weight) or more in a single container.

Dated: September 2, 2003.

Karen P. Tandy,

Administrator.

[FR Doc. 03–22963 Filed 9–9–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–120–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment increases the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by the Virginia Department of Mines, Minerals and Energy (DMME).

EFFECTIVE DATE: September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303. Internet: *rpenn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated May 16, 2003 (Administrative Record Number VA–1029), the DMME submitted an amendment to the Virginia program. In its letter, the DMME stated that the 2003 Virginia General Assembly enacted legislation (House Bill 2465/ Senate Bill 1173 approved March 18, 2003) to increase the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by DMME.

The proposed amendment revises the Code of Virginia at section 45.1–235.E and the Virginia Coal Surface Mining and Reclamation Regulations at 4VAC25–130–777.17 concerning permit fees. Specifically, Virginia is increasing the permit application fee for a surface coal mining and reclamation permit from $12.00 to $26.00 per acre or any fraction thereof for the total acreage permitted. In addition, the anniversary fee is being increased from $6.00 to $13.00 per acre or any fraction thereof for areas disturbed under the permit. This fee is paid each year on the anniversary of the permit's issuance, and represents an ongoing permitting cost.

We announced receipt of the proposed amendment in the July 7, 2003, **Federal Register** (68 FR 40227). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number VA–1031). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 6, 2003. We received comments from four Federal agencies.

III. OSM's Findings

We are approving the amendment. Our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are presented below.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that an application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The fee increases proposed by Virginia are the first such increases since the State received permanent program approval in 1981. We find that the permit fees proposed by Virginia are reasonable and consistent with the

discretionary authority provided by the Federal regulations at 30 CFR 777.17.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on May, 29, 2003, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA–1030). On June 4, 2003, the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded (Administrative Record Number VA–1032) and stated that it concurs with the changes concerning permit and fee rates. These changes, NRCS stated, will better reflect actual AML costs and changes passed by the 2003 Virginia General Assembly. NRCS stated that the amendment proposed by Virginia should conform to presently practiced regulations and costs to better suit their intended use. NRCS recommended that the amendment be accepted by OSM. As noted in our findings above, we are approving the amendment.

On June 6, 2003, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the amendment appears adequate to serve the intended purpose and does not conflict with MSHA regulation or policy (Administrative Record Number VA–1033).

On July 21, 2003, the U.S. Department of the Interior, Bureau of Land Management, Solid Minerals Group responded and stated that it had no comments regarding the revision (Administrative Record Number VA–1035).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1030).

The EPA responded by letter dated July 17, 2003 (Administrative Record Number VA–1034), and stated that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction. EPA offered no further comments.

V. OSM's Decision

Based on the above findings, we approve the amendment sent to us by Virginia on May 16, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule applies only to the Virginia program and therefore does not affect tribal programs.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR Part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for Part 946 continues to read as follows:

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

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
		VA Code § 45.1–235.E.
* * * * *	*	*
May 16, 2003	September 10, 2003.	4 VAC 25–130–777.17.

[FR Doc. 03–23077 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AC02

National Forest System Land and Resource Management Planning; Extension of Compliance Deadline for Site-Specific Projects

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comment.

SUMMARY: The Department is issuing an interim final rule to extend the transition period for site-specific project decisions in the Forest Service land and resource management planning regulations adopted November 9, 2000. Early in 2001, the Department determined that the November 2000 planning regulations needed to be revised, and a proposed planning rule was published on December 6, 2002, (67 FR 72770). An interim final rule at 36 CFR 219.35(b), published May 20, 2002, (67 FR 35431), already has extended the transition period for land and resource management plan amendments and revisions until the date of adoption of new planning regulations. This interim final rule at 36 CFR 219.35(d) provides the same extension of the transition period for site-specific projects. Comments are requested.

DATES: *Effective Date:* This interim final rule is effective September 10, 2003.

Comment Date: Comments must be received in writing by November 10, 2003.

ADDRESSES: Send written comments to: USDA FS Content Analysis Team, Attn: USDA FS Compliance Deadline, P.O. Box 7669, Missoula, MT 59807; by electronic mail to *compliancedeadline@fs.fed.us;* or by facsimile to Extension of Compliance Deadline at (406) 329–3021. The agency cannot confirm receipt of comments. If you intend to submit comments in batched e-mails from the same server, please be aware that electronic security safeguards on Forest Service and the Department of Agriculture computer systems intended to prevent commercial spamming may limit batched e-mail access. The Forest Service is interested in receiving all comments on this interim final rule, however, so please call (801) 517–1020 to facilitate transfer of comments in batched e-mail messages. Please note that all comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying at the office of the Content Analysis Team, 200 East Broadway, Room 301, Missoula, MT. Individuals wishing to inspect the comments should call Shari Kappel at (406) 329–3022 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service at (202) 205–1019.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2000, the Secretary of Agriculture adopted a final rule substantially revising the National Forest System land and resource management planning regulations at 36 CFR part 219 (65 FR 67514), which had been previously adopted in 1982 (47 FR 43026, September 30, 1982). These regulations, which implement the National Forest Management Act, apply to the development, revision, and amendment of land and resource management plans. The November 2000 planning rule also applies to site-specific project decisions. Section 219.35(d) of the 2000 planning rule requires all site-specific project decisions made by the responsible official as of November 9, 2003, to conform with the provisions of the 2000 planning rule at 36 CFR part 219.

Section 219.35 of the 2000 planning rule also provided for a transition from the 1982 planning rule to the 2000 planning rule.

Subsequent to the adoption of the 2000 planning rule, the Department determined in early 2001 that there were serious concerns regarding the agency's ability to implement the 2000 planning rule, such as the number of very detailed analytical requirements; the lack of clarity regarding many of the requirements; the lack of flexibility; and the lack of recognition of the limits of agency budgets and personnel. Therefore, on May 20, 2002, the Department issued an interim final rule at § 219.35(b) to delay mandatory compliance with the 2000 planning rule for land and resource management plan amendments and revisions until a new final planning rule is adopted (67 FR 35431); this delay would allow the agency time to propose and adopt revisions to the 2000 planning rule.

In the May 20, 2002, **Federal Register** notice, the Department also noted that concerns had been raised by field personnel that the reasons necessitating an extended transition to the November 2000 rule for forest plan amendments and revisions may apply equally, if not more, to the November 9, 2003, deadline for site-specific decisions to conform with part 219. At that time, the Department identified that it expected to address these concerns by removing the requirement or extending the original transition date for site-specific projects.

A proposed revision of the 2000 planning rule was published on December 6, 2002, (67 FR 72770). One change is that this rule, unlike the 2000 rule, would not apply to site-specific project decisions.

This interim final rule at § 219.35(d) provides the same extension of compliance deadline for site-specific projects as did the 2002 interim final rule at § 219.35(b) for plan amendments and revisions; until the Department promulgates the final planning regulations.

Need for Immediate Action

The provisions of the 2000 planning rule are unclear regarding the relationship of site-specific project decisions to the development of landscape goals and information development requirements for addressing ecological, social, and ecomonic sustainability. Reviews of the 2000 planning rule have pointed out the issues and problems related to mixing programmatic and project-level planning direction. There is a lack of clarity about how projects are to be compliant with the rule. This uncertainty and lack of clarity may pose an unreasonable analysis burden on field units when planning for site-specific project decisions.

The Department has proposed improvements and revisions to the 2000 planning rule that would remove the applicability of part 219 to site-specific project level decisions (67 FR 72770, December 6, 2002). Instead, the requirements of the 2002 proposed planning rule would apply at the programmatic level only to the development, amendment, and revision of land and resource management plans and (unlike the requirements of the 2000 planning rule) would not apply to site-specific projects. Under the 2002 proposed rule, a plan would guide site-specific project implementation and project decisions would be required to be consistent with the plan, but a plan would not determine the selection or implementation of site-specific actions.

Therefore, the Department has determined that it is necessary to extend the transition period at 36 CFR 219.35(d) by which the 2000 planning rule requires compliance for site-specific project decisions, currently set at November 9, 2003, until the promulgation of a final planning rule. While it has been anticipated that a final revised planning rule would be promulgated by the end of 2003, such a final rule may not be adopted by November 9, 2003.

Accordingly, extension of the transition period at 36 CFR 219.35(d) until a final planning rule is adopted is necessary for the following reasons: (1) To clarify planning requirements for site-specific project decisions; (2) to grant relief to the units of the National Forest System from a regulatory provision of the 2000 planning rule soon to be made obsolete; and (3) in case the 2002 proposed planning rule is not finalized by November 9, 2003.

Exemption From Advance Notice and Comment

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, the APA also allows agencies to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(3)(B)). Furthermore, the APA exempts certain rulemakings from its notice and comment requirements, including rulemakings involving ''public property'' and ''rules of agency organization, procedure, or practice'' (5 U.S.C. 553 (a)(2) and (b)(3)(A)).

In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the APA notice and comment rulemaking exemptions (July 24, 1971; 36 FR 13804). Thus, USDA agencies proposing rules generally provide notice and an opportunity to comment on proposed rules. However, the Hardin policy permits agencies to publish final rules without prior notice and comment when an agency finds for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest. The courts have recognized this good cause exemption of the Hardin policy and have indicated that, since the publication requirement was adopted voluntarily, the Secretary should be afforded ''more latitude'' in making a good cause determination (*see Alcaraz* v. *Block,* 746 F.2d 593, 612 (9th Cir. 1984)).

To the extent that 5 U.S.C. section 553 applies to this interim final rule, good cause exists to exempt this rulemaking from advance notice and comment (5 U.S.C. 553 (b)(B) and 553 (d)(3)). The Department has determined that delaying an extension of the compliance date in § 219.35(d) to obtain public comment is impracticable, unnecessary, and contrary to the public interest. Earlier in this preamble, the Department has made clear that an extension of the compliance date is necessary. Given the length of time (usually up to 6 months) it takes field units to plan for site-specific project decisions, it is impracticable to provide for prior public comment on this extension. The agency's publication of a proposed rule in 2002 to revise the November 2000 planning rule, and the fact that this

proposed rule would not apply to site-specific project decisions, is an important consideration in adopting this interim final rule. The prior identification of this subject in the May 2002 **Federal Register** notice, and the Department's expressed intent to address it, is also an important factor.

The public interest is best served by extending the compliance date and avoiding the unnecessary expenditure of agency time and effort to comply with a regulatory provision soon to be made obsolete. The interim final rule is effective immediately upon publication, although the Department will accept comment on the modification of § 219.35(d).

Conclusion

For the reasons identified in this preamble, the Department finds good cause to adopt, without prior notice and comment, this interim final rule that amends § 219.35(d) to extend the transition date by which site-specific project decisions must comply with the November 2000 Forest Service land and resource management planning regulations, from the current deadline of November 9, 2003, until the Department promulgates a revised final planning rule. This interim final rule does not change any other provisions of the 2000 planning rule.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This interim final rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This interim final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of beneficiaries of such programs. Accordingly, this interim final rule is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the act because the interim final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, a regulatory flexibility analysis is not required for this interim final rule.

Environmental Impact

This interim final rule at § 219.35(d) has no direct or indirect effect on the environment, but merely extends the date by which site-specific project decisions must conform to the 2000 planning rule. The planning regulation (36 CFR part 219) deals with the development and adoption of Forest Service land and resource management plan decisions. An environmental assessment was completed on the 2000 planning rule, with a finding that the rule would have no significant impact on the environment. Moreover, section 31.1b of Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking and the procedural nature of 36 CFR part 219, the Department has determined that this interim final rule falls within this category of actions and that no extraordinary circumstances exist as currently defined that would require preparation of an environmental assessment or environmental impact statement.

Energy Effects

This interim final rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this interim final rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this interim final rule merely extends a compliance date.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this interim final rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the rule conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this interim final rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes was not required.

No Takings Implications

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule will not pose the risk of a taking of private property.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988 on civil justice reform. This interim final rule (1) does not preempt State and local laws and regulations that conflict with or impede its full implementation; (2) has no retroactive effect; and (3) will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this interim final rule on State, local and tribal governments and the private sector. This interim final rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact

statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, Part 219 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 219–PLANNING

Subpart A—National Forest System Land and Resource Management Planning

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

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

■ 2. Revise paragraph (d) of § 219.35 to read as follows:

§ 219.35 Transition.

* * * * *

(d) The date by which site-specific decisions made by the responsible official must be in conformance with the provisions of this subpart is extended from November 9, 2003, until the Department promulgates the final planning regulations published as proposed on December 6, 2002 (67 FR 72770).

* * * * *

Dated: September 3, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–22977 Filed 9–9–03; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0244; FRL–7322–7]

Trifloxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of trifloxystrobin in or on leaf petioles subgroup 4B; and vegetable, root, except sugar beet, subgroup 1B, except radish. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 10, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0244, must be received on or before November 10, 2003.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0244. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

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

II. Background and Statutory Findings

In the **Federal Register** of March 5, 2003 (68 FR 10469) (FRL–7294–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 3E6522) by IR-4, 681 U.S. Highway #1 South, New Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by Bayer CropScience, the registrant. There were no comments received on this petition.

The petition requested that 40 CFR 180.555 be amended by establishing tolerances for combined residues of the fungicide, trifloxystrobin, (benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-, methyl ester) and the free form of its acid metabolite CGA-321113((*E,E*)-methoxyimino-[2-[1-(3-trifluoromethylphenyl) ethylideneaminooxymethyl] phenyl]acetic acid), in or on the

following commodities: Leaf petioles subgroup 4B at 2.0 parts per million (ppm), and vegetable, root, except sugar beet, subgroup 1B, except radish at 0.10 ppm. The petition was subsequently amended to propose the tolerance for the leaf petioles subgroup 4B at 3.5 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for combined residues of trifloxystrobin and the free form of its acid metabolite CGA-321113 on leaf petioles subgroup 4B at 3.5 ppm, and vegetable, root, except sugar beet, subgroup 1B, except radish at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by trifloxystrobin are discussed in Unit III.A. of the final rule on trifloxystrobin, which was published in the **Federal Register** of May 22, 2002 (67 FR 35915) (FRL–7178–6).

B. Toxicological Endpoints

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

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

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

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

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	*Special FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary females 13–49 only.	NOAEL = 250 mg/kg/day UF = 100 Acute RfD = 2.5 mg/kg/day	FQPA SF = 1X aPAD = aRfD ÷ FQPA SF = 2.5 mg/kg/day	Developmental toxicity-Rat LOAEL = 500 mg/kg/day, based upon increased fetal skeletal anomalies
Acute dietary general population including infants and children.	There were no appropriate toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including maternal effects in developmental studies in rats and rabbits. Therefore, a dose and endpoint were not identified for this risk assessment		
Chronic dietary all populations.	Parental NOAEL = 3.8 mg/kg/day UF = 100 Chronic RfD = 0.038 mg/kg/day	FQPA SF = 1X cPAD = cRfD ÷ FQPA SF = 0.038 mg/kg/day	2–generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon decreases in body weight, body weight gains, reduced food consumption and histopathological lesions in the liver, kidneys and spleen
Short-Term Oral (1–30 days). Intermediate-Term Oral (1–6 months)	Offspring NOAEL = 3.8 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	2–Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon reduced pup body weights during lactation
Short-Term Dermal (1–30 days). Intermediate-term dermal (1–6 months)	Dermal study NOAEL = 100 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	28–Day dermal toxicity study-Rat LOAEL = 1,000 mg/kg/day, based upon increases in mean absolute and relative liver and kidney weights
Long-term dermal (>6 months).	Oral study NOAEL = 3.8 mg/kg/day (dermal absorption rate = 33%)	LOC for MOE = 100 (Residential, includes the FQPA SF)	2–Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon reduced pup body weights during lactation
Short-term inhalation (1–30 days). Intermediate-Term Inhalation (1–6 months) Long-Term Inhalation (> 6 months)	Oral study NOAEL = 3.8 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential, includes the FQPA SF)	2–Generation reproduction study-Rat LOAEL = 55.3 mg/kg/day, based upon reduced pup body weights during lactation
Cancer (oral, dermal, inhalation).	Trifloxystrobin is classified as ''Not Likely Human Carcinogen'' based on the lack of evidence of carcinogenicity in mouse and rat cancer studies		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.555) for the residues of trifloxystrobin, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from trifloxystrobin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In conducting this acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Data base (DEEM-FCID®) which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessment: The acute dietary exposure analysis for trifloxystrobin is a Tier I assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin (''100% CT''), and tolerance-level residues were used in the analysis.

ii. *Chronic exposure.* In conducting this acute dietary risk assessment EPA used the DEEM® software with the DEEM-FCID® which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: The chronic dietary exposure analysis for trifloxystrobin is a Tier I assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with trifloxystrobin, and tolerance-level residues were used in the analysis.

iii. *Cancer.* The Agency determined that trifloxystrobin should be classified as a ''Not Likely Human Carcinogen.''

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates

are made by reliance on simulation or modeling taking into account data on the physical characteristics of trifloxystrobin.

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

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health LOC.

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

Trifloxystrobin is immobile, and degrades rapidly in soil and aquatic environments to the primary isomer, CGA-321113. EECs were calculated for total trifloxystrobin residues (parent trifloxystrobin plus metabolites) using the FIRST model for surface water and the SCI-GROW model for ground water. EPA's interim method for drinking water estimates for pesticides used in rice paddies was also used to generate surface water EECs.

Surface water concentrations for total trifloxystrobin residues are 92 parts per billion (ppb) for the peak value (acute) and 50 ppb for the chronic value using the FIRST model for terrestrial uses (turfgrass). To estimate surface water concentrations for use on rice, an interim rice paddy model was used. For surface water concentrations from treated rice, the acute estimate for the parent is 48 ppb, and the chronic estimate for the total parent plus degradate is 140 ppb. The rice estimate is considered to be an overestimate of the true value found in the environment due to the assumptions used in the drinking water model for rice. Further, EPA considers the turfgrass estimate to be a more realistic estimate of drinking water residues. The ground water screening concentration used for both acute and chronic assessments is 3.4 ppb. These values represent upper-bound estimates of the concentrations of total residues of trifloxystrobin that might be found in surface water and ground water from uses on turfgrass at the maximum application rate.

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

Trifloxystrobin is currently registered for use on the following residential non-dietary sites: Turfgrass and ornamental (Compass™). Postapplication exposures from various activities following lawn treatment are considered to be the most common and significant in residential settings. There is potential for dermal exposure to adults and children and oral exposure to children during postapplication activities. Four postapplication exposure scenarios resulting from lawn treatment were assessed, as follows: (1) Dermal exposure from pesticide residues on lawns, (2) incidental non-dietary ingestion of pesticide residues on lawns from hand- to-mouth transfer, (3) incidental non-dietary ingestion of residues from object-to mouth activities (pesticide-treated turfgrass), and (4) incidental non-dietary ingestion of soil from pesticide-treated residential areas. Exposure via incidental non-dietary ingestion involving plant material may occur but is considered negligible. Since the application of trifloxystrobin on turf grass and ornamental is limited to certified pest control operators, an assessment of dermal or inhalation exposure for residential handlers was not performed.

The MOE for adult dermal risk from postapplication exposure is 1,300 and 800 for children. Children's risk from oral exposures range from 1,600 to 220,000. When incidental oral exposure from all possible residential sources are combined (ingestion of residues on turfgrass from hand-to-mouth activities, mouthing turfgrass and eating soil), the result is an MOE of 1,100. Therefore, postapplication exposure and risk estimates for adults and children are considered to be below EPA's LOC.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments

either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin.

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

i. There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the developmental and reproduction toxicity studies, effects in the fetuses/offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

ii. The Agency determined that a developmental neurotoxicity study in rats is not required.

iii. Although an acute neurotoxicity study is required (the submitted study was unacceptable), the lack of an acute neurotoxicity study does not impact EPA's ability to make an FQPA SF decision.

iv. The acute and chronic dietary food exposure assessments utilize existing and proposed tolerance level residues and 100% crop treated information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

v. The exposure assessments will not underestimate the potential dietary (food and drinking water) or non-dietary exposures for infants and children from the use of trifloxystrobin.

vi. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which are not likely to be exceeded.

vii. The residential postapplication assessment is based upon the residential Standard Operating Procedures (SOPs). The assessment is based upon surrogate study data. These data are reliable and are not expected to underestimate risk to adults or children. The residential SOPs are based upon reasonable ''worst-case'' assumptions and are not expected to underestimate risk.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

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

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to trifloxystrobin will occupy <1% of the aPAD for females 13–49 years old. An acute dietary endpoint for the general population including infants and children was not identified. In addition, there is potential for acute dietary exposure to trifloxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for females 13–49 years old, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLOXYSTROBIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	2.5	<1	92 turf 48 rice	3.4	75,000

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to trifloxystrobin from food will utilize 14% of the cPAD for the U.S. population, 54% of the cPAD for children 1–2 years old, 10% of the cPAD for females 13–49 years old, and 10% of the cPAD for adults 50+ years old. Based on the use pattern, chronic residential exposure to residues of trifloxystrobin is not expected. In addition, there is potential for chronic dietary exposure to trifloxystrobin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO TRIFLOXYSTROBIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.038	14	140 rice 50 turf	3.4	1,100
Children (1–2 years old)	0.038	54	140 rice 50 turf	3.4	170
Females (13–49 years old)	0.038	10	140 rice 50 turf	3.4	1,000
Adults (50+ years old)	0.038	10	140 rice 50 turf	3.4	1,200

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Trifloxystrobin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for trifloxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 690 for the U.S. Population; 154 for children 1–2 years old; 970 for females 13–49 years old; and 950 for adults 50+ years old. These aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of trifloxystrobin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's LOC, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO TRIFLOXYSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. Population	690	100	140 rice 50 turf	3.4	1,100
Children 1–2 years old	154	100	140 rice 50 turf	3.4	130
Females 13–50 years old	970	100	140 rice 50 turf	3.4	1,000
Adults 50+ years old	950	100	140 rice 50 turf	3.4	1,200

4. *Intermediate-term risk*. The intermediate-term aggregate risk assessment estimates risks likely to result from 1 to 6 months of exposure (30 to 180 days) to trifloxystrobin residues from food, drinking water, and residential pesticide uses. Intermediate-term exposure to trifloxystrobin is not expected to occur based on the chemical's short soil half-life (about 2 days). Therefore, no intermediate-term aggregate risk is expected.

5. *Aggregate cancer risk for U.S. population*. Trifloxystrobin is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to trifloxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for trifloxystrobin. Harmonization is thus not an issue at this time.

V. Conclusion

Therefore, the tolerances are established for combined residues of trifloxystrobin, (benzeneacetic acid, (*E,E*)-α-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl) phenyl]ethylidene]amino]oxy]methyl]-, methyl ester) and the free form of its acid metabolite CGA-321113((E,E)-methoxyimino-[2-[1-(3-trifluoromethyl phenyl) ethylideneaminooxymethyl] phenyl]acetic acid) in or on leaf petioles subgroup 4B at 3.5 ppm, and vegetable, root, except sugar beet, subgroup 1B, except radish at 0.10 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0244 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 10, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0244, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since

tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.555 is amended by adding commodities to the table in paragraph (a) to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Leaf petioles subgroup 4B	3.5
* * *	* *
Vegetable, root, except sugar beet, subgroup 1B, except radish	0.10
* * *	* *

* * * * *

[FR Doc. 03–23054 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2762, MB Docket No. 02–83, RM–10404]

Digital Television Broadcast Service; Sault Saint Marie, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Scanlan Television, Inc., substitutes DTV channel 9c for DTV channel 56 at Sault Saint Marie, Michigan. *See* 67 FR 20941, April 29, 2002. DTV channel 9c can be allotted to Sault Saint Marie in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 46–03–08 N. and 84–06–38 W. with a power of 24, HAAT of 291 meters and with a DTV service population of 84 thousand. Since the community of Sault Saint Marie is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–83, adopted August 28, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by removing DTV channel 56 and adding DTV channel 9c at Sault Saint Marie.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22966 Filed 9–9–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 175
Wednesday, September 10, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV03–931–1 PR]

Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears handled. The Committee locally administers the marketing order, which regulates the handling of fresh Bartlett pears grown in the States of Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 25, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 147 and Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in the States of Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable fresh Bartlett pears beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods, from $0.025 to $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears grown in the States of Oregon and Washington.

The Oregon and Washington fresh Bartlett pear marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of Oregon or Washington fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2003, and unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent of fresh Bartlett pears. In comparison, last year's budgeted expenditures were $77,612. The assessment rate of $0.335 is $0.31 higher than the rate currently in

effect. The Committee recommended an increased assessment rate to establish market research and development projects to assist, improve, or promote the marketing, distribution, and consumption of pears. These projects will be executed through an agreement with Pear Bureau Northwest, which also oversees market development and promotion, including paid advertising, projects for the Winter Pear Control Committee, under Marketing Order No. 927 regulating the handling of winter pears grown in Oregon and Washington. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications though website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities would be conducted.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal Committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
Oregon Bartlett Pear Commission	$0.34	$.0275	−$0.3125
Washington State Fruit Commission	0.332	0.022	−0.31
Northwest Fresh Bartlett Pear Marketing Committee	0.025	0.335	0.31
Oregon Total	0.365	0.3625	−0.025
Washington Total	0.357	0.357	0.0

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower/shipper organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The assessment rate recommended by the Committee was determined by reviewing the historical market development expenses of other organizations and past expenses for the Committee. Commodity shipments for the 2003–2004 season are estimated at 3,350,000 standard boxes, which should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $16,997.14) would be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (§ 931.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,500 growers of fresh Bartlett pears in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the *Noncitrus Fruits and Nuts, 2002 Preliminary Summary* issued in January 2003 by the National Agricultural Statistics Service, the total farm gate value of fresh Bartlett pears in the regulated production area for 2002 was $34,782,000. Therefore, the 2002 average gross revenue for a fresh Bartlett pear grower in the regulated production area was $23,188. Further, based on Committee records and recent f.o.b. prices for fresh Bartlett pears, over 98 percent of the regulated handlers ship less than $5,000,000 worth of fresh Bartlett pears on an annual basis. Based on this information, it can be concluded that the majority of growers and handlers of fresh Bartlett pears in the States of Oregon and Washington may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from $0.025 to $0.335 per 44-pound standard box or container

equivalent of fresh Bartlett pears. The Committee unanimously recommended 2003–2004 expenditures of $1,122,250 and an assessment rate of $0.335 per 44-pound standard box or container equivalent. The proposed assessment rate is $0.31 higher than the current rate. The quantity of assessable fresh Bartlett pears for the 2003–2004 season is estimated at 3,350,000 standard boxes. Thus, the $0.335 rate should provide $1,122,250 in assessment income. Income derived from handler assessments, along with miscellaneous income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses (§ 931.42).

The major expenditures recommended by the Committee for the 2003–2004 year include $78,934 for expenses shared with Pear Bureau Northwest and the Winter Pear Committee (salaries, employee benefits, office rent, and similar administration expenses), $38,316 for unshared committee expenses (meetings, assessment collection fees paid to the Washington State Fruit Commission, fees paid to four grower handler organizations for collating information used in generating crop and quality reports, and contingency reserves), and $1,005,000 for market research and development expenses. Budgeted expenses for these items in 2002–2003 were $63,712, $13,900, and $0, respectively.

The proposed increase in the assessment rate is necessary for the Committee to establish market research and development projects. These market development projects will be executed through an agreement with Pear Bureau Northwest, which also oversees the market development projects for the Winter Pear Control Committee, administering Marketing Order No. 927. The Bartlett pear projects for 2003–2004 include activities to enhance the consumption of pears in Latin America and South America, trade and consumer communications though website and newsletter releases, a domestic field staff program to distribute point of sale materials and conduct consumer samplings, and participation in food service and consumer shows to advance Bartletts as the first available USA pear variety. No paid advertising activities would be implemented.

These market development projects were previously administered by the Oregon Bartlett Pear Commission and the Washington State Fruit Commission. However, following an eight-month series of industry meetings, both state commissions recommended that the federal Committee administer future Bartlett pear market development projects. Thus, with industry consensus in support of the action, the Committee, on May 29, 2003, unanimously recommended that it establish and administer future market development projects for the Bartlett pear industry.

The net effect to the Northwest Bartlett pear industry in transferring the market development projects from the State commissions to the Committee is negligible as indicated in the table below.

	2002–2003	2003–2004	Net change
Oregon Bartlett Pear Commission	$0.34	$.0275	−$.03125
Washington State Fruit Commission	0.332	0.022	−0.31
Northwest Fresh Bartlett Pear Marketing Committee	0.025	0.335	0.31
Oregon Total	0.365	0.3625	−0.025
Washington Total	0.357	0.357	0.0

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2003–2004 season could range between $9.20 and $11.00 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 2003–2004 season as a percentage of total grower revenue could range between 3.6 and 3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon and Washington fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Oregon or Washington fresh Bartlett pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on July 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable fresh Bartlett pears handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is proposed to be amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 931.231 is revised to read as follows:

§ 931.231 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.335 per 44-pound standard box or container equivalent is established for fresh Bartlett pears grown in Oregon and Washington.

Dated: September 5, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–23048 Filed 9–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–213–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes. This proposal would require modification of the escape slide/raft pack assembly and cable release sliders. This action is necessary to prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–213–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–213–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of improper escape slide/raft deployment and passenger/crew door blockage during slide deployment tests on certain Boeing Model 747 series airplanes. Subsequent investigation revealed that the cause of this improper deployment or door blockage was damaged pins of the slide pack cover, which could not be extracted. If the pins are not extracted, either the door will not fully open or the slide will not deploy.

We also received one report of high-deployment and non-deployment forces of the floor mounted escape slide of the upper deck during maintenance. Investigation revealed that the cable release slider did not travel enough to allow for easy extraction of the deployment cables, which can result in high-deployment forces. Further investigation revealed that the release pins can become snagged in the access hole of the outboard cover panel cone, preventing escape slide deployment.

Improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation could result in injury to passengers or crewmembers.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Special Attention Service Bulletin 747–25–3274, Revision 1, dated January 9, 2003, which describes procedures for modification of the escape slide/raft pack assembly. For Group 1 and 2 airplanes, the modification includes removing the slide packs and replacing the cover release pin cable assemblies with new assemblies containing high-strength pins, and removing the pulley guard bracket to prevent new pins from hanging on the pulley guard during slide pack release. For Group 3 through 15 airplanes, the modification includes removing the slide packs and replacing the cover release pin cable assemblies with new assemblies containing high-strength pins. For Groups 4, 6, 8, and 10 airplanes, the modification includes removing the cable guard brackets from the door 3 ramp packs.

We also have reviewed and approved Boeing Special Attention Service Bulletin 747–25–3307, dated November 21, 2002, which describes procedures for modification of the cable release sliders of the escape slide/raft pack assembly. The modification includes overhaul or replacement of the cable release sliders with new sliders and installation of washers on the outboard pack cover. This service bulletin is to be done prior to or concurrent with Service Bulletin 747–25–3274.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Service Information and This Proposed AD

Although the service bulletins recommend accomplishment of the modifications at the earliest time when manpower and parts are available, or at the next scheduled slide overhaul/maintenance, respectively, we have determined that a specific compliance time is needed to ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the average utilization of the affected fleet. Considering these factors, we find that a 36-month compliance time for completing the proposed actions is warranted, in that this represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 592 airplanes of the affected design in the worldwide fleet. We estimate that 187 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per escape slide to accomplish the proposed modification of the escape slide/raft pack assembly, at an average labor rate of $65 per work hour. Required parts would cost between $13,980 and $48,940 per slide. Based on these figures, the cost impact of the modification of the escape slide/raft pack assembly proposed by this AD on U.S. operators is estimated to be between $14,110 and $49,070 per slide.

Should an operator be required to accomplish the overhaul of the cable release sliders, it would take approximately 2 work hours to accomplish the proposed overhaul, at an average labor rate of $65 per work hour. Required parts cost would be negligible. Based on these figures, the cost impact of the overhaul of the cable release sliders proposed by this AD on U.S. operators is estimated to be $130 per slider.

Should an operator be required to accomplish the replacement of the cable release sliders, it would take approximately 1 work hour to accomplish the proposed replacement, at an average labor rate of $65 per work hour. Required parts would cost approximately $2,940 per slider. Based on these figures, the cost impact of the replacement of the cable release sliders proposed by this AD on U.S. operators is estimated to be $3,005 per slider.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–213–AD.

Applicability: All Model 747SP, 747SR, 747–100, –100B, –100BSUD, –200B, –200C, –200F, and –300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) 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 improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Modify the escape slide/raft pack assembly (includes removing the slide packs, replacing the cover release pin cable assemblies with new assemblies, and removing the pulley guard bracket, as applicable), per Boeing Special Attention Service Bulletin 747–25–3274, Revision 1, dated January 9, 2003.

(b) Prior to or concurrent with accomplishment of paragraph (a) of this AD:

Modify the cable release sliders of the escape slide/raft pack assembly (includes overhauling or replacing the cable release sliders and installing washers on the outboard pack cover, as applicable), per Boeing Special Attention Service Bulletin 747–25–3307, dated November 21, 2002.

Part Installation

(c) As of the effective date of this AD, no one may install, on any airplane, a pin cable assembly with a part number listed in the ''Existing Part Number'' column of the table in Appendix A of Boeing Special Attention Service Bulletin 747–25–3274, Revision 1, dated January 9, 2003.

Alternative Methods of Compliance

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

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

Special Flight Permit

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

Issued in Renton, Washington, on September 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22992 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H049C]

RIN 1218–AA05

Assigned Protection Factors

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: OSHA is extending the deadline for receipt of public comments on its proposed rule ''Assigned Protection Factors'' to October 2, 2003. This action is in response to interested parties who have requested the additional time.

DATES: Comments and data must be submitted by October 2, 2003. Comments submitted by mail must be postmarked no later than October 2, 2003.

ADDRESSES: *Written comments.* You may submit three copies of written comments to the Docket Office, Docket No. H–049C, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office, telephone number (202) 693–1648. You do not have to send OSHA a hard copy of your faxed comments. You may submit comments electronically through OSHA's Homepage at *http://ecomments.osha.gov/.* You may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies of them to the OSHA Docket Office at the address above. These materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2289 or fax (202) 693–1678. For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website on the Internet at *http://www.osha.gov/.*

SUPPLEMENTARY INFORMATION: OSHA published the final, revised Respiratory Protection Standard, 29 CFR 1910.134, on January 8, 1998 (63 FR 1152). The standard contains worksite-specific requirements for program administration, procedures for respirator selection, employee training, fit testing, medical evaluation, respirator use, and other provisions. However, OSHA reserved the sections of the final standard related to assigned protection factors (APFs) and maximum use concentration (MUC) pending further rulemaking (*see* 63 FR 1182 and 1203). On June 6, 2003, (68 FR 34036), OSHA published a proposal to revise its existing Respiratory Protection Standard to add definitions and specific requirements for APFs and MUCs. The proposed revisions also would supersede the respirator selection provisions of existing substance-specific standards with these new APFs (except the APFs for the 1,3-Butadiene Standard). The period for filing public comment on the proposal was to end on September 4, 2003. Several interested parties, including the Building and Construction Trades Department of the AFL–CIO, have requested an extension of the deadline for submitting comments based on the need for additional time to address assigned protection factors, as well as the changes to several substance-specific standards, proposed for revision in the notice. OSHA is granting the request and extending the deadline for submitting comments to October 2, 2003.

Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice. It is issued under Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC, on September 4, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–23078 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–26–P

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; correction.

SUMMARY: This document corrects an error in the **DATES** section of a **Federal Register** document regarding the Commission's 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 on October 2, 2003 and Reply Comments are due on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, (202) 418–1580.

In rule FR Doc. 03–22194 published September 2, 2003 (68 FR 52307) make the following correction.

1. On page 52307, in the first column, in the dates section remove ''Reply Comments are due October 23, 2003'' and add ''Reply Comments are due November 3, 2003'' in its place.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22970 Filed 9–9–03; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is providing public notification of the decision to discontinue the development of a Cost Accounting Standard (CAS) addressing the recognition of costs of post-retirement benefit plans under government cost-based contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: Robert Burton, Office of Federal Procurement Policy (telephone: 202–395–3302).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This notice announces the discontinuation of a case after completing steps one and two of the four-step process in accordance with the requirements of 41 U.S.C. 422(g)(1)(B) and (C).

B. Background and Summary

Prior Promulgations

Post-retirement benefit plans have existed for many years, but received little attention until the Financial Accounting Standards Board (FASB) examined the potential liabilities and costs of these plans and issued Statement No. 106, ''Employers' Accounting for Post-Retirement Benefits Other Than Pensions'' (SFAS 106), in December of 1990. In response to numerous public comments recommending that the CAS Board establish a case concerning the measurement, assignment, and allocation of the costs of post-retirement benefit plans, at a February 24, 1995 meeting, the CAS Board directed the staff to begin work on a Staff Discussion Paper (SDP).

On September 20, 1996, the Board published an SDP, ''Post-Retirement Benefit Plans Other Than Pension Plans Sponsored by Government Contractors' (61 FR 49533), identifying the cost accounting issues related to post-retirement benefit plans. On January 12, 1999, the Board sent a letter to all the respondents to the SDP. This letter was also made widely available for public comment on February 18, 1999 (64 FR 8141).

The Board published an ANPRM (65 FR 59503), ''Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors,'' on October 5, 2000.

Public Comments

The Board received twenty-three (23) sets of public comments in response to the ANPRM. Most respondents believed that accrual accounting following the provisions of SFAS 106 was the most appropriate basis for measuring and assigning the costs of a post-retirement benefit plan that created a firm liability. However, many respondents believed that the imposition of any nonforfeitability criteria, as proposed, could lock a contractor into providing explicit benefits with no ability to control the employer-paid portion of the cost or to switch to alternative benefit delivery arrangements. Moreover, the continuing high level of medical inflation coupled with various economic factors, and global competition, raises the question whether any contractor could risk the adverse effects of providing any level of nonforfeitable benefits. The argument has been made that the only prudent way of providing some assurance that some level of benefit will be available in the future, is for a contractor to currently fund the accrued cost as permitted by existing procurement regulations. Many commenters did not believe the Board should proceed with this project.

Continuing Research

Subsequent to the publication of the ANPRM, the General Accounting Office (GAO) issued a report to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, entitled ''RETIREE HEALTH BENEFITS—Employer-Sponsored Benefits May Be Vulnerable to Further Erosion'' (GAO–01–374) in May 2001. The GAO summarized its findings as follows:

> Despite a sustained strong economy and several years of relatively low rates of increase in health insurance premiums, the decline in the availability of employer-sponsored retiree health benefits has not reversed since 1997—the last year for which we had reported previously—and several indicators suggest that there may be further erosion in these benefits. Employer benefit consultants we contacted generally indicated that retiree health benefits were continuing to decline. Two widely cited employer benefit surveys, however, provide conflicting data as to whether the proportion of employers sponsoring retiree health insurance remained stable or declined slightly from 1997 through 2000. In some cases, employers provide retiree health benefits to current retirees or long-term employees, but newly hired employees are not eligible. To date, however, the percentage of retirees with employer-sponsored coverage has remained relatively stable over the past several years, with about 37 percent of early retirees and 26 percent of Medicare-eligible retirees receiving retiree health coverage from a former employer. This stability may also be linked to employers' tendency to reduce coverage for future rather than current retirees. In some cases, employers that continue to offer retiree health benefits have reduced the terms of these benefits by increasing the share of premiums that retirees pay for health benefits, increasing co-payments and

deductibles, or capping the employers' expenditures for coverage.

Several current and developing market, legal, and demographic factors may contribute to a further decline in employer-sponsored retiree health benefits. These factors include—

- A resumption of health insurance premiums rising at a rate faster than general inflation;
- Proposed changes in Medicare coverage, such as adding a new prescription drug benefit, that could affect the costs and design of employers supplemental health benefits for Medicare-eligible retirees;
- A recent circuit court ruling allowing claims of violations of federal age discrimination law when employers make distinctions in health benefits they offer retirees on the basis of Medicare eligibility; and
- The movement of the baby boom generation into retirement age, leading some employers to have a growing number of retirees relative to active workers.

Retirees whose former employers reduce or eliminate health benefits often face limited or unaffordable alternatives to obtaining coverage. Retirees may purchase coverage on their own—either individual insurance policies for these under age 65 or Medicare supplemental plans for those age 65 or older. However, despite federal laws that guarantee access to some individual insurance policies to certain individuals who lose group coverage, retirees' ages and often poorer health status combine to make individually purchased health insurance expensive. For example, the majority of states do not restrict the price of premiums that carriers may charge individuals who purchase individual insurance policies. Thus, carriers in these states may charge 60-year-old males a monthly premium close to 4 times higher than what they charge 30-year-old males, and there may be an even bigger difference if the older individual is not healthy. Similarly, the number of Medicare supplemental plans that federal law guarantees to retirees over 65 whose employers eliminate coverage is limited, and they do not include coverage for benefits such as prescription drugs. Thus, retirees seeking alternative coverage could receive less comprehensive coverage and pay more for it than they had previously.

The findings of the GAO report were supported and expanded upon by the Employee Benefit Research Institute (EBRI) Issue Brief Number 236, ''Retiree Health Benefits: Trends and Outlook,'' authored by Paul Fronstin in August 2001. The Issue Brief reported that employers had taken various actions in response to SFAS 106, including placing caps on the employers' expenditures, changing age and service requirements, and moving to ''defined contribution'' health benefits. Some employers dropped all retiree health benefits for future retirees and other employers dropped benefits for current retirees' coverage, though this action occurred less often than did other changes. Regarding future trends, EBRI found the following:

> While the changes employers have made to retiree health benefits do not appear to be having much impact on current retirees, they are likely to be felt most by future retirees who have not yet or may never become eligible for retiree health benefits because the courts have ruled that an employer has a right to terminate or amend retiree health benefits only if it has proved that such a right has been reserved or stated in specific language and on a widely known basis.

The EBRI Issue Brief also remarked that many early retirees, ages 55–64, who were not covered by employment-based retiree health insurance, had difficulty finding affordable insurance. This observation helped to explain the report's finding that—

> By law, employers are under no obligation to provide retiree health benefits, except to current retirees who can prove that they were previously promised a specific benefit. Between 1994 and 1999, retirees ages 55–64 experienced an increase in the likelihood of being uninsured, but, as mentioned above, the percentage of retirees covered by health benefits through a former employer or union was unchanged (although as is shown below, current retirees have seen increases in their share of health insurance premiums). In addition, the likelihood of an early retiree having health insurance through his or her own spouse increased. An erosion of public health insurance and health insurance purchased directly from an insurer accounts for the increase in the uninsured.

The courts continue to find that an employer has a right to terminate or amend retiree health benefits if such a right has been reserved or stated in specific language and on a widely known basis. In *Hughes* v. *3M Retiree Medical Plan* (2002 CA8), 2002 WL 276767, the Eighth Circuit held that an employee booklet describing a retiree health plan did not create a ''lifetime'' benefit because the summary plan description was silent as to vesting. The Court also noted that the benefit booklet contained the statement that ''[t]he company hopes and expects to continue these plans indefinitely, but reserves the right to amend or discontinue them, subject to collective bargaining as required.''

A recent study by a joint project of the Kaiser Family Foundation, the Commonwealth Fund, and the Health Research & Education Trust found not only that the number of employers who sponsor retiree health plans is continuing to decline, but that those plan sponsors who are continuing their retiree health plans are considering shifting more of the cost to the retirees. Mark A. Hoffmann, writing for ''Business Insurance'' on April 17, 2002, reported the following:

> The percentage of employers offering retiree health care coverage is continuing to drop, according to a survey released earlier this week.
>
> Only 34% of U.S. companies with 200 or more employees offered health care coverage to Medicare-eligible retirees in 2001, down from 37% in 2000 and 41% in 1999, according to the study, titled ''Erosion of Private Health Care Insurance Coverage for Retirees.''
>
> The study. . . also found that Medicare-age retirees, on average, pay 26% of the total cost of their health care premiums, compared with 13% paid by active workers in the same firms.
>
> ''By 2001, numerous warning signs indicate that, although few employers are dropping coverage altogether, many say they plan to make changes that shift a greater share of costs to retirees, by raising premium contributions and imposing greater cost-sharing requirements for benefits such as prescription drugs,'' the report states.

As did the EBRI Issue Brief, the study found that while retiree health coverage will probably continue to be provided for current retirees, the prospect of retiree health coverage for future retirees is less certain. The survey made the following observation:

> Yet, just 4% of companies offering retiree coverage say they are likely to eliminate that coverage entirely in the next two years. Seven percent of firms say it's likely they will eliminate retiree benefits for new employees or for existing workers who have not yet retired.
>
> However, while no jumbo firms indicate they would eliminate retiree health coverage entirely, 11% say they are likely to eliminate them for new employees or existing workers who have not yet retired.

The staff reviewed copies of post-retirement benefit documents and plan descriptions of several defense contractors. At the request of the CAS Board staff, the Defense Contract Audit Agency (DCAA) provided these copies from their contract files after obtaining permission from the contractors to release these proprietary materials for review by the Board and its staff in their deliberation on this case. While the details and the benefits provided by these plans were quite varied among the plan documents, the provisions of these plans were consistent with the general description of post-retirement benefit

plans found in most articles and literature on the subject. In particular, attainment of an age close to retirement and significant service—*e.g.*, age 50 and 20 years of service—were usually required for eligibility. All the plans contained reference to the contractor's unrestricted right to amend or terminate the plan.

There have also been a number of news stories in the print and broadcast media concerning retirees from large private companies who have lost their employer-based retiree health insurance and have been unable to purchase health insurance coverage on their own due to pre-existing conditions or cost. As the general public has become increasing aware of this issue, some members of Congress have begun considering how the protections of the Employee Retirement Income Security Act of 1974 (ERISA) or other statutes might be extended to protect these retirees.

In response to a request from Representative Carolyn McCarthy, the GAO did a survey of three major defense contractors. In a letter to the Congresswoman dated February 27, 2003, which reported on ''Retiree Health Benefits at Selected Government Contractors,'' the GAO wrote:

DCMA and DCAA closely monitored postretirement health benefits to ensure charges to the government were made in compliance with federal regulations. As part of their oversight efforts, the two agencies performed risk assessments and conducted regular reviews of the contractors' actual and projected postretirement health benefits costs and the assumptions underlying future projections. For the 2 years covered in our review, neither DCAA nor DCMA found any significant problems with the contractors' actual or projected postretirement health benefit costs. For example, DCAA took no exceptions to the projected costs reflected in the contractors' pricing proposals and took exception to less than 1 percent of the $756 million in postretirement health benefits costs incurred by the contractors over the 2-year period.

Conclusions

Because contractors need the flexibility to modify, reduce, or even eliminate post-retirement benefits in the future in response to the pressures of medical inflation, an aging population, and global competition, the Board finds that the liability for post-retirement benefits cannot be made sufficiently firm to be recognized for government cost accounting purposes without undue financial risk to both the contractor and the government. Therefore, the Board has decided to discontinue further development of the rule proposed in the ANPRM and the project (CASB Docket No. 96–02A) to develop a separate Cost Accounting Standard (CAS) that addresses the recognition of costs of post-retirement benefit plans under government cost-based contracts and subcontracts.

Angela B. Styles,

Chair, Cost Accounting Standards Board.

[FR Doc. 03–23053 Filed 9–9–03; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

[Docket No. RSPA–03–14405 (HM–220F)]

RIN 2137–AD78

Hazardous Materials Regulations: Aluminum Cylinders Manufactured of Aluminum Alloy 6351–T6 Used in SCUBA, SCBA, and Oxygen Service—Revised Requalification and Use Criteria

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) pertaining to aluminum cylinders manufactured using aluminum alloy 6351–T6. The purpose of this rulemaking initiative is to enhance safety, minimize the potential for personal injury and property damage during the cylinder filling process, and adopt a standard for early detection of sustained load cracking (SLC) to reduce the risk of a cylinder rupture.

DATES: Comments must be received by November 10, 2003.

ADDRESSES: You may submit comments 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 System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9:00 am and 5:00 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA -03–14405 (HM–220F) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Toughiry, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Public Participation
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A. Executive Order 12866 and DOT Regulatory Polices and Procedures
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I. Background

Cylinders made of aluminum alloy 6351–T6 are known to be susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder. The majority of the SLC-related ruptures have occurred in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. Since 1994, the Research and Special Programs Administration (RSPA, we) has been notified of twelve suspected SLC ruptures of cylinders manufactured of aluminum alloy 6351–T6. Five of the twelve ruptures resulted in serious injuries. RSPA's review of manufacturers' data revealed that there have been several thousand cylinders

that leaked, and many additional cylinders have been found with cracks in the cylinder's neck during the normal requalification process. Manufacturers of cylinders made from the 6351–T6 alloy have performed research, testing and analysis to determine whether there is any correlation between SLC and the probability of a cylinder rupture. The data indicated that the cylinders would leak but not rupture when operated at marked service pressure. It was also found that the probability of cracking increases with an increase in stress levels. We performed additional metallurgical analysis on several ruptured cylinders to verify the cause of failure and failure mode. (*See* the metallurgical analysis reports at *http://hazmat.dot.gov/3al_cyls_info.htm*.) Those metallurgical analyses revealed that SLC caused the cylinder ruptures, but the results were inconclusive as to why the cylinders abruptly ruptured instead of leaked. United States manufacturers discontinued using aluminum alloy 6351–T6 in mid-1990, replacing it with aluminum alloy 6061–T6, which is not susceptible to SLC. We estimate that approximately four million U.S. cylinders manufactured from aluminum alloy 6351–T6 are in use in SCUBA, SCBA, and oxygen services.

The primary domestic manufacturers of DOT 3AL cylinders currently in service are Luxfer USA; Walter Kidde Co.; Cliff Impact Division of Parker Hannifin Corporation; and Catalina Cylinders. The majority of the cylinders are being used in six major services: (1) SCUBA, (2) SCBA, (3) carbon dioxide, (4) oxygen, (5) industrial gases, and (6) fire extinguishers.

Cylinders manufactured of aluminum alloy 6351–T6 prior to July 1990 include seamless aluminum cylinders marked ''DOT 3AL'', including those marked with ''DOT 3AL'' above or near one of the following exemption or special permit numbers: 6498, 7042, 8107, 8364, and 8422. In addition, unless determined otherwise, affected individuals should assume that a DOT 3AL or DOT–E 7235 cylinder manufactured outside the United States is constructed of aluminum alloy 6351–T6.

On August 8, 2002, we published a final rule (Docket HM–220D, 67 FR 51626) that amended the requirements of the HMR applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. In that final rule, we added the following amendments pertaining to DOT specification cylinders made with aluminum alloy 6351–T6:

- We removed the authorization for the manufacture of DOT specification cylinders from aluminum alloy 6351–T6 because cylinders manufactured with this aluminum alloy have a greater risk of failure than other aluminum cylinders.
- We prohibited these cylinders for Hazard Zone A materials effective on October 1, 2002. After that date, cylinders made of aluminum alloy 6351–T6 may not be filled and offered for transportation in toxic inhalation hazard service.
- We prohibited the use of cylinders manufactured of aluminum alloy 6351–T6 for gases having pyrophoric properties.
- We required a DOT specification or exemption cylinder made of aluminum allow 6351–T6 to be inspected for evidence of sustained load cracking in the neck and shoulder area.

As stated earlier, the majority of the SLC-related ruptures occurred in SCUBA, SCBA and oxygen services. Additionally, for these services, the probability of cracking increases due to the increased frequency with which cylinders in these services are filled. We recognize that cylinders used in beverage service are also filled on a frequent basis. However, beverage service cylinders typically are filled to lower pressures than cylinders used in SCUBA, SCBA, and oxygen services, thereby reducing the stress levels to which beverage service cylinders are subjected. Moreover, in SCUBA and SCBA services, the cylinder is attached to the back of a diver or firefighter, which substantially increases the risk of injury or fatality in the event of a rupture. Similarly, an oxygen cylinder may be placed close to a patient in the hospital or home. SLC could also result in an oxygen leak that may cause an explosion. Therefore, because of the higher risk in SCUBA, SCBA and oxygen services, this rulemaking (HM–220F) proposes to adopt a standard for early detection of SLC to reduce the risk of a cylinder rupture.

We performed an analysis of costs associated with operating cylinders manufactured of aluminum alloy 6351–T6. The economic evaluation considered and compared the costs of three possible alternatives: (1) Leaving the cylinder in service without taking any additional measures to reduce the risk, (2) removing all cylinders made of aluminum alloy 6351–T6 from service, or (3) performing a non-destructive examination (NDE) at the time of the cylinder's periodic requalification and requiring additional operational controls (OC) during the cylinder filling process. Estimating the societal cost of injuries or fatalities that would otherwise be avoided if SLC were eliminated is complicated. The uncertainties due to the unpredictability at which ruptures occur and the likelihood that aging cylinders may be progressively more prone to SLC makes option three to most prudent of the three options. It also addresses a known safety problem without imposing excessive costs.

DOT 3AL cylinders must be requalified every five years (twelve years for fire extinguishers) in accordance with § 180.205 of the HMR. The requalification performed under § 180.205 includes a visual inspection (internal and external) and a volumetric expansion test. The requalification does not include a specific NDE of the cylinder neck or crown areas for detection of SLC. However, we understand that in addition to the visual inspection and volumetric expansion test, many users and requalifiers are currently performing an eddy current examination. Approximately 2,000 eddy current devices have been purchased by various cylinder requalifiers to examine aluminum cylinders for SLC. Cylinder manufacturers report that a large number of affected cylinders have been removed from service because of flaws discovered during eddy current examinations.

We evaluated three NDE methods—visual examination (VT), eddy current examination (ET), and ultrasonic examination (UT)—to detect a critical-size crack. A cylinder with a critical-size crack must be removed from service upon detection of the crack. Under the direction of RSPA, Texas Research Institute (TRI) evaluated these three NDE (VT, ET, UT) methods by performing blind examinations that were applied by individuals of varying skill levels (See the Nondestructive Inspection of High Pressure Aluminum Gas Cylinder, Final Report, dated September 2000, at *http://hazmat.dot.gov/ohmforms.htm#other*). TRI determined that each NDE method was capable of detecting SLC, but the detectability using VT was limited by external factors, such as the inspector's eye sight, lighting, position of the crack, and alertness of the examiner. TRI also determined that UT must be applied by a certified technician to produce accurate results in detecting SLC. TRI concluded that ET combined with a visual inspection (VT) provides the most accurate and practical examination for detecting SLC. Both ET and VT can be conducted by a requalifier with minimal training.

In this NPRM, we propose to require cylinders manufactured of aluminum alloy 6351–T6 used in SCUBA (diving), SCBA (firefighting), and oxygen service

to undergo a combined visual and eddy current examination (referred to as ''VE'' in this rulemaking) in order to requalify the cylinders in accordance with § 180.205. We propose to add a new Appendix C to part 180, to specify the procedure to be used to conduct the ET examination. No person may requalify a DOT specification or exemption cylinder in accordance with § 180.209 of this chapter unless that person has been issued a requalifier identification number (RIN) as provided in § 107.805(d). Each person who holds a valid RIN and performs an ET in accordance with § 180.205 must notify RSPA in writing in accordance with the procedural requirements in § 107.805. We are also proposing that suitable safeguards be provided to protect personnel and facilities should failure occur during the filling of cylinders manufactured of aluminum alloy 6351–T6 used in SCUBA, SCBA, and oxygen services. Additionally, we are recommending that only individuals essential to the filling process be allowed in the vicinity of the cylinder during the filling process.

Although we believe that the twelve reported SLC suspected ruptures under-represent the extent of the SLC issue, we do not have sufficient data to determine whether the SLC related ruptures extend beyond those services discussed above. Therefore, we are requesting additional information from manufactures and users who are aware of the rupture of any DOT 3AL cylinder or any other cylinder manufactured from aluminum alloy 6351–T6, whether the incident was domestic or foreign, to submit the information in their comments to this rulemaking. More broadly, we invite commenters to address the issue of whether the new inspection requirements proposed in this NPRM should apply to cylinders manufactured of aluminum alloy 6351–T6 and used in services other than SCUBA, SCBA, or oxygen.

II. Public Participation

You should identify the docket number RSPA–03–14405 (HM–220F) at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that RSPA received your comments, you should include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://dms.dot.gov.*

III. Section-by-Section Review

Part 171

Section 171.7

As a result of RSPA's proposal to require cylinders manufactured of aluminum alloy 6351–T6 used in SCUBA, SCBA, and oxygen service to undergo an NDE, we are proposing to revise the incorporation by reference entry CGA Pamphlet C–6.1, ''Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995,'' under the Compressed Gas Association, Inc., to incorporate by reference the 2002 edition of this pamphlet. The 2002 edition of the standard has provisions discussing cleaning methods that may result in the removal of cylinder wall material. It also contains a new requirement that all aluminum cylinders be internally inspected for cracks in the neck region. Persons who may be affected by these changes should review the standard to determine any potential impacts on their operations.

Part 173

Section 173.302

We are proposing to revise this section by adding a new paragraph (e) to require that operational controls must be in place during the filling process, for cylinders manufactured of aluminum alloy 6351–T6. The operational controls will reduce the risk of injury and property damage during the filling process.

Part 180

Section 180.209

We are proposing to revise in paragraph (a), the entry for the DOT 3AL cylinder in the ''Requalification of Cylinders'' table to add a reference to the new paragraph (m). In addition, we are proposing to add a new paragraph (m) to include a non-destructive examination for cylinders manufactured of aluminum alloy 6351–T6. The non-destructive examination will be used to detect sustained load cracking in the neck and shoulder area.

Section 180.213

We are proposing to revise paragraph (d) and to add a new paragraph (f)(8) to specify the requalification marking requirements for those aluminum cylinders that successfully pass the combined eddy current examination and visual inspection.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. A regulatory analysis is available for review in the docket.

The compliance costs associated with this rule are minimal. The regulatory analysis revealed the increased cost for performing an NDE and OC to be small compared to the cost and safety risks of ''doing nothing,'' and it is significantly less than the cost of ''removing all cylinders from service.'' The economic evaluation data were based on information obtained from cylinder manufacturers, industrial gas companies, cylinder inspectors, and on metallurgical evaluation of the ruptured cylinders. We determined that the removal of cylinders manufactured of aluminum alloy 6351–T6 will result in a significant economic impact to cylinder owners and may cause a serious shortage of breathing air cylinders used in fire fighting and medical applications. Therefore, based on the risk assessment and regulatory analysis, we conclude that a requirement to perform an eddy current examination combined with a visual inspection at the required five-year requalification period is the best alternative. Since the NDE would take place at the time of the currently required five-year requalification period, the cost would be reduced substantially. We estimate the cost of volumetric expansion test and internal visual inspection that is required under the current regulation to be $5.00 per cylinder every five years. We estimate that the eddy current examination combined with the current volumetric expansion test and visual inspection to be $7.25 per cylinder every five years. The estimated $7.25 per cylinder includes the initial start-up cost (*e.g.*, training and cost of purchasing eddy current equipment). Therefore, we estimate the additional annual cost of the eddy current examination combined with the visual inspection to be $0.45 per cylinder. The average annual cost of this examination is the annual cost per cylinder multiplied by the number of cylinders, or $1,800,000. The cost of additional operational controls is nominal.

While researching a viable NDE method that could accurately detect SLC, we made a significant effort to reduce the risk of injury by educating cylinder users regarding the risk of using cylinders manufactured of aluminum alloy 6351–T6. As a result of this effort, we published the following safety advisory notices in the **Federal Register** between 1983 and 1999, concerning SLC in cylinders manufactured of aluminum alloy 6351–T6:

Aug. 11, 1983; Vol. 48, No. 156; pg. 36559
Feb. 27, 1984; Vol. 49, No. 39; pg. 7182
Nov. 01, 1984; Vol. 49, No. 213; pg. 44047
Jul. 17, 1985; Vol. 50, No. 137; pg. 29037
Aug. 15, 1985; Vol. 50, No. 158; pg. 32944
Jul. 10, 1987; Vol. 52, No. 132; pg. 26027
Mar. 24, 1993; Vol. 58, No. 55; pg. 15895
Aug. 10, 1993; Vol. 58, No. 152; pg. 42620
Jul. 26, 1994; Vol. 59, No. 142; pg. 38028
Dec. 14, 1998; Vol. 63, No. 239; pg. 68819
Oct. 18, 1999; Vol. 64, No. 2001; pg. 56243

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local and Indian tribe requirements, but does not propose any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule covers items 2 and 5 and would preempt any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 90 days from publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is not required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. This rule imposes only minimal new costs of compliance on the regulated industry. Based on the assessment in the regulatory evaluation, I hereby certify that while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed Regulatory Flexibility analysis is available for review in the docket.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This proposed rule may result in a modest increase in annual burden and costs based on a new information collection requirement. These proposals regarding the shipment of aluminum cylinders which result in a new information collection requirement will be submitted to OMB for review and approval. RSPA currently has an approved information collection under OMB Control No. 2137–0022, ''Testing, Inspection, and Marking Requirements for Cylinders.''

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies a new information collection request that RSPA will submit to OMB for approval based on the requirements in this proposed rule. RSPA has developed burden estimates to reflect changes in this proposed rule. RSPA estimates that the total information collection and recordkeeping burden as proposed in this rule would be as follows:

OMB No. 2137–0022:

Total Annual Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 271,461.

Total Annual Burden Cost: $2,615,515.

Total One-Time Start-Up Cost: $964,000.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Direct your requests for a copy of the information collection to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive your comments prior to the close of comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the

Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. RSPA proposes to amend requirements in the HMR pertaining to DOT 3AL aluminum cylinders. The purpose of this rulemaking initiative is to minimize personal injury during the cylinder filling process and to adopt a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture. Adopting a standard for early detection of sustained load cracking in order to reduce the risk of a cylinder rupture has no potential for environmental damage or contamination.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I, Subchapter C, as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the table in paragraph (a)(3), the entry for pamphlet C–6.1 under the Compressed Gas Association, Inc., is revised to read as follows:

§ 171.7 Reference material.

(a) * * *

* * * * *

(3) *Table of material incorporated by reference.*

Source and name of material	49 CFR reference
* * * * * * *	
Compressed Gas Association, Inc.,	
* * * * * * *	
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 2002.	180.205; 180.209; Appendix C to part 180.
* * * * * * *	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENT AND PACKAGES

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53

4. In § 173.302, paragraph (e) is added to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.

* * * * *

(e) *Aluminum cylinders manufactured of 6351–T6 aluminum alloy.* Suitable safeguards must be provided to protect personnel and facilities should failure occur while filling cylinders manufactured of aluminum alloy 6351–T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. The cylinder filler should allow only those individuals essential to the filling process to be in the vicinity of the cylinder during the filling process.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 180.209 in paragraph (a), in the ''Requalification of Cylinders table'' the entry ''DOT 3AL'' is revised, and a new paragraph (m) is added to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(a) * * *

TABLE 1.—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig.) [2]	Requalification period (years)
* *	* * *	* *
DOT 3AL	5/3 times service pressure	5 or 12 (*see* § 180.209(j) and § 180.209(m) [3]).
* *	* * *	* *

[1] Any cylinder not exceeding 2 inches outside diameter and less than 2 feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301(e)(1) of this subchapter.
[3] This provision does not apply to aluminum cylinders used in fire extinguisher service.

* * * * *

(m) *Aluminum cylinders manufactured of 6351–T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205, cylinders manufactured of aluminum alloy 6351–T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Cylinders with sustained load cracking that has expanded into the neck threads must be condemned in accordance with § 180.205(i). This provision does not apply to aluminum cylinders used in fire extinguisher service and to cylinders used to transport carbon dioxide or industrial gases. Requalification and inspection of the aluminum cylinders must conform to the following table.

REQUALIFICATION AND INSPECTION OF ALUMINUM CYLINDERS MADE OF ALUMINUM ALLOY 6351–T6 MANUFACTURED PRIOR TO JULY 1990

Requalification requirement	Examination procedure [1]	Sustained load cracking rejection criteria [2]	Requalification period (years)
Eddy current examination combined with visual inspection.	In accordance with Appendix C of this part. Visual inspection—In accordance with CGA Pamphlet C–6.1 (IBR; see § 171.1 of this subchapter).	2 threads long	5

[1] The requalifier performing eddy current must be familiar with the eddy current equipment and standardize (calibrate) the system in accordance with the requirements provided in Appendix C to this part. The requalifier must perform the visual inspection of the cylinder neck and shoulder in accordance with CGA Pamphlet C–6.1 (IBR; see § 171.7 of this subchapter).
[2] The eddy current must be applied from the inside of the cylinder's neck to detect any sustained load cracking that has expanded into the neck threads.

7. In § 180.213, paragraph (d) is revised and a new paragraph (f)(8) is added to read as follows:

§ 180.213 Requalification markings.

* * * * *

(d) *Requalification markings.* Each cylinder that has successfully passed requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right; and the fourth in the lower left. Example: A cylinder requalified in September 1998, and approved by a person who has been issued RIN ''A123'', would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is a follows:

A1

9 98 ×

32

Where:

''9'' is the month of requalification

''A123'' is the RIN

''98'' is the year of requalification, and

''X'' represents the symbols described in paragraphs (f)(2) through (f)(8) of this section.

* * * * *

(f) * * *

* * * * *

(8) For designation of the eddy current examination combined with a visual inspection, the marking is as illustrated in paragraph (d) of this section, except that the ''X'' is replaced with the letters ''VE''.

8. In Part 180, Appendix C is added to read as follows:

Appendix C to Part 180—Acceptable Eddy Current Examination for Cylinders Manufactured of Aluminum Alloy 6351–T6

1. This examination procedure is designed to detect critical size cracks in cylinders made of aluminum alloy 6351–T6.

2. *Eddy Current Equipment*—Equipment, such as Visual Plus, Visual Eddy, or equivalent non-destructive testing equipment must be capable of detecting the notches on the standard reference ring.

3. *Eddy Current Reference Ring*—The reference ring must be produced to represent the outer diameter (O.D.) of each cylinder to be tested. The reference ring must include artificial notches that will simulate a neck crack. The size of the artificial notch (depth and length) must be obtained from the eddy current equipment manufacturer. The standard reference must have a drawing that includes the depth of each notch, diameter and alloy.

4. *Eddy Current Equipment Standardization*—Each day prior to testing, the eddy current equipment must be standardized for each size (O.D.) of aluminum cylinder, using the reference ring described in item number 3 above. The minimum standardization requirements of the eddy current equipment are as follows:

(i) Screw reference ring onto the probe until the base of the reference ring is flush with the probe bottom, then back off two turns.

(ii) Warm the equipment for at least 20 minutes.

(iii) Set up the system between 150–215 kHz.

(iv) Locate the line ¼ from the screen bottom.

(v) Rotate the reference ring counterclockwise and observe the spike signal on the screen. Adjust the gain (using gain control) until the spike peaks to ¾ of the screen height (from home position to ¼ of screen from the top).

(vi) When spike signals break the centerline the threshold light must come on.

5. *Eddy Current Examination and Visual Inspection*—A written examination procedure for performing the eddy current examination and visual inspection must be kept at each facility that performs examinations under this procedure. The visual inspection procedure must be in accordance with CGA pamphlet C–6.1 (IBR; *see* § 171.1 of this subchapter).

At a minimum, the written examination procedure for performing the eddy current must include the following instructions:

(i) Remove the probe from the reference ring and screw probe clockwise half-way into cylinder's neck and press the sweep (*e.g.* NULL) button.

(ii) Continue rotating the probe clockwise until the threshold line moves off top of the screen, indicating probe is inside shoulder area (probe is in air).

(iii) Rotate probe counterclockwise towards the outlet of the cylinder until the threshold line appears on the screen indicating the probe is in the cylinder's neck.

(iv) Press the sweep (*e.g.* NULL) button to ensure that the line is positioned on screen, preferably at home position.

(v) Watch for spike signals indicating cracks. Mark positions with a grease pencil. When the spike occurs rotate the probe 360 degrees.

(vi) Check for successive indications at same angle indicating multiple cracks. Two successive spikes that break the threshold at the same angle indicate a two thread crack. A two thread crack is the rejection criteria.

(vii) Perform the visual inspection for confirmation.

6. *Examination equipment records.*

Records of eddy current inspection shall contain the following information:

(i) Equipment manufacturer, model number and serial number.

(ii) Probe description and unique identification (*e.g.*, serial number, part number, etc.).

7. *Eddy current examination reporting and record retention requirements.*

Daily records of eddy current examinations must be maintained by the person who performs the requalification until either the expiration of the requalification period or until the cylinder is again requalified, whichever occurs first. These records must be made available for inspection by a representative of the Department on request. Eddy current examination records shall contain the following information:

(i) Specification of each standard reference ring used to perform the eddy current examination.

(ii) DOT specification or exemption number, manufacturer's name or symbol, owner's name or symbol and date of manufacture.

(iii) Name of test operator performing the eddy current examination.

(iv) Date of eddy current examination.

(v) Location and type of defect on the cylinder crown or the threaded neck (*e.g.*, 5 threads).

(vi) Acceptance/rejection results (*e.g.* pass or fail).

(vii) Legible identification of test operator.

Issued in Washington, DC on September 3, 2003, under authority delegated in 49 CFR part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–22808 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 13 and 17

RIN 1018–AI85

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Revisions to the Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise our regulations pertaining to enhancement of survival permits issued under the Endangered Species Act. The purpose of the proposed revisions is to revise the current implementing regulations for permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances. These revisions will make Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to understand and implement.

DATES: Comments from all interested parties must be received by November 10, 2003.

ADDRESSES: Comments or materials concerning the proposed rule should be sent to Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (Telephone 703/358–2171, Facsimile 703/358–1735). Comments and materials received on the proposed rule will be available for inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the Act authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(d) requires that such permits be applied for in good faith, and if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

In June of 1999, we issued two policies and revised our regulations to add two categories of permits to enhance the propagation or survival of listed, proposed, candidate, and other at-risk species. One category, called ''permits for the enhancement of survival through Safe Harbor Agreements,'' is detailed at §§ 17.22(c) and 17.32(c), and in the Safe Harbor Policy (64 FR 32717). The other category, called ''permits for the enhancement of survival through Candidate Conservation Agreements with Assurances,'' is detailed at §§ 17.22(d) and 17.32(d), and in the Candidate Conservation Agreements with Assurances Policy (64 FR 32726).

The purpose of the Safe Harbor Program is to promote voluntary management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. In return for the participant's efforts, the Service will authorize incidental take through an associated enhancement of survival permit issued under section (10)(a)(1)(A) of the Act. In issuing such a permit, we expect a net conservation benefit will be accrued for the covered species through implementation of the Safe Harbor Agreement. The permit would allow participants to take individual listed animals to return

population levels and habitat conditions to those agreed upon as baseline.

Candidate Conservation Agreements with Assurances are voluntary agreements between us and non-Federal landowners to benefit proposed species, candidate species, and species likely to become candidates in the near future. Candidate Conservation Agreements with Assurances provide cooperators, who agree to manage their lands or waters in a manner that removes threats to at-risk species, with assurances that their conservation efforts will not result in future regulatory obligations beyond those they agreed to at the time they entered into the Agreement. In return for the participant's proactive management, we provide an enhancement of survival permit under section 10(a)(1)(A) of the Act, which, if the species were to become listed, would authorize take of individuals or the modification of habitat conditions to the levels specified in the Agreement. Our goal is that the benefits of the management activities included in the Candidate Conservation Agreement with Assurances, when combined with those benefits that would be achieved if the activities were also implemented on other necessary properties, would preclude or remove the need to list the covered species.

The objective of the proposed revisions to the Safe Harbor Agreement and Candidate Conservation Agreements with Assurances regulations is to rectify inconsistencies between the policies and their respective implementing regulations. In addition, these revisions will correct drafting errors in the regulations overlooked when the Safe Harbor and Candidate Conservation Agreements with Assurances regulations were published in 1999. Lastly, experience gained since 1999, when the policies and regulations were finalized, has shown the need to clarify ambiguities in the regulations to eliminate confusion.

Revisions to the Regulations

The implementing regulations at § 13.25(b), which pertain to the transfer of permits to successors in interest, are inconsistent with the terms of the Safe Harbor and Candidate Conservation Agreements with Assurances policies. Part 11 of the Safe Harbor Policy and Part 10 of the Candidate Conservation Agreements with Assurances Policy require the original landowner only to notify the Service of his or her intent to transfer the property. That notification allows the Service to contact the new owner, who may, under the policies, either ''agree to continue the original Agreement, or * * * enter into a new Agreement.'' The current regulations, however, create uncertainty as to the ability of successors in interest to assume the rights and responsibilities of the original Agreement. The regulations require the original landowner and the proposed transferee to make a ''joint submission'' prior to the transfer. This joint submission must convince us that the proposed transferee meets a number of requirements that the original permit holder did not have to meet to get the original permit. Specifically, the regulations require that the proposed transferee provide ''adequate written assurances'' that it will ''provide sufficient funding for the conservation plan'' and implement any ''outstanding minimization and mitigation requirements.'' These requirements apply to and are appropriate for section 10(a)(1)(B) incidental take permits, but are not requirements for section 10(a)(1)(A) enhancement of survival permits. Accordingly, we propose to revise the regulations to make the permit transfer provisions consistent with the Safe Harbor and Candidate Conservation Agreements with Assurances policies by allowing a permit to be transferred as long as the new owner agrees to become a party to the original agreement and permit.

The Safe Harbor and Candidate Conservation Agreements with Assurances policies and implementing regulations at §§ 17.22(c)(1) and 17.32(c)(1), and §§ 17.22(d)(1) and 17.32(d)(1) indicate that Safe Harbor and Candidate Conservation Agreements with Assurances applicants should be property owners. But they refer to property owners in several different ways (*e.g.,* ''private property owners,'' ''non-Federal property owners,'' ''landowners,'' and ''participating landowners'') without clarifying the nature of property ownership that will qualify a person or entity to enter into a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Property ownership can take many different forms. These forms range from fee simple ownership (*i.e.,* complete and permanent ownership of the property), to temporary property interests, such as leases and life estates, or partial interests in property, such as right-of-way easements and rights to harvest timber or develop property. Depending on the nature of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances, and subject to applicable State law, we believe that any holder of a property interest should be eligible to meet the requirement in the policies and implementing regulations that the applicant must have ''shown capability for and commitment to implementing all of the terms'' of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances at §§ 17.22(c)(2)(vi) and (d)(2)(vi) and 17.32(c)(2)(vi) and (d)(2)(vi). For instance, the owner of a right-of-way easement may be able to maintain a right-of-way as habitat for listed species. The holder of a lease may be able to ensure that during the period of the lease a property is managed to benefit listed species. The important consideration is not the type of non-Federal property ownership, but whether it gives the owner the power and the authority to carry out the management activities and other provisions of the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Therefore, we will consider any person or organization to be a potentially eligible applicant and permittee if their ownership interest gives them the authority to enter into and implement the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances on the covered property, as long as the nature of that ownership is clearly documented in permit application materials and/or administrative record materials. Accordingly, we propose to clarify that ''property owners'' includes anyone with a fee-simple, leasehold, or other property interest sufficient to carry out the proposed management activities, and that such property owners may submit an application for an enhancement of survival permit.

The following proposed revision applies to Safe Harbor Agreement regulations only. Currently, both the Safe Harbor Policy and the Safe Harbor implementing regulations at §§ 17.22(c)(1)(ii) and 17.32(c)(1)(ii) require a permit applicant to include in his or her application a description of the activities for which the applicant requests incidental take authority. This requirement was unclear on two points. First, the regulation did not acknowledge that there are two broad categories of incidental take that may occur under a Safe Harbor Agreement. One category includes the incidental take that results from implementation of management activities on the covered property, such as from periodic prescribed burning to sustain high-quality habitat for the species. The other category includes incidental take that would result if the property were returned to baseline conditions, such as from removal of the vegetation planted to enhance or restore habitat. We are proposing new language that recognizes

both incidental take associated with management activities and incidental take associated with returning the property to baseline conditions. The second point that requires clarity is the requirement that the applicant describe future land use and water management activities that would result in incidental take. This requirement has been mistakenly interpreted by some as an intent by us to limit future private property use. This is not the intent of the regulations, so we propose to revise this provision to require the applicant to describe how incidental take may occur (*i.e.,* through management activities and/or return to baseline), but to eliminate any need to describe future land use or water management activities that will take place after the term of the agreement and permit.

The following proposed revision applies to Safe Harbor Agreement regulations only. The issuance criteria in the regulations at §§ 17.22(c)(2)(ii) and 17.32(c)(2)(ii) provide that the Director may issue a permit if he or she finds that the Agreement ''will'' provide a net conservation benefit to the covered species. This may be read to suggest that the Director must determine with complete certainty that a net conservation benefit will occur before a permit can be issued. This unrealistic standard is not the intent of either the Safe Harbor Policy or the existing rule. As indicated in the background statement to the Final Safe Harbor Policy, the net conservation benefits ''should be reasonably expected to occur during the Agreement.'' 64 FR 32731 (''Revisions to the Draft Policy''). Although the Policy states in Part 4 that the Director must find that there will be a net conservation benefit, it indicates that this finding is to describe the ''*expected* net conservation benefits.'' Similarly, the net conservation benefits requirements in Part 5(3) of the Policy require Safe Harbor Agreements to identify the actions to be ''undertaken to accomplish the *expected* net conservation benefits'' and the time frames within which ''the *anticipated* net conservation benefits'' will be achieved. The Policy thus requires that the Director must reasonably expect that a Safe Harbor Agreement will meet the net conservation benefit standard before a permit can be issued. We accordingly propose to clarify the regulations by revising the issuance criteria to state that the Director may issue the permit if the Director finds that the Safe Harbor Agreement ''is reasonably expected to provide a net conservation benefit'' to the covered species.

The current Safe Harbor and Candidate Conservation Agreements with Assurances regulations, at §§ 17.22(c)(3)(ii) and 17.32(c)(3)(ii) and §§ 17.22(d)(3)(ii) and 17.32(d)(3)(ii) respectively, require a property owner to notify us at least 30 days in advance, but preferably as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Notification provides us with an opportunity to relocate affected individuals of the species if possible and appropriate, or to implement other conservation options that may be available to us, and with the consent of the landowner. The notification requirement is often a desirable feature of a Safe Harbor Agreement or a Candidate Conservation Agreement with Assurances. For example, in the Safe Harbor Agreement with Environmental Defense, the Cooperator agrees to notify Environmental Defense and the Fish and Wildlife Service local office not less than 60 days prior to any activity that will take the property back to baseline conditions to allow us to rescue any black-capped vireos or golden-cheeked warblers, if possible and appropriate. However, prior notice before engaging in activities that result in take is not always appropriate based on the biology of the species or the covered activities. For example, some species may not be easily captured or may not be able to survive if transplanted to another site, such as larvae or eggs of certain smaller species of butterfly. Thus, we would not be able to rescue the individuals prior to the authorized incidental taking and advanced notice of incidental taking in order to rescue the butterflies may not be appropriate. Emergency situations would not be appropriate for advanced notification as well. For example, if habitat within a Safe Harbor Agreement for the red-cockaded woodpecker were infested by pine beetle, the trees must be harvested quickly to halt the infestation. In this situation, a 60-day advanced notice would be inappropriate and shortened notice may not be sufficient time to properly capture the red-cockaded woodpeckers. Advanced notification is appropriate when such notification allows for sufficient time to ameliorate the immediate effect of the property returning to baseline conditions. The policy states ''If appropriate, incorporate a notification requirement to provide the Services or appropriate State agencies with reasonable opportunity to rescue individuals of a covered species * * *.'' Both the Service and the property owner will determine if the Safe Harbor Agreement will include an advanced notification requirement. Therefore, instead of requiring notification from the permittee, we propose to revise the regulations to state that, ''when appropriate,'' notification of at least 30 days is to be given in advance of when the permittee expects to incidentally take any listed species covered under the permit.

The existing Safe Harbor regulations state that ''If additional conservation and mitigation measures are deemed necessary, the Director may require additional measures of the permittee, but only if such measures are limited to modifications within conserved habitat areas, if any * * *'' (§§ 17.22(c)(5)(ii) and 17.32(c)(5)(ii)). We propose to remove the references to additional mitigation measures and to ''conserved habitat areas.'' Unlike the requirements for Habitat Conservation Plan permits issued under 10(a)(1)(B), there are no mitigation requirements in the Safe Harbor Policy. Therefore, it is not necessary or appropriate to authorize the imposition of ''additional'' mitigation measures. Also, it is confusing to reference ''conserved habitat areas,'' because there are no ''conserved habitat areas'' as defined by our regulations (50 CFR 17.3) in Safe Harbor Agreements. In addition, because these are voluntary agreements, establishing authority to require a landowner to carry out other measures that were not previously agreed to by the landowner is inappropriate.

Similarly, the Candidate Conservation Agreements with Assurances Policy does not have mitigation requirements, and does not refer to ''conserved habitat areas,'' as defined by our regulations (50 CFR 17.3). Therefore, we propose to delete the word ''mitigation'' and the phrase ''conserved habitat areas'' from the implementing regulations at §§ 17.22(d)(5)(i), (ii), and (iii)(B) and 17.32(d)(5)(i), (ii), and (iii)(B).

Existing regulations at §§ 17.22(c)(7) and 17.32(c)(7) and §§ 17.22(d)(7) and 17.32(d)(7) authorize us to revoke a permit issued in association with a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances if we determine that ''continuation of the permitted activity would be inconsistent with the criterion set forth in § 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion.'' Because we are concerned that this authority may create a disincentive to landowners considering development of a Safe Harbor Agreement or Candidate Conservation Agreement with Assurances, we propose to replace this provision with a statement that the Director may revoke a permit if continuation of the permitted activity

would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. In addition, we propose to include a provision that commits the Director to use all other available authorities to avoid revoking the permit under these circumstances. We propose to revise the existing revocation criterion by stating that, with the consent of the permittee, we will pursue all feasible and appropriate options prior to permit revocation, including extending or modifying the existing permit, capturing and relocating the species, providing compensation to the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging a third-party acquisition of an interest in the property.

Required Determinations

We have evaluated the effects of the revisions described in this proposed rule. We have concluded that the resulting economic benefits of the proposed rule would accrue to the persons who secure agreements with us. While the number of persons who pursue agreements may increase as a result of these proposed changes, we do not anticipate that the level of participation in the permitting programs will increase because the resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will not result in additional effects. Based on this finding, we have made the following determinations for this proposed rule.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule.

(a) This proposed rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Because most of the proposed rule deals with revisions of current regulations, we do not anticipate that this rule will cause any significant economic changes, either positive or negative. We have concluded that this rule will have some beneficial economic effect because we are rectifying inconsistencies and drafting errors, thereby making Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to undertake and implement. The effect would be minimal because of the small number of permits anticipated to be issued.

(b) This proposed rule is not expected to create additional inconsistencies with other agencies' actions. Although the Safe Harbor and Candidate Conservation Agreements with Assurances policies are joint policies with the National Oceanic and Atmospheric Administration Fisheries, the implementing regulations subject to this proposed rule apply to the Fish and Wildlife Service exclusively. NOAA Fisheries has not adopted similar regulations to the Fish and Wildlife Service to provide a consistent basis for the joint policy implementation.

(c) This proposed rule is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule raises novel legal or policy issues. If this regulation can help facilitate wider adoption of the Safe Harbor and Candidate Conservation Agreements with Assurances programs, it could help increase private conservation efforts on behalf of listed and unlisted species, which is a key component of successful implementation of the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule does not establish any new application or implementation burdens. Submitting applications for enhancement of survival permits under the Act is voluntary, and participation in activities that enhance the survival or propagation of species is also voluntary on the part of the applicant. We expect that any impacts of this rule would be beneficial because they clarify the regulatory requirements for obtaining enhancement of survival permits under the Act. We, therefore, do not expect these changes to affect a substantial number of small entities. To date, we have issued 16 Safe Harbor Agreement permits and 5 Candidate Conservation Agreement with Assurances permits. We expect to issue the same number of enhancement of survival permits per year. That averages approximately four Safe Harbor Agreement permits and one Candidate Conservation Agreement with Assurances permit per year. Given the low number of enhancement of survival permits expected to be issued, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under Executive Order 12866, and is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We expect that this proposed rule will not result in any significant additional expenditures by entities that develop Agreements.

(b) This proposed rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; as a result, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This proposed rule imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule has no provision that would take private property rights. Participation in this permitting program is strictly voluntary.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this rule is to address inconsistencies in and clarify the current regulations.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, this proposed rule does not directly affect Tribal resources. The effect of this proposed rule on Native American Tribes would be determined on a case-by-case basis with individual evaluations of permit applications. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the permit application any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation measures that will restore or enhance Tribal trust resources. After consultation with applicable Tribes and the entity that developed the permit application, and after careful consideration of the Tribes' concerns, we must clearly state the rationale for the recommended final decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with affected Tribes. This requirement will be addressed during individual evaluations of permit applications.

(b) We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed during individual evaluations of permit applications.

(c) We will consider Tribal views in individual evaluations of permit applications.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this proposed rule on Tribes. This requirement will be addressed during individual evaluations of permit applications.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB clearance number 1018–0094. This rule revises current regulations for programs permitted under 50 CFR 17.22(c) and (d), and 17.32(c) and (d). Our current application approval number, 1018–0094, which expires July 31, 2004, already accommodates this clarification and the changes proposed. Therefore, no change in the approved application forms is needed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. We have determined that this proposed rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1.

Section 7 Consultation

Although these revisions to the regulations will make enhancement of survival permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to obtain, understand, and implement, it will not change the issuance standards or the manner in which the Service makes its issuance determinations. In addition, the Service will continue to consult on the issuance of each individual permit. During consultation, the potential risks to listed and proposed species and designated and proposed critical habitat areas will be evaluated. Therefore, we have determined that the present action of revising existing regulations for section 10(a)(1)(A) permits will not affect listed species or designated critical habitat.

Public Comments Solicited

We request public comments on this proposed rule to revise the regulations applicable to enhancement of survival permits issued under the Act. We will consider all comments and any additional information received by the close of the comment period (listed above in **DATES**) in making a final determination on this proposal. Comments on the proposed rule should be submitted to the Division of Conservation and Classification (*see* **ADDRESSES**).

Executive Order 12866 requires that each agency write regulations that are easy to understand. We invite your comments on how we might make this rule easier to understand, specifically: (1) Are the requirements in the rule clearly stated?; (2) Does the rule contain technical language or jargon that interferes with its clarity?; (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?; (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking); and (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must 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.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668(a), 704, 712, 742j–l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Amend § 13.25 by revising paragraph (b) introductory text, redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c) as set forth below:

§ 13.25 Transfer of permits and scope of permit authorization.

* * * * *

(b) Permits issued under § 17.22(b) or § 17.32(b) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

* * * * *

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or (d) or § 17.32 (c) or (d) of this subchapter B, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

* * * * *

PART 17—[AMENDED]

3. 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.

* * * * *

4. Amend § 17.3 by revising the following definitions to read as follows:

§ 17.3 Definitions.

* * * * *

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by plan or agreement developers and the Service and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

* * * * *

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and the Service at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

* * * * *

5. Amend § 17.22 by revising the first sentence of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), the first sentence of paragraph (d)(1), paragraphs (d)(3)(ii), (d)(5)(i)–(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (c) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.21.

* * *

* * * * *

(ii) A description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and

* * * * *

(2) * * *

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation*

Agreements with Assurances. A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (d) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). * * *

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) * * *

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this subsection. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

6. Amend § 17.32 by revising the first sentence of paragraph (c)(1), paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), the first sentence of paragraph (d)(1), paragraphs (d)(3)(ii), (d)(5)(i)-(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

§ 17.32 Permits—general.

* * * * *

(c)(1) *Application requirements for permits for the enhancement of survival through Safe Harbor Agreements.* A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (c) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate address see 50 CFR 10.22), if the applicant wishes to engage in any activity prohibited by § 17.31.* * *

* * * * *

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline;

* * * * *

(2) * * *

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species,

compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

(d)(1) *Application requirements for permits for the enhancement of survival through Candidate Conservation Agreements with Assurances.* A property owner (including anyone with a fee simple, leasehold, or other property interest sufficient to carry out the proposed management activities, subject to applicable State law) must submit an application for a permit under paragraph (d) of this section to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where the applicant resides or where the proposed activity is to occur (for appropriate addresses, see 50 CFR 10.22). * * *

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) * * *

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this subsection. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

Dated: July 21, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–22776 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH93

Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise our regulations pertaining to permits issued under the Endangered Species Act. The proposed revisions will refine and clarify the application requirements and issuance criteria for such permits, particularly when used in connection with projects to improve habitat for listed species. The revisions will encourage and facilitate enhancement initiatives by landowners, natural resource agencies, and others.

DATES: Comments from all interested parties must be received by November 10, 2003.

ADDRESSES: Comments or materials concerning the proposed rule should be sent to Division of Conservation and Classification, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 North Fairfax Drive, Suite 420, Arlington, Virginia 22203 (Telephone 703/358–2171, Facsimile 703/358–1735). Comments and materials received on the proposed rule will be available for inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service (Telephone 703/358–2171, Facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1) of the Act authorizes the Service to issue permits allowing otherwise prohibited activities for certain actions that are consistent with the purposes of the Act. Section 10(a)(1)(A) authorizes such permits for scientific research or to enhance the propagation or survival of all listed species. Generic regulations for these permits are detailed at 50 CFR 17.22(a) and 17.32(a). Section 10(a)(1)(B) authorizes permits allowing the taking of listed species incidental to otherwise lawful activities (such as land development, timber harvest). Regulations for these permits are detailed at §§ 17.22(b) and 17.32(b).

The Service issues section 10(a)(1)(A) permits for otherwise prohibited activities when the purpose of the permit is scientific or when there is a clear link between the proposed activity and the enhancement of propagation or survival of the affected species.

Scientific purposes include activities such as, but not limited to, presence/absence surveys, monitoring, and mark/recapture studies that involve Federally-listed species. Enhancement permits are issued for activities that directly aid in the recovery of endangered and threatened species. The current regulations at 50 CFR 17.22(a) and 17.32(a) refer to some of the activities that can be permitted under section 10(a)(1)(A) of the Act. The principal purpose of this proposed rule is to more explicitly describe and accommodate the different types of enhancement activities can be permitted under section 10(a)(1)(A) of the Act.

Permits to enhance the propagation or survival of listed species have most commonly been issued in connection with captive breeding efforts and research activities. The Service has recognized, however, that such permits can be used in other contexts as well. For example, in 1999, the Service revised its regulations to recognize two special categories of permits to enhance the survival of listed species. One category, called ''permits for the enhancement of survival through Safe Harbor Agreements,'' is detailed at §§ 17.22(c) and 17.32(c). The other category, called ''permits for the enhancement of survival through Candidate Conservation Agreements with Assurances,'' is detailed at §§ 17.22(d) and 17.32(d).

Both of the special categories of enhancement of survival permits authorize take that is incidental to beneficial management activities. The Service could have authorized such take under section 10(a)(1)(B), which authorizes permits for take incidental to any otherwise lawful activity. However, we concluded that it was more appropriate to utilize the authority of section 10(a)(1)(A) for both Safe Harbor Agreements and Candidate Conservation Agreements with Assurances because the purpose of such agreements is to enhance the survival of listed species. In addition, some of the requirements applicable to Habitat Conservation Plans and associated permits under section 10(a)(1)(B), such as mitigation, are ill-suited to the context of activities carried out for the purpose of benefitting listed and unlisted species.

As a result of the 1999 revisions, the regulations now recognize three types of enhancement of survival permits: (1) The generic category of enhancement of propagation or survival permits (§§ 17.22 and 17.32(a)), and the specific categories of permits connected with (2) Safe Harbor Agreements (§§ 17.22 and 17.32(c)) and (3) Candidate Conservation Agreements with Assurances (§§ 17.22 and 17.32(d)). As discussed above, the generic category has historically been used principally to authorize otherwise prohibited activities in connection with captive breeding or similar activities. However, the Service recognizes that there are many other types of activities that can appropriately be authorized under the first category.

An example of such activities would be habitat management activities not associated with mitigation, such as management of parks, reserves or other conservation areas for the benefit of listed species. For example, a state natural reserve may use prescribed burning on a regular basis to maintain the habitat of a listed species such as the Karner blue butterfly. Regular prescribed burning is a beneficial management practice necessary simply for the long-term well-being of this (and many other) species, yet burning has the potential to take at least some individuals of the species, particularly in the sedentary and relatively cryptic egg, larval, or pupal life stages. The purpose of the activity is the maintenance of the species' required habitat in order to enhance the survival of the Karner blue butterfly. To authorize such activities through a Habitat Conservation Plan permit under section 10(a)(1)(B) would be inappropriate to require mitigation for impacts due to habitat management activities that enhance the propagation or survival of listed species.

It may also be inappropriate in some cases to authorize these activities under a Safe Harbor Agreement. This may be particularly true if the landowner does not wish to return the habitat to its baseline condition, which would mean that the requirement of the Safe Harbor policy to quantify baseline responsibilities would result in an unnecessary expense. For these reasons, it would be most efficient and appropriate to authorize the anticipated take, incidental or not, under the generic authority to issue permits to enhance the propagation or survival of a listed species.

The generic authority to issue permits to enhance the propagation or survival of listed species can authorize take that is intentional (as is the case with respect to removing animals from the wild in order to start a captive breeding program) and incidental (as in the prescribed burning example above). For example, a conservation initiative to improve and expand habitat for a species at a site where it currently occurs in only small numbers in degraded habitat may unavoidably result in the incidental take of some individuals of the species. In addition, if the species (*e.g.*, prairie dogs) has the potential to continue to expand into areas not intended for enhancement under the conservation initiative and detrimentally affect crops or livestock, the conservation initiative may include provisions to relocate or remove individuals that disperse from the habitat enhanced under the conservation initiative into nearby agricultural areas. Provided that the conservation initiative clearly meets the requirement that its overall impact would be to enhance the survival of the affected species, a permit under Section 10(a)(1)(A) could authorize both the incidental and intentional take described here. These permits could not be used to authorize past take even if conservation measures could be used to compensate for that impact to the species.

There are a number of activities that can appropriately be authorized under the first category to encourage in-situ conservation of foreign-listed species. An example would be the import of the Morelet's crocodile (*Crocodylus moreletii*) skins from ranched populations in Mexico. As part of an overall conservation program for this species, Mexico allows a regulated removal of live specimens from the wild to establish parental stock for captive-breeding operations. A certain portion of the young produced are returned to the wild and the remainder are used to produce ranched skins that are traded internationally. This is part of a comprehensive conservation and management program for Morelet's crocodiles, which includes sustainable use of the species to encourage its conservation. As a result of this management program, Mexico has been able to register its captive-breeding facilities with the Convention on International Trade in Endangered Species for international commercial trade. However, this international trade is still excluded from the United States because of the species' endangered status under the Act. Allowing the regulated import of such skins or products could further encourage Mexico to enhance its conservation efforts for this species in the wild.

Federal agencies generally would continue to be able to obtain permits authorized through parts 17.22(a) and 17.32(a). Federal agencies may not obtain authorization for intentional take associated with a Safe Harbor Agreements and Candidate Conservation Agreements with Assurances because the Safe Harbor Agreements and Candidate Conservation Agreements with

Assurances policies expressly prohibit Federal agencies from obtaining assurances included with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

The Service recognizes that its existing regulations at §§ 17.22(a) and 17.32(a) do not clearly describe the full range of activities that enhance species survival. Although our current regulations authorize the permitting of take that results from any activity that meets the standard under section 10(a)(1)(A), enhancement of propagation or survival, we propose to revise §§ 17.22(a) and 17.32(a) to clarify the range of actions that may be permitted. Furthermore, we propose to clarify that these permits may also be issued in conjunction with Candidate Conservation Agreements with Assurances and Safe Harbor Agreements that contemplate intentional take.

Revisions to the Regulations

In 1999, the Service's Office of Management Authority, which is responsible for activities involving non-native listed species and the international movement of all listed species, became the Division of Management Authority. As such, § 17.8(a)(2) needs to be revised to reflect this change.

Regulations at §§ 17.22(a) (for endangered species) and 17.32(a) (for threatened species) describe application requirements and issuance criteria for permits for scientific purposes or to enhance the propagation or survival of listed species (§ 17.32(a) also covers the issuance of permits for other purposes that are allowable for threatened species). As currently written, those regulations prescribe the same application requirements and issuance criteria for all such permits, regardless of whether the purpose of the application is to conduct scientific research, import, export, conduct interstate commerce, implement captive breeding efforts, carry out habitat restoration activities to enhance the survival of species associated with that habitat, or carry out other activities designed to benefit the species' survival in the wild. Some of these provisions, particularly the application requirements, are important for only certain purposes, but not for all. We propose to revise these application requirements and issuance criteria to indicate clearly which apply to which of the different purposes for which permits are sought. Specific changes are described as follows.

Both §§ 17.22(a)(1)(i) and 17.32(a)(1)(i) require applications to specify the number, age, and sex of animals to be covered by the permit. This information may be of considerable importance if the purpose of the permit is to acquire particular individuals from the wild for captive breeding or scientific research. It is generally not important, or determinable, in other contexts, such as when the permit applicant seeks authority to take the species incidental to carrying out habitat improvement activities to enhance the survival of the species, as in the case of prescribed burning of Karner blue butterfly habitat. Accordingly, we propose to revise this provision to require such information only insofar as it is determinable at the time of the permit application.

A resume of the applicant's attempts to obtain specimens of wildlife sought to be covered by the permit in a manner that would not cause its death or removal is required by §§ 17.22(a)(1)(iii) and 17.32(a)(1)(iii). This requirement is appropriate in those situations in which the permit applicant seeks to collect or obtain wildlife. In situations where that is not the case, such as when the applicant must inadvertently take wildlife as part of a program to enhance the species survival through habitat creation or improvement, the requirement is unnecessary. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant seeks to obtain specimens under the permit.

The requirements, at §§ 17.22(a)(1)(v) and 17.32(a)(1)(v), that an application must include a description of an institution or facility only has relevance where the applicant intends to use, display, or maintain the covered wildlife. In other situations, such as those involving habitat restoration to enhance the survival of a species, the applicant will not use, display, or maintain the species. Accordingly, we propose to clarify this provision by adding a prefatory clause explaining that it applies only when an applicant intends to use, display, or maintain wildlife covered by the permit.

Both §§ 17.22(a)(1)(vi) and 17.32(a)(1)(vi) require an applicant to describe the facilities where wildlife covered by the permit will be housed or cared for. This provision is relevant if the applicant intends to house or care for live wildlife, but not if the applicant intends only to enhance the survival of a species through habitat improvement. Accordingly, we propose to clarify this provision by specifying that it applies only when the applicant intends to house or care for live wildlife.

At present, §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) require evaluation of whether the purpose for which the permit is required is adequate to justify removing from the wild the wildlife sought to be covered under the permit or otherwise changing its status. Yet not all scientific research or enhancement of propagation or survival permits will entail removing wildlife from the wild, or changing its status. Some enhancement or research activities may take wildlife by means of harassment (such as handling individuals through banding, or disturbing individuals through habitat restoration), but will not remove it from the wild. Accordingly, we propose to revise §§ 17.22(a)(2)(i) and 17.32(a)(2)(i) to a more general statement requiring the Director to consider whether the purpose for which the permit is sought is adequate to justify the otherwise prohibited activity.

Considering whether issuance of the permit would conflict with any program to enhance the survival probabilities of the population from which the wildlife is to be removed is required by §§ 17.22(a)(2)(iii) and 17.32(a)(2)(iii). Because not all permits issued under this authority entail removing wildlife from the wild, we propose to revise this provision to state more generally that the Director must consider whether issuance of the permit would conflict with any program to enhance the survival probability of the wildlife covered by the permit.

Permits for the enhancement of survival through Safe Harbor Agreements authorized by §§ 17.22(c) and 17.32(c) only authorize take that is incidental to some otherwise lawful activity. In some limited circumstances in which a Safe Harbor Agreement would enhance the survival of a listed species by various activities, such as those discussed above, it may be appropriate to permit limited intentional taking of that species. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Safe Harbor Agreement can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(c) or 17.32(c), but only if the Director determines that all requirements of the Safe Harbor policy are met, other than its limitation for only incidental take. Thus, Safe Harbor Agreement permits issued under §§ 17.22(a) or 17.32(a) covering intentional take will be administered in accordance with the responsibilities and assurances stated in the Safe Harbor policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory

obligations in excess of those to which they agreed. These assurances cannot be provided to Federal agencies.

Similarly, permits for the enhancement of survival through Candidate Conservation Agreements with Assurances, authorized by §§ 17.22(d) and 17.32(d), only authorize future take that is incidental to some otherwise lawful activity should the species named on the permit become listed as endangered or threatened. However, in some limited circumstances in which a Candidate Conservation Agreement with Assurances enhances the survival of an unlisted species by creating, restoring, or improving its habitat, reintroducing it, or other similar activities, it may be appropriate to permit limited intentional taking of that species to reduce damage to or destruction of agricultural crops, livestock, domestic animals, buildings or other infrastructure, or negative effects to human health or safety. Therefore, we propose a provision whereby a permit authorizing such intentional take associated with a Candidate Conservation Agreement with Assurances can be issued under §§ 17.22(a) or 17.32(a), in addition to incidental take under §§ 17.22(d) or 17.32(d), but only if the Director determines that all requirements of the Candidate Conservation Agreements with Assurances policy are met, other than its limitation for only incidental take. Thus, Candidate Conservation Agreements with Assurances permits issued under §§ 17.22(a) or 17.32(a) covering intentional take will be administered in accordance with the responsibilities and assurances stated in the Candidate Conservation Agreements with Assurances policy. This means that holders of these permits will have assurances that their conservation efforts will not incur future regulatory obligations in excess of those to which they agreed. As with Safe Harbor Agreements, these assurances cannot be provided to Federal agencies.

A notice to the Director in the event of escape of wildlife from captivity is a permit condition required by §§ 17.22(a)(3) and 17.32(a)(3). We propose to clarify that such a condition is required only in permits that authorize the keeping of wildlife in captivity. In addition, we propose to add a provision under this paragraph applicable to permits to undertake habitat creation, restoration, or improvement, reintroduction of a species, or similar activities. The Director shall condition these permits as he or she deems appropriate to ensure that the net effect of those activities, together with any taking to be authorized by the requested permit, is reasonably expected to be beneficial to the conservation of such species.

Required Determinations

We have evaluated the effects of the proposed regulation revisions described in this rule. We have concluded that the resulting economic benefits would be limited by the number of persons obtaining permits, and that the number of permits issued would be limited by our resources available to develop and process permit applications. This proposed rule clarifies the regulations pertaining to scientific purposes or enhancement of propagation or survival permits to encourage habitat enhancement activities. Although we anticipate issuing these types of permits, we do not anticipate that the level of participation in these permitting programs will significantly increase as a result of this rule because our resources available to process permit applications will not change as a result of this rule. Therefore, we conclude that this proposed rule will have little effect. Based on this finding, we have made the following determinations for this proposed rule.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant proposed rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This proposed rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Since most of the proposed rule deals with clarification of current regulations, we do not anticipate this rule will cause any economic changes, either positive or negative. We have concluded that the portion of the proposed rule that deals with issuing permits for habitat improvement will have a beneficial economic effect, but that the effect would be small because of the small number of permits anticipated to be issued and the relatively small economic benefits that would accrue to permittees who take advantage of this provision.

(b) This proposed rule is not expected to create inconsistencies with other agencies' actions.

(c) This proposed rule is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. The proposed rule does not establish any new implementation burdens. Submitting applications for permits under the Act is voluntary, and participation in activities that enhance the survival or propagation of species is also voluntary on the part of the applicant. We expect that any impacts of this rule would be beneficial by making it easier to understand the issuance requirements for permits under the Act and particularly for undertaking enhancement of survival or propagation activities that would be beneficial for habitat restoration and improvements. While the Service currently issues a large number of permits for activities such as research and captive breeding (currently over 1,200 permits issued, with 485 permits issued in 2001) and incidental take (currently over 400 permits issued, with 141 of incidental take permits issued in 2001), we only anticipate issuing a small number of permits that take advantage of this new habitat enhancement provision. We, therefore, do not expect these changes to affect a substantial number of small entities. We expect to issue approximately 10 additional of these habitat enhancement permits per year during the first several years of the program's operation. Therefore, given the low number of habitat enhancement permits expected to be issued and the

fact that the remaining portion of this proposed rule only clarifies current regulation, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We expect that this proposed rule will not result in any significant additional expenditures by entities that develop Agreements.

(b) This proposed rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This proposed rule imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule has no provision that would take private property rights. Participation in this permitting program is strictly voluntary.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, this proposed rule does not directly affect Tribal resources. The effect of this proposed rule on Native American Tribes would be determined on a case-by-case basis with individual evaluations of permit applications. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the permit application any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation measures that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the permit application and after careful consideration of the Tribe's concerns, we must clearly state the rationale for the recommended final decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We have not yet consulted with affected Tribes. This requirement will be addressed during individual evaluations of permit applications.

(b) We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed during individual evaluations of permit applications.

(c) We will consider Tribal views in individual evaluations of permit applications.

(d) We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this proposed rule on Tribes. This requirement will be addressed during individual evaluations of permit applications.

Paperwork Reduction Act

This rule does not contain any new collections of information under permit application forms other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB clearance number 1018–0094. This rule clarifies the range of activities that may be permitted under 50 CFR 17.22(a) and 17.32(a). Our current application approval number 1018–0094, already accommodates this clarification and the changes proposed herein. Therefore, no change in the approved application forms is needed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. This proposed rule is being submitted to OMB for review.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Fish and Wildlife Service has determined that this rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1.

Section 7 Consultation

Though these revisions to the regulations will clarify the range of actions that may be permitted under enhancement of survival permits, it will not change the issuance standards for these enhancement of survival permits, or the manner in which the Service makes its issuance determinations. In addition, the Service will continue to consult on the issuance of each individual permit. During consultation, the potential risks to listed and proposed species and designated and proposed critical habitat areas will be evaluated. Therefore, at this time the Service has determined that the present action of revising these regulations for section 10(a)(1)(A) permits will not affect listed species or designated critical habitat.

Public Comments Solicited

We request public comments on this proposed rule to revise the regulations applicable to permits for scientific purposes or enhancement of propagation or survival. We will take into consideration all comments and any additional information received by the close of comment period (listed above in **DATES**) in making a final determination on this proposal. Comments on the proposed rule and policy changes should go to the Division of Conservation and Classification (listed above in **ADDRESSES**). Comments on the required determinations should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget via facsimile (202/395–6566), or e-mailed to

OIRA_DOCKET@omb.eop.gov, and to the Fish and Wildlife Information Collection Officer, Room 222, 4401 N. Fairfax Drive, Arlington, VA 22203.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 17.8 Permit applications and information collection requirements.) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariate and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state 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.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B 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. Amend § 17.8 by revising paragraph (a)(2) to read as follows:

§ 17.8 Permit applications and information collection requirements.

(a) * * *

(2) Submit permit applications for activities affecting native endangered and threatened species in international movement or commerce, and all activities affecting nonnative endangered and threatened species, to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203.

* * * * *

3. Amend § 17.22 by revising paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* A person wishing to get a permit for an activity prohibited by § 17.21 submits an application for activities under this section. The Service provides Form 3–200 for the application to which all of the following must be attached:

(i) The common and scientific names of the species to be covered by the permit, as well as the number, age, and sex of such species, and the activity to be authorized (such as take, export, or interstate commerce). If the purpose of the permit is for habitat restoration, in-situ conservation for foreign listed species, or other such situations where this information is undeterminable, the number, age, and sex of the species may not be required;

(ii) A statement as to whether, at the time of application, the wildlife to be covered by the permit

(A) Is still in the wild,

(B) Has already been removed from the wild,

(C) Was born in captivity, or

(D) Was artificially propagated;

(iii) If the applicant seeks to obtain specimens of the wildlife to be covered by the permit, a resume of the applicant's attempts to obtain the wildlife in a manner that would not cause the death or removal from the wild of such wildlife. If the purpose of the permit is to promote in-situ conservation of foreign-listed species, such information may not be required;

(iv) If the wildlife to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife to be covered by the permit was born or artificially propagated, the country and place where such wildlife was born or artificially propagated, as well as the name and address of the breeder;

(v) If the wildlife to be covered by the permit is to be used for scientific purposes, displayed for educational purposes, or maintained for any reason at an institution of other facility, a complete description and address of the institution or other facility;

(vi) If the applicant intends to house and/or care for live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit, including the details of the activities to be authorized by the permit; and

(viii) If the application is for the purpose of enhancement of propagation, a statement of

(A) The applicant's willingness to participate in a nationally or internationally recognized cooperative breeding program,

(B) A description of how participation in such a breeding program will be carried out,

(C) The applicant's willingness to maintain or contribute data to a studbook, and

(D) A description of how the propagation of the species will benefit the species in the wild.

(2) *Issuance criteria.*

(i) Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether the Service should issue a permit. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(A) Whether the applicant's intended purpose for which the permit is required justifies allowing the applicant to engage in an otherwise prohibited activity;

(B) The probable direct and indirect effect that issuing the permit would have on the wild populations of the wildlife to be covered by the permit;

(C) Whether the permit, if issued, would, in any way, directly or indirectly conflict with any known program intended to enhance the survival probabilities of any population of the wildlife to be covered by the permit;

(D) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife to be covered by the permit;

(E) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other mattes germane to the application; and

(F) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives stated in the application;

(ii) The Director may issue a permit for enhancement of survival of a species that allows the applicant to create, restore, or improve habitat, reintroduce the species, contribute to in-situ conservation of foreign-listed species, or conduct similar activities if the Director finds that the net effect of those activities, together with any incidental or other taking to be authorized by the permit, will likely be beneficial to the conservation of that species. In determining whether these actions are beneficial, the Director will consider factors including, but not limited to: whether the action is expected to increase the number of individuals or amount of suitable habitats, whether the potential benefits outweigh any negative effects associated with the action, whether the action eliminates or reduces threats to the species, and whether the duration of planned activities is sufficient to achieve the expected benefits. In the case of an application for a permit to allow intentional take of any species in association with a Safe Harbor Agreement, the Director must find that the activity will be in accordance with the terms of an associated Safe Harbor Agreement and will comply with all requirements of the Safe Harbor Agreements Policy, except for the limitation in that policy to incidental take. In the case of an application for a permit to allow intentional take of any species not yet listed at the time of the permit application, the Director must find that the activity will be in accordance with the terms of an associated Candidate Conservation Agreement with Assurances and will comply with all requirements of the Candidate Conservation Agreements with Assurance Policy, except for the limitation in that policy to incidental take;

(3) *Permit conditions.* (i) In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section that authorizes the keeping living wildlife in captivity will be subject to the condition that the escape of wildlife covered by the permit will be immediately reported to the Service office designated in the permit;

(ii) Permits issued under this section for enhancement of survival to undertake habitat creation, restoration, or improvement, or reintroduction of a species, or similar activities will be subject to such conditions as the Director deems appropriate to ensure that the net effect of those activities, together with any incidental or intentional take to be authorized by the requested permit, will be beneficial to the conservation of such species.

* * * * *

4. Amend § 17.32 by revising paragraphs (a)(1)(i)–(viii), (a)(2), and (a)(3) to read as follows:

§ 17.32 Permits—general.

(a)(1) * * *

(i) The common and scientific names of the species to be covered by the permit, as well as the number, age, and sex of such species, and the activity to be authorized (such as take, export, or interstate commerce). If the purposes of the permit is for habitat restoration, in-situ conservation of foreign listed species, or other such situations where this information is undeterminable, the number, age, and sex of the species may not be required;

(ii) A statement as to whether, at the time of application, the wildlife to be covered by the permit

(A) Is still in the wild,

(B) Has already been removed from the wild,

(C) Was born in captivity, or

(D) Was artificially propagated;

(iii) If the applicant seeks to obtain specimens of the wildlife to be covered by the permit, a resume of the applicant's attempt to obtain the wildlife in a manner that would not cause the death or removal from the wild of such wildlife. If the purpose of the permit is to promote in-situ conservation of foreign-listed species such information may not be required.

(iv) If the wildlife to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife to be covered by the permit was born in captivity or artificially propagated, the country and place where such wildlife was born or artificially propagated, as well as the name and address of the breeder;

(v) If the wildlife to be covered by the permit is to be used for scientific purposes, displayed for educational purposes, or maintained for any reason at an institution or other facility, a complete description and address of the institution or other facility;

(vi) If the applicant intends to house and/or care for live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit, including the details of the activities to be authorized by the permit; and

(viii) If the application is for the purpose of enhancement of propagation, a statement of

(A) The applicant's willingness to participate in a nationally or internationally recognized cooperative breeding program,

(B) A description of how participation in such a breeding program will be carried out,

(C) The applicant's willingness to maintain or contribute data to a studbook, and

(D) A description of how the propagation of the species will benefit the species in the wild.

(2) *Issuance criteria.* (i) Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether the Service should issue a permit. In making this decision, the Director will consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(A) Whether the applicant's intended purpose for which the permit is required justifies allowing the applicant to engage in an otherwise prohibited activity;

(B) The probable direct and indirect effect that issuing the permit would have on the wild populations of the wildlife to be covered by the permit;

(C) Whether the permit, if issued, would, in any way, directly or indirectly conflict with any known program intended to enhance the survival probabilities of any population of the wildlife to be covered by the permit;

(D) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife to be covered by the permit;

(E) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(F) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives stated in the application.

(ii) The Director may issue a permit for enhancement of survival of a species that allows the applicant to create, restore, or improve habitat, reintroduce the species, contribute to in-situ conservation of foreign-listed species, or conduct similar activities if the Director finds that the net effect of those activities, together with any incidental or other taking to be authorized by the permit, will likely be beneficial to the conservation of that species. In determining whether these actions are beneficial, the Director will consider factors including, but not limited to: whether the action is expected to increase the number of individuals or amount of suitable habitats, whether the potential benefits outweigh any negative effects associated with the action, whether the action eliminates or reduces threats to the species, and whether the duration of planned activities is sufficient to achieve the expected benefits. In the case of an application for a permit to allow intentional take of any species in association with a Safe Harbor Agreement, the Director must find that the activity will be in accordance with the terms of an associated Safe Harbor Agreement and will comply with all requirements of the Safe Harbor Agreements Policy, except for the limitation in that policy to incidental take. In the case of an application for a permit to allow intentional take of any species not yet listed at the time of the permit application, the Director must find that the activity will be in accordance with the terms of an associated Candidate Conservation Agreement with Assurances and will comply with all requirements of the Candidate Conservation Agreements with Assurances Policy, except for the limitation in that policy to incidental take.

(3) *Permit conditions.* (i) In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section that authorizes the keeping of living wildlife in captivity will be subject to the condition that the escape of wildlife covered by the permit will be immediately reported to the Service office designated in the permit.

(ii) Permits issued under this section for enhancement of survival to undertake habitat creation, restoration, or improvement, or reintroduction of a species, or similar activities will be subject to such conditions as the Director deems appropriate to ensure that the net effect of those activities, together with any incidental or intentional take to be authorized by the requested permit, will be beneficial to the conservation of such species.

* * * * *

Dated: May 3, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–22777 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980702167; I.D. 031901A]

RIN 0648–AK26

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action would require processing vessels to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under these requirements, a fishery management plan (FMP) must adopt a standardized reporting methodology for assessing the amount and kind of bycatch occurring in the fishery. In addition, this action will benefit fisheries conservation and management by providing information needed for enforcing fishery regulations, maintaining safe and adequate working conditions for observers, and establishing certification and performance standards for observers to ensure that quality data are available for managing the fishery.

DATES: Comments on this proposed rule must be received by October 10, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070, Attn: Becky Renko. Comments also may be sent via facsimile (fax) to 206–526–6736. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, or by contacting Don McIsaac at 503–326–6352. Copies may also be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to one of the NMFS addresses and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, telephone: 206–526–6140; fax: 206–526–6736; and e-mail: *bill.robinson@noaa.gov* or Svein Fougner, Southwest Region, NMFS, telephone: 562–980–4000; fax: 562–980–4047; and e-mail: *svein.fougner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su__docs/aces/aces140.html.*

The Federal groundfish fishery off the Washington, Oregon, and California (WOC) coasts is managed pursuant to the Magnuson-Stevens Act and the

Pacific Coast Groundfish FMP. The FMP was developed by the Council. Regulations implementing the FMP appear at 50 CFR part 660 subpart G.

The Magnuson-Stevens Act at 16 U.S.C. 1853(a)(11) requires each FMP to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Further, at 16 U.S.C. 1853(b)(8), the Magnuson-Stevens Act provides that an FMP may require that one or more observers be carried aboard a vessel of the United States engaged in fishing for species that are subject to an FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. Placement of fishery observers on vessels at sea is acknowledged as an important method for collecting fisheries data. Therefore, the Pacific Coast Groundfish FMP provides that all catcher/processors and at-sea processing vessels operating in the groundfish fishery may be required to accommodate on board observers for purposes of collecting scientific data. Amendment 13 to the FMP also provides that vessels may be required to pay for observers. Under the Magnuson-Stevens Act at 16 U.S.C. 1855(d), the Secretary of Commerce, acting through NMFS, has general responsibility to carry out any fishery management plan and may promulgate such regulations as may be necessary to carry out this responsibility.

The current regulations requiring observers in the Pacific Coast groundfish fishery (50 CFR 660.360) apply to catcher vessels, but not to processing vessels. So far, the only processing vessels participating in the fishery are large catcher/processors and motherships that also participate in the Alaskan pollock fisheries. This fishery is described in more detail below.

The WOC at-sea Pacific whiting fishery is a mid-water trawl fishery that is currently composed of large catcher-processor and mothership vessels. The catcher-processors harvest and process catch while the motherships rely on smaller catcher vessels to deliver unsorted catch for processing. These large processing vessels primarily operate in the Alaskan pollock (*Theragra chalocogramma*) fisheries, but move south to the WOC to fish for whiting between pollock seasons. While they participate in the pollock fishery, they are subject to 50 CFR part 679, which specifies requirements related to observer services for the North Pacific (Alaskan) Groundfish fisheries. The Alaska observer requirements have recently been revised, a proposed rule was published at 67 FR 58452 (September 16, 2002) and a final rule was published at 67 FR 72595 (December 6, 2002).

Under the Alaska observer program (as specified in the final Alaskan rule), vessels are required to employ and pay for NMFS-certified observers that are provided by third-party observer provider companies operating under permits administered by the NMFS Alaska Region. The Alaska program contains rigorous qualification and performance standards both for observers and observer provider companies, and also contains processes for sanctioning observer provider company permits, as well as certifying and decertifying observers.

In addition to the large processing vessels that also participate in the Alaskan fisheries, it is anticipated that some smaller vessels may enter the at-sea processing sector of the Pacific whiting fishery in the near future. Severe constraints for the non-whiting Pacific Coast groundfish fishery are expected to motivate catcher vessel operators to seek new opportunities. At-sea processing of Pacific whiting may represent one such opportunity. As catcher vessels, such vessels are currently required to carry observers under the observer regulations for the groundfish fishery at 50 CFR 660.360. However, as processing vessels, they would not be covered by the WOC observer requirements unless this proposed rule is adopted.

Since 1991, the large at-sea whiting processing vessels have each voluntarily carried at least one NMFS-trained observer to provide data for estimating total landed catch and discards; monitoring the attainment of annual groundfish allocations; estimating catch rates of prohibited species; and assessing stock conditions. NMFS has come to depend on data from whiting observers to provide information critical to conservation and management of the marine resources.

In recent years, observer data has also become increasingly important for monitoring incidental catch of overfished species and Endangered Species Act (ESA) listed salmonids. Some of the overfished species are taken as bycatch in the Pacific whiting fishery. Pacific whiting itself was declared overfished in 2002.

For the most part, the at-sea whiting fishery has been monitored satisfactorily under the voluntary program. However, there is concern about the lack of data that would be available if at-sea processing vessels no longer voluntarily carried observers. With this in mind, at its April 1999 meeting the Council recommended that NMFS proceed with a regulatory package to provide for a mandatory observer program in the at-sea processing portion of the whiting fishery for vessels more than 125 ft (38.1 m) in length. The Council's recommendation would have covered all the processing vessels that were participating in the whiting fishery at that time. In addition, on April 12, 2002, a Federal magistrate concluded in *Pacific Marine Conservation Council, Inc.* v. *Evans*, 200 F. Supp.2d 1194 (N.D. Calif. 2002), that the Pacific Coast Groundfish FMP fails to establish a legally adequate bycatch reporting methodology because it fails to establish either a mandatory or adequate observer program. By establishing mandatory observer requirements for the at-sea processing sector of the groundfish fishery, this proposed rule in part responds to the court's ruling.

To assure the integrity and availability of observer data in the future, NMFS now proposes to establish a mandatory observer program and mandatory observer coverage levels for all at-sea processing vessels in the Pacific Coast groundfish fishery. At-sea processing is currently confined to the Pacific whiting fishery. The proposed rule requires at-sea processing vessels greater than 125 ft (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery. Vessels less than 125 ft (38.1 m) in length are required to carry one observer. Observers must be obtained, and paid for by the vessels, through third-party observer provider companies operating under permits issued by the NMFS Alaska Region. The proposed rule also specifies certification and decertification requirements for observers that will be administered by the Northwest Region of NMFS in Seattle, Washington, and defines the responsibilities of observers and processing vessels.

Observers

Observers are a uniformly trained group of technicians whose objective is fisheries data gathering. Observers are stationed aboard vessels to gather independent data about the fish that are taken, harvested, received or processed by the vessel. Standardized sampling procedures, defined by NMFS, are intended to provide statistically reliable data for fleetwide monitoring of the fishery. The primary duties of an observer include: estimating catch weights; determining catch composition; collecting length and weight measurements, and determining sex distribution.

To be an observer, applicants are required to have a bachelor's degree in fisheries, wildlife biology, or a related

field of biology or natural resource management. Observers must be capable of performing strenuous physical labor, and of working independently under difficult conditions without direct supervision. To date, only individuals who have successfully completed at least one cruise as an observer in the federal groundfish fishery off Alaska have been deployed as observers in the whiting fishery.

Under the existing voluntary observer program, hiring procedures, minimum qualifications, certification requirements, responsibilities, or prohibited behaviors are not defined by regulations. In addition, there are no provisions that allow NMFS to sanction individuals who are found to have violated program requirements or unsatisfactorily performed the duties of an observer.

Defining certification requirements and prohibited behaviors will ensure that observers are qualified, and understand their responsibilities and duties. Establishing a suspension/decertification process will allow NMFS to deal with observer performance or behavioral issues while allowing observers an opportunity to file an administrative appeal prior to a final determination.

In small fleets, such as the at-sea catcher-processor and mothership sectors of the whiting fishery, a single observer's data collection represents a substantial portion of the data available to manage the fishery. As a result, poor quality data may have a strong influence on fleetwide estimates of total catch by species. Although poor performance by observers has not been a significant problem to date, it is important to have procedures available to address performance concerns in order to maintain data integrity.

Vessels

In recent years, approximately twelve processing vessels, have annually participated in the WOC at-sea whiting fishery. There are currently no regulations that require at-sea processors to provide safe and adequate working conditions for observers. Operational or mechanical barriers can easily prevent an observer from sampling according to the protocols defined by NMFS. The observer's ability to accomplish their duties, and thereby maintain data integrity, requires that the vessel provide: (1) notification of fish being brought aboard, (2) access to unsorted catch, (3) sufficient time to collect a sample, and (4) adequate space in which to collect and work up samples. When there are no regulatory requirements defining the conditions necessary for an observer to carry out their duties, individual operations may intentionally or inadvertently neglect to provide these necessities.

Observer health and safety is of primary importance to NMFS. Instituting a mandatory observer program will ensure that the health and safety standards specified at 50 CFR 600.725 and 600.746 will apply to whiting observers. Under these regulations, owners and operators of fishing vessels that carry observers must comply with specific requirements in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer. In addition to the national regulations, existing regulations specific to the treatment and well being of Pacific coast groundfish observers at 50 CFR 660.360 will also apply to observers on board at-sea processing vessels.

Observer Coverage

This proposed rule includes requirements for each at-sea processing vessel over 125 feet (38.1 m) in length to carry two observers while participating in the fishery and each at-sea processing vessel less than 125 feet (38.1 m) in length to carry one observer while participating in the fishery. Since 1991, all processing vessels participating in the at-sea whiting fishery have voluntarily carried at least one observer. Since mid–1997, when the Department of Justice approved allocation of quota shares among members of the Whiting Conservation Cooperative, all catcher-processors have generally carried two observers on a voluntary basis. Having two observers allows all or almost all hauls to be sampled. This level of sampling also provides the Whiting Conservation Cooperative members with additional data for managing their voluntary quota program among vessels that are members of the Cooperative.

In contrast, the mothership sector did not begin carrying two observers until 2000. Beginning in 2000, most motherships in the sector chose to increase their observer coverage to obtain additional data for estimating incidental catch of salmon and overfished species. Since 2001 all motherships have carried two observers. The treaty Indian tribal mothership, which processes catch taken by catcher vessels harvesting the Makah tribal whiting allocation, has typically carried two observers since 1996.

Because the large whiting processing vessels process whiting twenty four hours per day, seven days a week, a single observer typically samples less than half of all hauls taken by an individual vessel. Requiring two observers would increase the number of observed hauls and is likely to increase the proportion of each individual haul that is sampled. The increased sampling coverage provided by two observers is necessary to increase the precision in estimates of incidentally caught species. Having more precise estimates is especially important for infrequently occurring species (those that are encountered in large numbers in only a few hauls or occurring in low numbers in most hauls) such as ESA listed salmon and overfished groundfish species.

Requiring each vessel to carry two observers deviates from the Council's April 1999 recommendation to require one observer per processing vessel. As discussed above, requiring each processing vessel to carry two observers will provide the data necessary for monitoring the fishery. Because all processors have carried two observers since 2001, this change from the Council's 1999 recommendation is not expected to be controversial nor to increase economic impacts upon the large processing vessels.

The proposed rule also requires at-sea processing vessels less than 125 ft (38.1 m) in length to carry one observer, should they choose to enter the processing sector of the fishery. This would be a new regulatory requirement for small vessels operating as processors. Currently, NMFS funds the observer program for similar sized catcher vessels, and the vessels themselves are not required to pay for anything but food and incidentals for the observers. Under this proposed rule the small processing vessels would be required to pay for their observer coverage.

Biological Impacts

Requiring large processing vessels to carry two observers, and smaller vessels to carry one observer, is expected to improve the accuracy of catch projections and reduce the likelihood of overestimating or underestimating the harvested amounts of target and incidentally caught species. Data inaccuracies could affect the long-term biological stability and yield of whiting or incidentally caught species. The ESA terms and conditions for incidental take of chinook salmon in the whiting fishery are also more likely to be met.

Socio-Economic Impacts

NMFS believes this action will benefit management of the Pacific whiting fishery by providing information needed for enforcement of fishery regulations. Regulations at 15 CFR part 905 preclude

NMFS from using information collected by voluntarily carried observers for enforcing regulations under the Magnuson-Stevens Act, Marine Mammal Protection Act, or ESA. Without mandatory observer coverage requirements, NMFS ability to address serious violations of fishery regulations is hindered.

At-sea processing vessels operating in the whiting fishery generally participate in the Alaska groundfish fisheries during the same calendar year, and are subject to Federal observer regulations at 50 CFR 679.50. These vessels also participate in the restricted access fisheries in Alaska, which require certified observer sampling stations. In developing observer regulations for the WOC whiting fisheries, the Alaskan observer regulations have been duplicated as much as possible, recognizing differences in Pacific coast groundfish fisheries, management strategies and objectives, and uses of observer data. Requirements in this proposed rule are not expected to create a significant burden on any vessel that is in compliance with the Alaskan regulations.

Because all large processors currently carry two observers voluntarily, mandating them to carry two observers is not expected to place an additional economic burden on processing vessels. The costs of carrying an observer during whiting season is about $300 per day. On average in 2001, each vessel fished for 31 days (ranging from 9–118 days). At $300 per day, the average cost to the vessel for each observer was $9,300 (ranging from $3,950 - $36,650) during the 2001 whiting season. In addition, training and debriefing costs would have been approximately $1,250 per observer. Applying $0.035 per pound (the average ex-vessel value of whiting to the Oregon shore-based fishery in July in 2001) to the average round weight of whiting processed per vessel in 2001 (7,705 mt) the cost of one observer would be on the order of 1.6 percent of the ex-vessel value of the whiting harvest, and would be double, 3.1 percent of the ex-vessel value of the whiting harvest if the vessel carried two observers.

With respect to smaller vessels that might enter the fishery as processors, nothing is known about the economics of their potential operations. Observer costs would be fixed, and would be the same as for the larger vessels, except that smaller vessels would only be required to carry one observer.

Observer certification requirements for the WOC whiting fishery have been patterned after those for the Alaskan groundfish fisheries contained in the Alaskan proposed rule at 67 FR 58452 (September 16, 2002). Regulations defining standards of observer conduct, and providing for suspension and revocation of observer certifications are also consistent with those used for the Federal groundfish fishery off Alaska. Some minor adjustments have been made to adapt the regulations to the WOC fishery. Also, a simplified appeals procedure limited to the needs of this particular observer program has been provided. The Alaska appeals procedure is an omnibus procedure that encompasses numerous types of agency actions, and is more elaborate than is necessary to accommodate the needs of the WOC observer program. An expected annual cost burden of $8 per observer is the cost estimated for the time required for observers to prepare appeals of initial administrative decisions on certifications, suspensions, or decertifications. This is expected to affect, at a maximum, 5 percent of the WOC observers per year.

Under this proposed rule, at-sea processing vessels will be required to obtain their observers from third-party observer provider companies that are subject to the Alaskan regulations at 50 CFR part 679.50. These are comprehensive regulations that provide for permitting and permit sanctions against the observer provider companies. These provisions are not duplicated in the WOC regulations, the observer provider companies will be regulated under the Alaska regulations by the NMFS Alaska Region. Therefore, the proposed action refers to the Alaskan requirements for observer providers, but does not repeat them in the WOC regulations.

Classification

This proposed rule has been determined to be not significant for the purpose of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and at the beginning of this section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Three alternative actions were considered and analyzed. The alternatives included: (1) the status quo, (2) one observer, observer and observer provider certification/decertification procedures, vessel standards, and prohibitions, and (3) two observers, observer and observer provider certification/decertification procedures, vessel standards, and prohibitions.

Under the preferred alternative, processing vessels would be required to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels. To the extent possible the proposed regulations are consistent with existing regulations for observers in the Alaska groundfish fisheries which are found at 50 CFR part 679. This has been done to minimize the burden on industry participants and to maintain a program that is similar to the existing voluntary program.

Processing vessels would be required to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery.

Due to biological concerns, a no observer alternative was not considered. If the whiting allocation is greatly exceeded or there are substantial discards of other species that go unmeasured, the long-term biological stability and yield of whiting or incidentally-caught species may be affected. Without accurate and timely information, the risk of error associated with fishery management decisions will increase.

Under the status quo (Alternative 1), NMFS would continue to administer the program; vessels would continue to voluntarily carry NMFS-trained observers; businesses that are certified as observer providers for the Federal groundfish fishery off Alaska would continue to pay the direct costs associated with carrying the observers.

The Council's April 1999 recommendation was to require each processing vessel to carry one observer (Alternative 2). However NMFS preferred option, Alternative 3, would require processing vessels equal to or greater than 125 ft (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery and vessels less than 125 ft (38.1 m) in length would be required to carry one observer. Having two observers on large processors increases the number of observed hauls and is likely to increase the proportion of each individual haul that is sampled. The increased sampling

coverage provided by two observers is necessary to increase the precision in estimates of incidentally caught species. Having more precise estimates is especially important for infrequently occurring species (those that are encountered in large numbers in only a few hauls or occurring in low numbers in most hauls) such as ESA listed salmon and overfished groundfish species. Since 2001, all processors have carried two observers and all processing vessels proposed to carry two observers. To date, no at-sea processors under 125 ft (38.1 m) or less have participated in the fishery.

This proposed rule is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. The Magnuson-Stevens Act at 16 U.S.C. 1853(a)(11) requires each FMP to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Further, at 16 U.S.C. 1853(b)(8), the Magnuson-Stevens Act provides that an FMP may require that one or more observers be carried aboard a vessel of the United States engaged in fishing for species that are subject to an FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. The Pacific Coast Groundfish FMP provides that all catcher/processors and at-sea processing vessels operating in the groundfish fishery may be required to accommodate on board observers for purposes of collecting scientific data. Amendment 13 to the FMP also provides that vessels may be required to pay for observers. This action would require processing vessels to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels. To the extent possible, the proposed regulations are consistent with existing regulations for observers in the Alaska groundfish fisheries, which are found at 50 CFR part 679. This has been done to minimize the burden on industry participants and to maintain a program that is similar to the existing voluntary program.

In April 1999, the Council recommended moving forward with certification and decertification requirements for observer providers. Therefore, an alternative to regulations that would have defined the responsibilities of observer providers was included in the National Environmental Policy Act analysis. However, since April 1999, NMFS has discussed an alternative to regulations that would have the responsibilities of contracting companies via the Government contracting process with a statement of work or possibly a contract at ''no-cost.'' The viability of a government procurement contract needs further research to determine if the contracting process would allow the use of such a mechanism for whiting observers.

Approximately seven WOC groundfish catcher/processors and five mothership processors will be affected by this proposed rulemaking. The Small Business Administration guidelines for fishing firms uses a $3,000,000 gross revenue threshold to separate small from large operations. In the application to any one firm, the $3,000,000 threshold considers income to all affiliated operations. NMFS records indicate that the gross annual revenue for each of the catcher/processor and mothership operations operating in the WOC exceeds $3,000,000 and are therefore not considered small businesses. On average in 1998 the catcher/processor and mothership operations gross revenue was more than $15,000,000.

Between fifteen and twenty catcher vessels participate in the fishery annually, these companies are all assumed to be small businesses. This rulemaking is expected to have minimal impacts on the business that catcher vessels conduct with the mothership processors. A separate final rule to establish an observer program for catcher vessels in the groundfish fishery off Washington, Oregon, and California was published on April 24, 2001 (66 FR 20609).

Projected reporting, recordkeeping and compliance requirements include the information for an appeal to an observer decertification. This is a narrative document that is voluntarily submitted by observers and would not require special skills or training. The proposed rule does not specify recordkeeping requirements for observer providers; however NMFS assumes that information needed for training/briefing registration, monitoring deployment/logistics, scheduling debriefings, and identifying observer harassment, observer safety concerns, or observer performance problems will continue to be voluntarily submitted by observer providers.

A catcher-processor or mothership 125 ft (38.1 m) in length or longer will be required to carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) in length will be required to carry one NMFS-certified observer. Requiring this level of observer coverage creates no additional burden to fishery participants than is currently incurred under status quo, because vessels currently carry two observers on a voluntary basis. Mandatory coverage provisions are expected to benefit the observer providers by insuring that each vessel will continue to carry two observers in the future as is currently done. Similarly, observers are expected benefit by having continued employment opportunities. Requiring 2 observers increases the number of hauls sampled and reduces the variability in total catch estimates. This is most important for estimating total catch of infrequently or rare occurring species which are incidentally caught with whiting. If smaller processing vessels (125 ft or less) (38.1 m) should enter the fishery in the future, one observer should be able to provide adequate sampling coverage. Therefore, the additional burden of two observers was determined to be unnecessary.

Because most vessels voluntarily follow the Alaska observer requirements under status quo, maintaining these provisions while participating in the whiting fishery would not create a substantial burden on the individual processing vessels, providing they are in compliance with the Alaska regulations. The proposed sample station requirements are consistent with those required for the Alaska restricted access fisheries. In recent years, all of the processing vessels that participated in the whiting fishery have had certified observer sample stations for the restricted access fisheries in Alaska, therefore the WOC requirements are not expected to place an additional burden on these vessels.

Requiring observers to adhere to the same standards as they are required to follow when they are deployed in Alaska creates only a small burden on the observers. The annual cost burden on whiting observers is expected to be $240 and are the costs related to the appeals process for certification, suspension and decertification, which are only expected to affect 5 percent of the WOC observers per year.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

Notwithstanding any other provisions 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 PRA unless that collection of information displays a currently valid OMB Control Number.

The estimated time for observers to obtain college transcripts and prepare a disclosure statement regarding criminal convictions is 15 minutes per response. The estimated time for observers to submit documentary evidence or to petition a rejected certification, suspension or decertification decision is 4 hours per response. Although the proposed rule does not contain requirements specific to the observer contracting companies, these companies do submit information to NMFS. The estimated time for this collection is as follows: training/briefing registration lists: 7 minutes per response; notification of physical examinations: 2 minutes per response; time required for physical exam: 2 hours; lists of projected observer assignments: 7 minutes per response; weekly logistics reports: 7 minutes per response; debriefing registration materials: 7 minutes per response; and reports on observer harassment, safety or performance concerns: 2 hours per response. All estimates of annual response time include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Odette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California).

This action implements a data collection program and is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat or result in any adverse effects on marine mammals.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 28, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposed to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, add the following definitions ''Direct financial interest,'', IAD,'' and ''Observer Program Office,'' in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer duties.

* * * * *

IAD means Initial Agency Decision.

* * * * *

Observer Program Office means the Observer Program Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

* * * * *

3. In § 660.303, paragraph (b) is revised as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (i.e., logbooks, fish tickets, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

* * * * *

4. Section 660.360 is amended as follows:

A. The text of paragraph (c)(1) is added;

B. The text of paragraph (d)(1)(i) is added;

C. Paragraph (d)(3)(ii) is revised;

D. Paragraph (d)(3)(iii) is added;

E. The text of paragraphs (d)(9) and (e) is added;

F. Paragraph (f) is revised;

G. Paragraphs (g),(h), and (i) are removed;

H. Paragraph (j) is redesignated as paragraph (g); and

I. Newly redesignated paragraphs (g)(1)(iii) through (vii) are revised.

The added and revised text reads as follows:

§ 660.360 Groundfish observer program.

* * * * *

(c) *Observer coverage requirements*—(1) *At-sea processors.* A catcher-processor or mothership 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

* * * * *

(d) * * *

(1) * * *

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

* * * * *

(3) * * *

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment that is used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* At-sea processing vessels must provide hardware and software pursuant to

regulations at 50 CFR 679.50(f)(1)(iii)(B)(1) and 50 CFR 679.50(f)(2), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication devise that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) *NMFS-supplied Software.* Ensuring that each at-sea processing ship that is required to have two observers aboard obtains the data entry software provided by the Regional Administrator for use by the observer.

* * * * *

(9) *At-sea transfers to or from processing vessels.* Processing vessels must;

(i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(e) *Procurement of observer services by at-sea processing vessels.* Owners of vessels required to carry observers under paragraph (c)(1) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(f) *Observer certification and responsibilities*—(1) *Observer Certification*—(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (f)(1)(v) of this section.

(ii) *Observer certification official.* The Regional Administrator (or a successor) will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider,:

(*1*) Information identified by NMFS at 50 CFR 679.50(i)(2) (x)(A)(*1*)(*iii*) and (iv); and

(*2*) Information identified by NMFS at 50 CFR 679.50(1)(2)(i)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (1)(2)(i)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(*1*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*2*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (f)(1)(iv)(A) of this section.

(E) Have not been decertified under paragraph (f)(3) of this section, or pursuant to 50 CFR 679.50.

(iv) Agency determinations on observer certification—(A) *Denial of a certification.* The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (f)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to paragraph (f)(4) of this section. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (f)(1)(iii) of this section.

(v) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. Renewal can be obtained by the observer successfully completing certification training once more. Observers will be notified of any changes to the endorsement expiration period prior to that change taking place.

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year

subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(D) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(*2*) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(*3*) Successfully complete a NMFS-approved observer training and/or whiting briefing as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(2) *Standards of observer conduct*—(i) Limitations on conflict of interest.

(A) Observers:

(*1*) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to,

(*i*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*ii*) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(*iii*) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(*2*) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(B) Provisions for renumeration of observers under this section do not constitute a conflict of interest.

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(3) *Suspension and Decertification*—(i) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(ii) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(A) When it is alleged that the observer has committed any acts or omissions of any of the following:

(*1*) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(*2*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (f)(2) of this section;

(B) Upon conviction of a crime or upon entry of a civil judgment for:

(*1*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*2*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*3*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (f)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph (f)(4) of this section.

(4) *Appeals.* (i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefor.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(g) * * *

(1) * * *

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

* * * * *

[FR Doc. 03–22570 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 175
Wednesday, September 10, 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

Natural Resources Conservation Service

Notice of the Availability of the Draft National Animal Agriculture Conservation Framework (NAACF) for Public Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: NRCS is seeking public comments on the draft National Animal Agriculture Conservation Framework (NAACF). NRCS is asking for comments from individuals; the livestock and poultry industries; private consultants; Federal, State, Tribal, and local governments or subgroups thereof; universities and colleges; environmental groups; conservation organizations; and other entities. These comments will assist NRCS in the development of the final NAACF. This National Framework presents an approach for assisting livestock and poultry producers with voluntary, proactive efforts to foster environmentally sound and economically viable production.

DATES: Comments must be received by October 27, 2003.

Location of the Document: The full text of the NAACF and related documents can be found on the NRCS Homepage at: *http://www.nrcs.usda.gov/programs/afo,* or can be obtained by hard copy from the contact address below.

ADDRESSES: Address all requests and comments to: Angel L. Figueroa, Natural Resources Specialist, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Stop Code 5473, Beltsville, Maryland 20705; phone: 301–504–2225; fax: 301–504–2264, e-mail: *angel.figueroa@usda.gov.*

SUPPLEMENTARY INFORMATION: Addressing the conservation needs of America's livestock and poultry producers is a public policy priority. The natural resource conservation provisions of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, made clear that producers should receive assistance to improve their operations' environmental performance, address Federal, Tribal, State, and local environmental regulatory requirements, and maintain economically viable operations.

In January 2003, Bruce I. Knight , Chief, NRCS, called for NRCS State Conservationists to work with their State Technical Committees to develop State Frameworks with the objective of meeting the conservation challenges facing animal production agriculture over the next 10 to 15 years. These State Frameworks provided the foundation for the development of the draft NAACF. More importantly, this National Framework recognizes that meaningful action will take place on farms and ranches across the Nation, and that programmatic objectives and concrete goals will be appropriately established at the local level in a manner consistent with the authorized and required purposes and objectives of the underlying conservation programs. This National Framework also envisions that these locally established goals, consistent with the underlying national guidance, will become NRCS objectives through established agency planning processes that build State and national priorities from local input.

The NAACF presents a vision for voluntary, proactive efforts to foster environmentally sound and economically viable livestock and poultry production. It envisions collaboration among Federal, Tribal, State, and local governments; producers; the public; and the private sector to bring the initiative, resources, and commitment to support environmental stewardship in animal agriculture. Four objectives guide this vision:

—Helping producers to meet environmental regulatory requirements;

—Helping producers reduce the need for further regulation through flexible, results-based multi-media solutions;

—Promoting innovation and market-based opportunities; and

—Sharing knowledge and increasing accountability.

The draft NAACF identifies six guiding principles that lay the groundwork for approaching environmental stewardship:

- *Local Decision-making and Action*—Defining the locally important issues, opportunities, and needs as the basis for developing workable objectives and actions. It is based on the principle that local stakeholders are best suited to deal with local resource challenges and opportunities.
- *Building and Enhancing Partnerships*—A broad cross section of partners with interests and concerns related to animal agriculture, and new partners not traditionally engaged in agriculture will be needed.
- *Flexible and Practical*—To be workable, approaches must be practical and adaptive in order to respond to changes in animal agriculture and its environmental, social, and economic conditions. Animal production is dynamic, and approaches must be flexible to respond to the demands of changing conditions.
- *Progressive Implementation*—The progression toward complete resource management systems must be based on the implementation of individual decisions over a reasonable period of time. Progressive conservation implementation ensures steady and logical advancements in achieving environmental objectives. Incremental achievement of environmental benefits enables livestock and poultry operations to remain economically viable while progressing toward the attainment of environmental objectives.
- *Forward Looking and Innovative*—Innovative approaches and technologies will be needed to bring new solutions to current resource concerns, as well as providing solutions for emerging concerns.
- *Science-based*—Sound science must form the basis for solutions to ensure that that they deliver what is expected by producers and the public. Through advancements in science, new innovations that are more effective and practical will be discovered, proven, and justified.

NRCS is committed to working effectively with its current partners in the agricultural and environmental communities, and bringing new partners to the table, to develop and implement

approaches to help the Nation's livestock and poultry producers achieve environmental and economic objectives. The NAACF is intended to be a representation of NRCS' commitment to this critical conservation opportunity.

Signed at Washington, DC, on August 29, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–22979 Filed 9–9–03; 8:45 am]

BILLING CODE 3410–16–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into a building fire explosion at Kaltech Industries Group, Inc., which injured 31 people, including 14 persons who were not employed by Kaltech on April 25, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 a.m. local time on September 30, at the Hilton New York, 1335 Avenue of Americas, New York, New York 10018.

The incident originated in space leased by Kaltech Industries Group Inc. in a mixed occupancy building in a densely populated area of the Chelsea district of New York City. Kaltech manufactures architectural quality signs and letters. Kaltech generates hazardous waste during the course of normal operations and is designated as a Large Quantity Waste Generator under the Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) of 1976. On the day of the incident Kaltech employees had just finished consolidating hazardous waste from smaller containers into two large drums. The waste was incompatible with each other and an explosion occurred. Key issues involved in this investigation concern hazard communication, hazardous waste handling and municipal oversight.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The incident originated in space leased by Kaltech Industries Group Inc. in a mixed occupancy building in a densely populated area of the Chelsea district of New York City. Kaltech manufactures architectural quality signs and letters. Kaltech generates hazardous waste during the course of normal operations and is designated as a Large Quantity Waste Generator under the Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) of 1976. On the day of the incident Kaltech employees had just finished consolidating hazardous waste from smaller containers into two large drums. The waste was incompatible with each other and an explosion occurred. Key issues involved in this investigation concern hazard communication, hazardous waste handling and municipal oversight.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–23174 Filed 9–8–03; 12:55 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1282]

Approval for Expansion of Manufacturing Authority Within Subzone 193A; Cardinal Health 409, Inc., Plant (Pharmaceutical Gelatin Capsules), Pinellas County, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Pinellas County Board of County Commissioners, grantee of FTZ 193A, has requested authority to expand the scope of manufacturing activity under zone procedures within Subzone 193A at the Cardinal Health 409, Inc. (formerly RP Scherer Corporation) plant in Pinellas County, Florida (FTZ Docket 17–2003, filed 3/27/2003);

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 18196, April 15, 2003);

Whereas, pursuant to section 400.32(b)(1) of the FTZ Board regulations (15 CFR 400), the Secretary of Commerce's delegate on the FTZ Board has the authority to act for the Board in making decisions regarding manufacturing activity within existing zones when the proposed activity is the same, in terms of products involved, to activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 193A on behalf of Cardinal Health 409, Inc., is approved, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of August, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23069 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1299]

Grant of Authority for Subzone Status; Decatur Mold Tool & Engineering, Inc. (Plastic Injection Molds), North Vernon, IN

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for authority to establish a special-purpose subzone at the plastic injection molds manufacturing and warehousing facilities of Decatur Mold Tool & Engineering, Inc., located in North Vernon, Indiana (FTZ Docket 62–2002, filed 12/17/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 79047, 12–27–02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the plastic injection molds manufacturing and warehousing facilities of Decatur Mold Tool & Engineering, Inc., located in North Vernon, Indiana (Subzone 72R), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of August, 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23068 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1298]

Grant of Authority for Subzone Status; Ergon St. James, Inc. (Oil Terminal), St. James, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of South Louisiana Commission, grantee of Foreign-Trade Zone 124, has made application to the Board for authority to establish special-purpose subzone status at the oil terminal of Ergon St. James, Inc., located in St. James, Louisiana (FTZ Docket 61–2002, filed 12/17/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 79047, 12/27/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the oil terminal of Ergon St. James, Inc., located in St. James, Louisiana (Subzone 124J), at the location described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of August, 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23067 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1297]

Grant of Authority for Subzone Status; Ergon Refining, Inc. (Oil Refinery Complex) Vicksburg, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Vicksburg-Jackson Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Ergon Refining, Inc., located in Vicksburg, Mississippi (FTZ Docket 60–2002, filed 12/17/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 79048, 12/27/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby grants authority for subzone status at the oil refinery complex of Ergon Refining,

Inc., located in Vicksburg, Mississippi (Subzone 158E), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—Petrochemical feedstocks (examiners report, Appendix ''C'');

—Products for export;

—And, products eligible for entry under HTSUS # 9808.00.30 and # 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 25th day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23066 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1296]

Approval for Expansion of Subzone 61F IPR Pharmaceuticals, Inc., Plant (Pharmaceuticals) Guayama, PR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of FTZ 61, has requested authority on behalf of IPR Pharmaceuticals, Inc., to expand the subzone boundaries and to expand the scope of manufacturing authority under zone procedures in terms of both products and capacity at Subzone 61F at the IPR Pharmaceutical, Inc., plant in Guayama, Puerto Rico (FTZ Docket 30–2002, filed 8/1/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 51820, 8/09/02);

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders: The application to add capacity and to expand the scope of authority under zone procedures within Subzone 61F on behalf of IPR Pharmaceuticals, Inc., is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–23065 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1292]

Approval for Extension of Authority of Board Order 875; Baxter Healthcare Corporation (Pharmaceutical Products), Guayama, PR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Board Order 875 (62 FR 10521, 3/7/97) approved the request of the Puerto Rico Exports Development Corporation, grantee of Foreign-Trade Zone 61, for pharmaceutical manufacturing authority at the Baxter Healthcare Corporation (Baxter) facility in Guayama, Puerto Rico (Subzone 61H);

Whereas, the authority was approved at the outset for five years, subject to extension;

Whereas, the Puerto Rico Exports Development Corporation, grantee of Foreign-Trade Zone 61, has requested authority, on behalf of Baxter, to extend its manufacturing authority on a permanent basis (FTZ Doc. 11–2002, filed 2/7/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 7132, 2/15/2002);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 25th day of August, 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23070 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1293]

Approval for Expansion of Facilities and Manufacturing Authority at Subzone 61H; Baxter Healthcare Corporation Plant (Pharmaceuticals), Guayama, PR

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Exports Development Corporation, grantee of Foreign-Trade Zone 61, has requested authority on behalf of Baxter Healthcare Corporation (Baxter), to expand the subzone boundaries and to expand the scope of manufacturing authority in terms of products and capacity under zone procedures within Subzone 61H at the Baxter pharmaceutical manufacturing plant in Guayama, Puerto Rico (FTZ Docket 35–2002, filed 9/10/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 58584, 9/17/02);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to add capacity and to expand the scope of manufacturing authority under zone procedures within Subzone 61H at the pharmaceutical manufacturing plant of Baxter Healthcare Corporation in Guayama, Puerto Rico, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–23071 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review on bars/wedges and revision of country-wide cash deposit rates.

SUMMARY: On March 6, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). As the Department rescinded the reviews of the orders on axes/adzes, hammers/sledges, and picks/mattocks on January 3, 2003, imports covered by these preliminary results of review comprise bars over 18 inches in length, track tools and wedges. The period of review (POR) is February 1, 2001, through January 31, 2002. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled *Final Results of Review*. We will instruct the Bureau of Customs and Border Protection (BCBP) to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department published a notice of opportunity to request administrative reviews of the antidumping orders on HFHTs from the PRC covering the period February 1, 2001 through January 31, 2002 (67 FR 4945). On February 28, 2002, Tianjin Machinery Import & Export Corporation (TMC), Shandong Machinery Import & Export Corporation (SMC), Liaoning Machinery Import & Export Corporation (LMC), and Shandong Huarong Machinery Company (Huarong) requested administrative reviews in the above-referenced orders. Specifically, TMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks and axes/adzes orders, SMC requested reviews of the hammers/sledges, bars/wedges, and picks/mattocks orders, LMC requested a review of the bars/wedges order, and Huarong requested a review of the bars/wedges order. Based on these requests, the Department initiated administrative reviews of TMC, SMC, LMC, and Huarong under the requested orders on March 20, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002).

On May 3, 2002, LMC withdrew its request for review of the bars/wedges order. On May 10, 2002, TMC withdrew its requests for review of the hammers/sledges and picks/mattocks orders. On June 7, 2002, SMC withdrew its request for review under the picks/mattocks order. Additionally, on September 26, 2002, TMC withdrew its requests for review of the axes/adzes order and bars/wedges order, and SMC withdrew its requests for review of the bars/wedges and hammers/sledges orders. The Department rescinded these reviews on January 3, 2003. *See Notice of Rescission of Antidumping Duty Administrative Review: Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 352 (January 3, 2003). The remaining review covers bars/wedges sold by Huarong.

On March 6, 2003, the Department published the preliminary results of this administrative review. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 10690 (March 6, 2003) (*Preliminary Results*). We invited parties to comment on the preliminary results. Both petitioner and respondent filed case briefs on April 7, 2003, and rebuttal briefs on April 14, 2003. A hearing was held pursuant to a request from the respondent on April 30, 2003.

Scope of Review

The products covered by the HFHT orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or mat not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size.Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The Max Multipurpose Tool is within the scope of the order. (See Notice of Scope Rulings, 58 FR 59991, November 12, 1993.) The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the Issues and Decision Memorandum from Holly A Kuga, Acting Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration (Decision Memorandum), dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we

have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B-099 of the main Department of Commerce building. In addition, the Decision Memorandum can be accessed directly on Import Administration's Web site at *http://ia.ita.doc.gov*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Separate Rates Determination

As stated in the preliminary results, Huarong is entitled to a separate rate.

Changes Since the Preliminary Results

In calculating the final results, the Department has made the following changes from the Preliminary Results:
1. We have corrected a typographical error in the calculation of the surrogate value for steel billet;
2. We have clarified that the Department used an average-to-transaction methodology for calculating the weighted-average dumping margin;
3. We have correctly re-labeled the CONNUMs of Huarong's indirect sales, thereby allowing the direct and indirect sales databases to be correctly merged;
4. We have assigned a separate observation number to all of Huarong's indirect sales so that observation numbers are not duplicated in the merged database; and
5. We have removed the deduction for additional port charges from our calculation of the net U.S. price.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period February 1, 2001, through January 31, 2002:

Manufacturer/exporter	Margin (percent)
Shandong Huarong Machinery Company.	
Bars/Wedges --- 2/1/01–1/31/02	30.02

Assessment Rates

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct the BCBP to assess antidumping duties on that importer's entries of subject merchandise. Since the entered value of the merchandise was not reported to us, we have divided, where applicable, the total dumping margins (calculated as the difference between normal value and export price) for each importer by the total number of units sold to the importer. We will direct the BCBP to assess the resulting unit dollar amount against each unit of subject merchandise entered by the importer during the POR. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these amended final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of bars and wedges from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) the cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore, *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies with a separate rate not listed above, the cash deposit rates will continue to be the company-specific rates published for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates; (4) for all non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

The PRC-Wide Cash Deposit Rates

The current PRC-wide cash deposit rates for Axes/Adzes and Bars/Wedges have been revised pursuant to the final results of a redetermination for the eighth administrative review of this proceeding, which can be accessed directly on Import Administration's Web site at *http://www.ia.ita.doc.gov/remands/01–88.htm*. The current PRC-wide cash deposit rates are 55.74 percent for Axes/Adzes, 139.31 percent for Bars/Wedges, 27.71 percent for Hammers/Sledges and 98.77 percent for Picks/Mattocks. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

Notification

This notice also serves as a final reminder to importers of their responsibility under19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Part I- Surrogate Country Issues

Comment 1: India as a surrogate country
Comment 2: Exclusion of Indian import prices that may be subsidized

Part II - General Surrogate Value Issues

Comment 3: The surrogate value calculation for steel
Comment 4: The surrogate value for steel billet
Comment 5: The surrogate brokerage and handling value
Comment 6: The surrogate value for steel scrap sold by Huarong
Comment 7: The surrogate value for steel pallets

Part III- Other Comments

Comment 8: Huarong's control numbers
Comment 9: Merging Huarong's direct and indirect sales into a single database
Comment 10: Huarong's date of sale methodology, and the use of entry date as the date of sale.
Comment 11: Costs for agency sales and net U.S. Price
Comment 12: Movement expenses
Comment 13: Clerical error in weight-averaging of U.S. sales
Comment 14: Offset adjustment for Huarong's steel scrap
Comment 15: The application of the Sigma rule to Huarong's inland freight for the steel factor
Comment 16: Separate port charges not substantiated in the record

[FR Doc. 03–23064 Filed 9–9–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131, (this is not a toll free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6 (a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–17A04.''

The Association for Manufacturing Technology's (''AMT'') original certificate was issued on May 19, 1987 (52 FR 19371, May 22, 1987) and lastly amended on March 1, 2002 (67 FR 12524 , March 19, 2002).

A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Association for Manufacturing Technology (''AMT''), 7901 Westpark Drive, McLean, Virginia 22102–4269.

Contact: Ronald J. Baumgarten, Jr., Legal Counsel, Telephone: (202) 662–5265.

Application No.: 87–17A04.

Date Deemed Submitted: August 26, 2003.

Proposed Amendment: AMT seeks to amend its Certificate to: (1) Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)):

A & A Manufacturing Company, Inc., New Berlin, WI;
Abbott Workholding Products, Manhattan, KS;
Action SuperAbrasive Products, Brimfield, OH;
Acu-Rite, Jamestown; NY;
Adept Technology Inc., Livermore, CA;
Agie Charmilles Group, Charlotte, NC;
Ahaus Tool and Engineering, Inc., Richmond, IN;
Airflow Systems, Inc., Dallas, TX;
Airtronics Gage & Machine Co., Elgin, IL;
Allen-Brady Co./Rockwell Automation, Milwaukee, WI;
Allied Machine & Engineering Corp., Dover, OH;
Aloris Tool Technology Co., Inc., Clifton, NJ;
AltaMAR Laser and Control, Fridley, MN;
Amada America Inc., Buena Park, CA;
Atlas Technologies Inc., Fenton, MI;
ATS Workholding, Inc., Anaheim, CA;
Automation Specialties, Inc., Howell, MI;
Automation Tool Company, Cookeville, TN;
Baublys Control Laser, Orlando, FL;
Beaumont Machine, Inc., Milford, OH;
Better Engineering, Mfg., Inc., Baltimore, MD;
Bock Workholding Inc., Mars, PA;
Bosch Rexroth-Electric Drives & Cntrls, Hoffman Estates, IL;
Brinkman International Group, Inc., Rochester, NY;
Buck Forkardt Inc., Portage, MI;
Carboloy Inc., Detroit, MI;
Cedarberg Industries, Inc., Eagan, MN;
Chick Workholding Solutions, Inc., Warrendale, PA;
Cincinnati Grinding Technologies, Middletown, OH;
CNC Engineering, Inc., Enfield, CT;
Coe Press Equipment Corp., Sterling Heights, MI;
Columbus McKinnon for the activities of its Positech Division, Laurens, IA;
Control Gaging, Inc., Ann Arbor, MI;
CRI, Centerless Rebuilders, Inc., Chesterfield Township, MI;
Curran Manu. Corp. for the activities of its Royal Products Division, Hauppauge, NY;
Cutting Edge Optronics, Inc., Saint Charles, MO;
Cyril Bath Company, Monroe, NC;
Daco Jaw Company, Milwaukee, WI;
Daewoo Heavy Industries, America Corp., West Caldwell, NJ;
Detroit Edge Tool Company, Detroit, MI;
DiManco, Inc.;
Dorian Tool International, East Bernard, TX;
Doringer Cold Saws, Inc., Gardena, CA;
DP Technology Corp./ESPRIT, Camarillo, CA;
DS Technology (USA) Inc., Cincinnati, OH;
Eagle Machine Tools, Inc., Fort Lauderdale, FL;
Eimeldingen Corporation, Indianapolis, IN;
Eitel Presses, Inc., Orwigsburg, PA;
EMAG L.L.C., Farmington Hills, MI;
Enerpac., Milwaukee, WI;
Engis Corporation, Wheeling, IL;
Eriez Magnetics, Erie, PA;
ExxonMobil Lubricants & Petrol Spec Co., Fairfax, VA;
Fagor Automation Corporation, Elk Grove Village, IL;
FANUC Robotics America, Inc., Rochester Hills, MI;
Fred V. Fowler Co., Inc., Newton, MA;
GE Fanuc Automation Americas, Inc., Charlottesville, VA;
Gibbs & Associates, Moorpark, CA;
Giddings & Lewis LLC, Fond Du Lac, WI;
Russell T. Gillman, Inc.—An SKF Co., Grafton, WI;
Gleason Corporation, Rochester, NY;
Govro-Nelson Company, St. Clair, MI;
Gudel Lineartec, Inc., Ann Arbor, MI;
Guhring, Inc., Brookfield, WI;
Hangsterfer's Laboratories, Inc., Mantua, NJ;
Hansford Parts And Products, Macedon, NY;

Heller Machine Tools, Troy, MI;
Helmel Engineering Products, Inc., Niagara Falls, NY;
Hines Industries, Inc., Ann Arbor, MI;
Hoffmann Filter Corporation, Brighton, MI;
Huron Machine Products, Inc., Fort Lauderdale, FL;
INA USA, Corp., Fort Mill, SC;
Inductoheat, Inc., Madison Heights, MI;
Ingersoll Cutting Tool Company, Rockford, IL;
Ingersoll Production Systems, Rockford, IL;
Innovative Products & Equip., Inc., Lowell, MA;
Intelitek, Manchester, NH;
Jensen Fabricating Engineers, Inc., Berlin, CT;
Jet Edge, Saint Michael, MN;
Kalamazoo Machine Tool, Portage, MI;
KAPP Technologies, Boulder, CO;
Kennametal Inc.—World Headquarters, Latrobe, PA;
Komet of America, Inc., Schaumburg, IL;
Koolant Koolers, Inc., Kalamazoo, MI;
KPT/Kaiser Precision Tooling, Inc., Elk Grove Village, IL;
Lexair/Production Dynamics, Lexington, KY;
Littell, Addison, IL;
LNS America, Inc., Cincinnati, OH;
Logansport Matsumoto Co., Inc., Logansport, IN;
Lovejoy Tool Company, Inc., Springfield, VT;
Mahr Federal Inc., Providence, RI;
Maintenance Service Corp., Milwaukee, WI;
Mass Finishing, Inc., Delano, MN;
Mastercam/CNC Software, Inc., Tolland, CT;
Master Chemical Corporation, Perrysburg, OH;
Master Work-Holding, Inc., Morganton, NC;
Mate Precision Tooling, Anoka, MN;
MDSI, Ann Arbor, MI;
Mestek Inc.;
Michigan Custom Machines, Farmington Hills, MI;
Micro Centric Corporation, Plainview, NY;
MIDACO Corp., Elk Grove Village, IL;
M&M Precision Systems Corporation, West Carrollton, OH;
Monsanto Enviro-Chem Systems, Inc., Chesterfield, MO;
Nook Industries, Inc., Cleveland, OH;
Northfield Precision Instrument Corp., Island Park, NY;
NorthTech Workholding, Inc., Schaumburg, IL;
Norwalk Innovation, Inc., Shelton, CT;
Novellus Systems, Inc., Chandler, AZ;
Novi Precision Products, Inc., Brighton, MI;
NSK Precision America Inc., Bloomingdale, IL;
Nuvonyx Inc., Bridgeton, MO;
Penn United Technology, Inc., Saxonburg, PA;
Phillips Corporation, Columbia, MD;
PIA Group, Cincinnati, OH;
Pines Manufacturing, Westlake, OH;
Polymer Sealing Solutions for the activities of its Seals Division, Fort Wayne, IN;
Positrol, Inc., Cincinnati, OH;
PowerHold Incorporated, Middlefield, CT;
P R C Laser, Landing, NJ;
Precision Industries Corporation, Elkhart, IN;
Preco Laser Systems, LLC, Somerset, WI;
Premier Tooling Systems, Grand Blanc, MI;
Pressure Island, Davidson, NC;
PRIMA North America, Inc., Chicopee, MA;
QPAC-Quality Products & Concepts, Lansing, MI;
Quality Vision International Inc., Rochester, NY;
Quantronix Corporation, East Setauket, NY;
Ranshoff, Inc., Cincinnati, OH;
Raycon Corporation, Ann Arbor, MI;
Royal Machine & Tool Corporation, Berlin, CT;
Saint-Gobain Abrasives, Inc., Worcester, MA;
W.J. Savage Co. for the activities of its Savage Saws Division, Knoxville, TN;
Schunk, Inc., Morrisville, NC;
Scientific Technologies, Inc., Fremont, CA;
Sescoi USA, Inc., Southfield, MI;
SGS Tool Company, Munroe Falls, OH;
Siemens Energy & Automation, Inc., Elk Grove Village, IL;
SMW Systems, Inc., Santa Fe Springs, CA;
Sortimat Technology L.P., Schaumburg, IL;
Southwestern Industries, Inc., Rancho Dominguez, CA;
SSD Control Technology, Inc., South Bend, IN;
The L.S. Starrett Co., Athol, MA;
The Precise Corporation, Racine, WI;
Tyler Machinery Co., Inc., for the activities of its MBD Machines Div., Warsaw, IN;
Stellram, La Vergne, TN;
S-T Industries, Inc., St. James, MN;
Suburban Tool, Inc., Auburn Hills, MI;
Suhner Manufacturing Inc., Rome, GA;
Systems Engineering Company Inc., Milwaukee, WI;
T2K—Tooling 2000, Redmond, WA;
Telesis Technologies, Inc., Circleville, OH;
The Timken Company, Torrington, CT;
Thomson Industries, Inc., Port Washington, NY;
Tri-Cam, Inc., Rockford, IL;
Tri-Turn Technologies, Inc., Euclid, OH;
Troyke Manufacturing Co., Cincinnati, OH;
TRU TECH Systems, Inc., Mount Clemens, MI;
Ultra-Grip International, Inc., Walled Lake, MI;
Unist, Inc., Grand Rapids, MI;
Vektek, Inc., Elwood, KS;
Vermont Machine Tool Corp., Springfield, VT;
Vibro/Dynamics Corporation, Broadview, IL;
VX Corporation, Palm Bay, FL;
O. S. Walker Company, Worcester, MA;
Walter Waukesha, Inc., Waukesha, WI

(2) Delete the following companies as ''Members'' of the Certificate:

Alliance Automation Systems
ATS Carolina
ATS Michigan
ATS Ohio
ATS Oregon
ATS Southwest
BHS-Torin Inc.
Blue Valley Machine and Manufacturing Co.
Bridgeport Machines, Inc.
Cargill Detroit Corp.
Cone-Blanchard Machine Co.
Centro-Metalcut Inc.
Dustvent Inc.
Dynetics Corporation
Eagle Eaton Leonard Inc.
Edgetek Machine Corp.
Evana Automation Inc.
E.W. Bliss Company
Gallmeyer & Livingston Company
Goss & De Leeuw Machine Company, The
Grav-I-Flo Corp.
Griffin Automation
Hansvedt EDM Division
Hegenscheidt Corporation
Heim Corp.
Herman Williams Company, Inc.
Hertlein Special Tool Co., Inc.
Hitachi Seiki USA
HR Krueger Machine Tool Inc.
Hybco Products, Inc.
Hyd-Mech Inc.
Komatus Cutting Technologies
Manufacturing Technology, Inc. (California)
Masco Machine, Inc.
Morey Machinery Design & Manufacturing (used to be Morey Machinery Mfg. Corp.)
Motch Corporation
Onsrud Machine Corp.
P S Group
R & B Machine Tool Co.
Redin Corporation
Robert Bosch Corporation for the activities of its Surf/Tran Division
South Bend Lathe Corp.
Taurus Products, Inc.
TCE Corporation
The National Acme Company
Wesel Manufacturing Co.
Wisconsin Machine Tool Corp.
Xermac, Inc.

(3) Change the listings of the existing members as follows:

''ABB Flexible Automation Systems, Inc.'' to ''ABB Inc.-Mfg & Consumer Industries Grp''; Advanced Assembly Automation, Inc.'' to ''DT Industries''; ''The Beckwood Corporation'' to ''Beckwood Press Company''; ''The Bodine Corporation'' to ''Bodine Assembly and Test Systems''; ''Broaching Machine Specialties'' to ''Broaching Machine Specialties Co.''; ''Brown & Sharpe Manufacturing Co.'' to ''Brown & Sharpe, Inc.''; ''Capco, Inc.'' to ''Capco Machinery Systems, Inc.''; ''Chas. G Allen Co.'' to ''Chas. G Allen Co., Inc.''; ''The Cincinnati Gilbert Mach. Tool Co. L.L.C.'' to ''The Cincinnati Gilbert Mach. Tool Co.''; ''Crankshaft Machine Group'' to ''CMG''; ''Dake'' to ''Dake—JSJ Corporation;'' ''Denford Machine Tooks, USA, Inc.'' to ''Denford Inc.''; ''DT Industries, Inc.'' to ''DT Industries''; ''ESAB L–TEC Cutting Systems'' to ''ESAB Cutting Systems''; ''Fayscott Co.'' to ''Fayscott LLC''; ''The Gem City Engineering Co.'' to ''GCE Technologies''; ''Hess Engineering, Inc.'' to ''Hess Industries, Inc.''; ''Industrial Metal Products Corp.'' to ''IMPCO Machine Tools''; ''Kingsbury Machine Tool Corporation'' to ''Kingsbury Corporation''; ''Kleer-Flo Company'' to ''KLEENTEC/KLEERFLO''; ''Lapmaster International'' to ''Lapmaster International—US''; ''Livernois Engineering'' to ''Outokumpu Livernois Engineering LLC''; ''Milacron, Inc.'' to ''Milicron, Inc.—Headquarters''; ''Miyano Machinery USA Inc.'' to ''Miyano Machinery Inc.''; ''Moline Tool Company, Inc.'' to ''Moline Tool''; ''Murata Wiedemann, Inc.'' to ''Murata Machinery USA, Inc.-Machine Tools''; ''National Broach & Machine Co.'' to ''Nachi Machining Technology Company'';

''Newcor, Inc.'' to ''Newcor Bay City''; ''New Nine Inc., d/b/a GWI Engineering'' to ''GWI Engineering, Inc.''; ''Okuma, Inc.'' to ''Okuma America Corporation (OAC)''; ''RMT Technologies'' to ''RMT Technology''; ''Seneca Falls Technology Group'' to ''Seneca Falls Tech Grp-Machine Blders Division''; ''SMS Group Inc.'' to ''Saginaw Machine Systems''; ''Strippit, Inc.'' to ''Strippit/LVD''; ''UNOVA Inc.'' to ''UNOVA Industrial Automation Systems''; Wilton Machinery'' to ''WMH Tool Group''.

Dated: September 5, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–23086 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082803C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of three incidental take permits.

SUMMARY: On August 20, 2003, NMFS Northwest Region issued three incidental take permits (1391, 1392, and 1393) allowing endangered Pacific salmon and steelhead to be taken incidental to the operation of three hydroelectric projects located on the Columbia River, WA. One permit was issued to Public Utility District No. 1 of Douglas County (Douglas PUD) and two to Public Utility District No. 1 of Chelan County (Chelan PUD). The projects are each licensed by the Federal Energy Regulatory Commission (FERC) and are referred to for licensing purposes as: Rocky Reach Hydroelectric Project (FERC No. 2145, Chelan PUD), Rock Island Hydroelectric Project (FERC No. 943, Chelan PUD), and Wells Hydroelectric Project (FERC No. 2149, Douglas PUD). NMFS issued the permits pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended. The actions and the species they affect are listed in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The permits, record of decision and related documents are available for review by appointment at NMFS' Hydropower Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fax: 503–230–5435). These documents are also available electronically on the Internet at *www.nwr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Ritchie Graves, Portland, OR (phone: 503–231–6891, e-mail: *ritchie.graves@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

The ESA requires that incidental take permits be issued based on a finding that such actions (1) will be incidental to otherwise lawful activity; (2) the applicant will, to the maximum extent practicable minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and (5) any additional measures that NMFS finds necessary or appropriate for the purposes of the plan will be implemented. Authority to take listed species is subject to conditions set forth in the permits. Permits, modifications, and amendments are issued in accordance with, and are subject to, the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR Sections 222.301–222.307).

This notice covers the following ESA-listed and unlisted species/evolutionarily significant units (ESUs):

Species/Evolutionarily Significant Unit	ESA Listing Status
Upper Columbia River (UCR) steelhead [*Oncorhynchus mykiss*]	Endangered
UCR spring-run chinook salmon [*O. tshawytsha*]	Endangered
UCR summer/fall-run chinook salmon [*O. tshawytsha*]	Not Warranted
Lake Wenatchee sockeye salmon (*O. nerka*)	Not warranted
Okanogan River sockeye salmon (*O. nerka*)	Not Warranted
Reintroduced non-indigenous coho salmon (*O. kisutch*)	Not Applicable

Dated: September 4, 2003.

Laurie K. Allen,

Acting Office Director, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23008 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090403C]

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Convention (IATTC); Initial Meeting of New Committee Members

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces the first meeting of the General Advisory Committee to the U.S. Section to the IATTC on September 24, 2003.

DATES: The open sessions of the General Advisory Committee meeting will be held on September 24, 2003, from 9 a.m. to 12 p.m. A closed session will be held September 24, 2003, from 1 p.m. to 4 p.m.

ADDRESSES: The meetings will be held at NMFS, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90803–4213.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt at (562) 980–4019.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee to the U.S. Section to the IATTC. The U.S. section consists of the four U.S. Commissioners to the IATTC and the representative of the Deputy Assistant Secretary of State for Oceans

and Fisheries. The Advisory Committee supports the work of the U.S. Section in a solely advisory capacity with respect to U.S. participation in the work of the IATTC, with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. The NMFS, Southwest Region, administers the Advisory Committee in cooperation with the Department of State.

The General Advisory Committee to the U.S. Section to the IATTC will meet to receive and discuss information on: (1) the results of the June 2003 Annual Meeting of the IATTC, (2) the upcoming extraordinary meeting of the IATTC scheduled for October 6 and 7, 2003, (3) 2003 IATTC activities, (4) recent and upcoming meetings of IATTC working groups, and (5) Advisory Committee operational issues. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

The General Advisory Committee will go into executive session during the afternoon of September 24, 2003, to discuss sensitive information relating to the U.S. negotiating position on issues on the agenda for the upcoming IATTC meeting and working groups including conservation and management measures for yellowfin and bigeye tuna for 2003, measures to be taken in cases of non-compliance with the IATTC's conservation and management measures, management of fishing capacity, measures to address bycatch and other issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Allison Routt at (562) 980–4019 at least 5 days prior to the meeting date.

Dated: September 4, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–23009 Filed 9–9–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Republic of Korea

September 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

EFFECTIVE DATE: September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63629, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 4, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 10, 2003, you are directed to increase the current limit for Category 443 in Group II to 344,600 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22978 Filed 9–9–03; 8:45 a.m.

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Panel To Review Sexual Misconduct Allegations at the U.S. Air Force Academy

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: The Panel to Review Sexual Misconduct Allegations at the U.S. Air Force held a public meeting to discuss and deliberate on information gathered through fact-finding, research and investigation, and testimony received during the Panel's study. The panel, chaired by former Florida Congresswoman Tillie K. Fowler, is conducting a study of the policies, management and organizational practices and cultural elements of the Air Force Academy that may have been conducive to alleged sexual misconduct, including sexual assaults and rape. A report of findings, conclusions and recommendations will be submitted to the Secretary of Defense and the Chairmen of the Senate and House Armed Services Committees upon completion of the study on September 22, 2003.

This notice is being published after the meeting took place due to administrative difficulties locating an appropriate meeting site and the short time frame Congress allowed for the Panel to complete their review and produce a final report.

DATES: Friday, September 5, 2003, 1–3 p.m.

ADDRESSES: Crowne Plaza Hotel, 1489 Jefferson Davis Hwy, Arlington, VA

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

22202. The meeting will be held in the large meeting room.

FOR FURTHER INFORMATION CONTACT: Contact Sheila Earle, Designated Federal Official, on 703–602–1515, ext. 110.

Dated: September 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–23007 Filed 9–9–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date changes.

SUMMARY: On Thursday, June 19, 2003 (68 FR 36772), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Enabling Joint Force Capabilities. The September 2, 2003, meeting has moved to September 22, 2003, at the Joint Forces Command; and the September 22, 2003, meeting has moved to September 29, at the Institute for Defense Analyses. In addition, the September 8, 2003, meeting has moved to September 9, 2003, as announced on Wednesday, July 23, 2003 (68 FR 43498).

September 4, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–23006 Filed 9–9–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board; Membership of the Office of the Secretary of Defense

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Missile Defense Agency, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Sandra Burrell, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 2003.

Office of the Secretary of Defense

Jennifer Buck, Chairperson
Bruce Bade
Robert Bruce
Jane Burke
Domenico Cippichio
Ellen Embrey
Keith Englander
Jeanne Fites
Robert Foster
Christopher Gardner
Alfred Goldberg
Bonnie Hammersley
Michael Ioffredo
James Johnson
Anna Johnson-Winegar
Jeanne Karstens
Paul Koffsky
Thomas Kuster
John Landon
Robert Leheny
George Lotz
William Lowry
Chuck Magrum
Timothy Morgan
Get Moy
Robert Nemetz
Ann Reese
J.Q. Roberts
Cheryl Roby
Alan Shaffer
Brooks Shelton
Scott Simpson
Joel Sitrin
Richard Sylvester
Alfred Volkman
Michael Williams

Dated: September 4, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–23005 Filed 9–9–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Introduction of F/A–18 E/F (Super Hornet) Aircraft to the East Coast of the United States

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy announces its decision to homebase 8 fleet squadrons (96 aircraft) and the Fleet Replacement Squadron (FRS) (24 aircraft) at Naval Air Station (NAS) Oceana, Virginia, and 2 fleet squadrons (24 aircraft) at Marine Corps Air Station (MCAS) Cherry Point, North Carolina, and to construct an outlying landing field (OLF) in Washington County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Pierson, Atlantic Division Naval Facilities Engineering Command (Code BD32FP), 6506 Hampton Blvd., Norfolk, Virginia 23508–1278, telephone (757) 322–4935.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality regulations (40 CFR 1500–1508); and Department of the Navy regulations (32 CFR 775), the Department of the Navy announces its decision to homebase 8 Super Hornet fleet squadrons (96 aircraft) and the FRS (24 aircraft) at NAS Oceana, and 2 fleet squadrons (24 aircraft) at MCAS Cherry Point, and to construct an OLF in Washington County. This decision implements one of the preferred homebasing alternatives, Alternative (ALT) 6, and the preferred OLF siting alternative, Site C, identified in the *Final Environmental Impact Statement for Introduction (FEIS) of F/A–18 E/F (Super Hornet) Aircraft to the East Coast of the United States* (July 2003). Introduction of the Super Hornet squadrons in the Atlantic Fleet area of responsibility is projected to begin in 2004 and be completed by 2010.

The Department of the Navy's proposed action is to provide facilities and functions to support homebasing and operation of the Super Hornet aircraft on the East Coast of the United States. These aircraft are planned for assignment to the Atlantic Fleet to replace the F–14 (Tomcat) and earlier model F/A–18 (Hornet) aircraft. The Navy evaluated the environmental consequences associated with aircraft operations, personnel transition, and

new construction or renovation of structures for a reasonable range of alternatives to accommodate the introduction of the Super Hornet aircraft to the East Coast.

Alternatives Considered: A screening process, based upon criteria set out in the Environmental Impact Statement (EIS), was conducted to identify a reasonable range of alternatives that would satisfy the Navy's purpose and need for this action. Eight home basing alternatives and a no-action alternative were analyzed in detail, as were six alternative OLF sites.

ALT 1 proposed homebasing all 10 fleet squadrons and the FRS at NAS Oceana. This alternative included use of Naval Auxiliary Landing Field (NALF) Fentress and the addition of a new OLF to support the field carrier landing practice (FCLP) operations of the Super Hornet squadrons.

ALT 2 proposed homebasing all 10 fleet squadrons and the FRS at MCAS Cherry Point. This alternative included a new OLF to support the FCLP operations of the Super Hornet squadrons because the projected number of FCLP operations of the 10 fleet squadrons and the FRS could not be accommodated at MCAS Cherry Point.

ALT 3 proposed homebasing all 10 fleet squadrons and the FRS at Marine Corps Air Station (MCAS) Beaufort, South Carolina. This alternative included a new OLF to support the FCLP operations of the Super Hornet squadrons because the projected number of FCLP operations of the 10 fleet squadrons and the FRS could not be accommodated at MCAS Beaufort. It also included the transfer of existing Marine Corps aircraft assets at MCAS Beaufort to MCAS Cherry Point in order to accommodate all of the Super Hornet squadrons at MCAS Beaufort.

ALT 4A proposed homebasing six fleet squadrons and the FRS at NAS Oceana and the remaining four fleet squadrons at MCAS Cherry Point. This alternative included continued use of NALF Fentress to support the FCLP operations of the Super Hornet squadrons homebased at NAS Oceana and the addition of a new OLF to support the FCLP operations of the Super Hornet squadrons homebased at both MCAS Cherry Point and NAS Oceana. An OLF located between the two air stations could be used by squadrons at both homebases because of the proximity of the two air stations.

ALT 4B proposed homebasing six fleet squadrons and the FRS at NAS Oceana and the remaining four fleet squadrons at MCAS Beaufort. This alternative included continued use of NALF Fentress and the addition of a new OLF to support the FCLP operations of the Super Hornet squadrons based at NAS Oceana. It also included a new OLF or parallel runway to support the FCLP operations of the Super Hornet squadrons homebased at MCAS Beaufort because the projected FCLP operations of the four fleet squadrons could not be accommodated on the existing runway configuration at MCAS Beaufort.

ALT 5A proposed homebasing six fleet squadrons and the FRS at MCAS Cherry Point and the remaining four fleet squadrons at NAS Oceana. This alternative included a new OLF to support the FCLP operations of Super Hornet squadrons homebased at MCAS Cherry Point because the projected number of FCLP operations of the six fleet squadrons and the FRS could not be accommodated at MCAS Cherry Point.

ALT 5B proposed homebasing six fleet squadrons and the FRS at MCAS Cherry Point and the remaining four fleet squadrons at MCAS Beaufort. This alternative included a new OLF to support the FCLP operations of the MCAS Cherry Point Super Hornet squadrons because the projected number of FCLP operations of the six fleet squadrons and the FRS could not be accommodated there. It also included a new OLF or parallel runway at MCAS Beaufort to support the FCLP operations of the Super Hornet squadrons homebased at MCAS Beaufort because the projected FCLP operations of the four fleet squadrons could not be accommodated on the existing runway configuration at MCAS Beaufort.

ALT 6 proposed homebasing eight fleet squadrons and the FRS at NAS Oceana and the remaining two fleet squadrons at MCAS Cherry Point. This alternative included continued use of NALF Fentress and the addition of a new OLF to support the FCLP operations of the Super Hornet squadrons homebased at both NAS Oceana and MCAS Cherry Point.

The Navy also conducted a thorough OLF siting study using the criteria described in the EIS to identify potential OLF sites to support Super Hornet homebasing. Six OLF site alternatives were evaluated in the EIS. Each site consisted of approximately 30,000 acres with a 2000-acre core area that would contain the runway and support structures. The six alternatives were: Site A, in Perquimans County, North Carolina; Site B, in Bertie County, North Carolina; Site C, in Washington County, North Carolina; Site D, in Hyde County, North Carolina; Site E, in Craven County, North Carolina; and Site F, in Burke County, Georgia.

The no action alternative maintained the status quo at air stations and OLF sites. No new or expanded facilities would be constructed, and there would be no increase in functional capacity at any homebasing site. While the no action alternative does not meet the purpose and need of providing adequate facilities and functions to support the introduction of the Super Hornet squadrons to the East Coast, it served as the baseline for describing and quantifying the impacts associated with the various siting alternatives analyzed in the EIS.

ALT 6, homebasing eight Super Hornet squadrons and the FRS at NAS Oceana and two Super Hornet squadrons at MCAS Cherry Point, is the environmentally preferred alternative. The primary environmental impact associated with homebasing the Super Hornet squadrons are impacts common to all of the homebasing alternatives: an increase in off-station noise exposure. While emissions decrease under all alternatives for NAS Oceana, and increase at other receiving bases, ALT 6 provides additional emission reduction at NAS Oceana. Of the dual-siting alternatives, ALT 6 also maximizes the investment in existing facilities and limits the amount of new construction and construction-related environmental impacts.

Site C was the environmentally preferred OLF site alternative. The estimated population within the greater than 60 Day-night average sound level (DNL) noise zone is lower at Site C than at Sites A, B, E, and F and comparable to that of Site D. Construction of the OLF at Site C will not impact wetlands, threatened and endangered species, or cultural resources. While there would be some impacts to migratory waterfowl, these impacts are mitigable and would be minor. Surrounding land use is primarily agricultural and is considered compatible with aircraft operations.

Environmental Impacts

The EIS evaluated the potential environmental consequences for each of the homebasing alternatives and the OLF sites. Potential significant impacts that could result from ALT 6, including construction of a new OLF at Site C in Washington County are discussed below:

There may be significant impacts related to noise from aircraft operations. Noise levels will increase in the vicinity of NAS Oceana, MCAS Cherry Point, and OLF Site C. Approximately 97,560 people will be within the greater than 65 DNL noise zone around the NAS

Oceana/NALF Fentress complex compared to 87,529 people under the modeled 2000 noise zone—an 11% increase over existing conditions. The DNL and noise equivalent sound level (L_{eq}) for schools within the greater than 65 DNL noise zone will increase between 0 and 4 decibels (dB), depending on location, over existing conditions. The total land area within the greater than 65 DNL noise zone around the NAS Oceana/NALF Fentress complex will increase by only 1%. While the total increase in affected land is only 1%, there will be a 17% increase in residential areas within the greater than 65 DNL noise zone in the City of Virginia Beach and a 40% decrease in residential areas within the greater than 65 DNL noise zone in the City of Chesapeake.

Approximately 8,915 people will be within the greater than 65 DNL noise zone around MCAS Cherry Point if the 2 fleet squadrons train at the new OLF, compared to 8,713 under the modeled 2000 noise zone—a 2% increase over existing conditions. The DNL and L_{eq} for schools within the greater than 65 DNL noise zone will increase between 0 and 2 dB over existing conditions. The total land area within the greater than 65 DNL noise zone around MCAS Cherry Point will increase 22%, but includes only an 11% increase in residential areas within the greater than 65 DNL noise zone.

Generally, individuals living in the greater than 65 DNL noise zone may be annoyed and may experience interference with daily activities such as sleep, conversation, television viewing, and outdoor recreation. Homeowners living in the greater than 65 DNL noise zones associated with operations at NAS Oceana, NALF Fentress, and MCAS Cherry Point may incur costs to ensure that sufficient sound attenuation exists within their dwellings to achieve the U.S. Environmental Protection Agency (USEPA) interior noise level goal of 45 dB. There is very little probability that these homeowners will experience long-term physical effects, such as hearing loss, from exposure to the projected noise levels. Recent studies suggest, however, that some individuals, particularly children, may temporarily experience stress or elevated blood pressure from exposure to noise.

Two schools near NAS Oceana and two schools near MCAS Cherry Point are located within the greater than 75 DNL noise zone. Research on the impacts of aircraft noise, and noise in general, on the cognitive abilities of school-aged children suggests that chronic exposure to noise can result in reading deficits, impaired speech perception, and difficulty in solving cognitive problems. Local school authorities may incur costs to ensure that sufficient sound attenuation exists within the schools to achieve the USEPA-recommended interior noise level goal of 45 dB and the American National Standards Institute, Inc., design guideline that background noise levels within most classrooms should not exceed 40 dB for more than 10% of the busiest hour.

At OLF Site C in Washington County, an estimated 141 persons reside within the area encompassed by the 60 DNL noise zone. Normally, noise zones are not depicted below 65 DNL because land uses are generally compatible with aircraft operations below 65 DNL. However, due to the rural nature and low ambient noise level of the OLF site, the projected noise exposure for OLF sites was analyzed for the 60 DNL and greater noise contours. No schools or churches are located within the greater than 60 DNL noise zone at Site C. Aircraft will reach a cruising altitude of 15,000 to 25,000 feet above ground level (AGL) at 5 to 8 miles beyond the OLF. At cruising altitude, sensitive ecological resources or population centers on the ground will not be affected by aircraft operations or noise.

The Navy will acquire approximately 30,000 acres at Site C in Washington County to mitigate noise-related impacts and promote compatible development and land uses in the vicinity of the OLF. Residences within the greater than 60 DNL noise zone will be acquired based on the appraised fair market value of the property at the time the purchase offer is made. While social and family connections to the land may be disrupted, the Navy will consider means for allowing property owners continued use of the land acquired for the OLF, where such use will not interfere with the mission and the safe and efficient operation of the OLF. New commercial or residential development on lands owned by the Navy will be precluded.

Local and state jurisdictions also will be impacted by the loss of tax revenue on property acquired by the Navy for the OLF. Although lands purchased by the Navy will be removed from the local property tax rolls, agricultural lands that are purchased by the Navy will be out-leased where consistent with the mission of the OLF and continue in productive use for these purposes. These agricultural leasehold interests are taxable in North Carolina.

There may be significant impacts from the loss of prime farmland. Approximately 1,700 acres of the core area of Site C is mapped as prime farmland soils. Based on the evaluation of the site using the site assessment criteria from the U.S. Department of Agriculture, Farmland Conservation Impact Rating Form, removal of these soils for construction of an OLF represents a significant loss of prime farmland in Washington County. Where consistent with the mission of the OLF, the Navy will out-lease unused agricultural acreage surrounding the OLF core area to continue productive use for these purposes.

There may be significant impacts on airspace in the area around OLF Site C. Aircraft operations at Site C may affect commercial and private users of airspace in the vicinity of the Plymouth Municipal Airport in Plymouth, North Carolina. Aircraft will not be able to utilize visual flight rules (VFR) when transiting airspace in the area of Site C. Additionally, the Navy will purchase a private airfield and provide relocation assistance to the owner.

There may be disproportionately high and adverse impacts on minority and low-income populations. The greater than 60 DNL noise zone for Site C extends over two census tracts that contain a higher percentage of minority and low-income populations than the respective county of comparison. Based upon this census tract data, the EIS concluded that selection of Site C for an OLF could result in disproportionately high and adverse effects on minority and low-income populations. Use of census tract data produces a conservative estimation of impacts because it assumes a uniform dispersion of the population throughout any given census tract.

Mitigation

The Navy will prepare a site plan for construction of the runway at Site C, with a designated flight operations plan. This will be submitted to the Federal Aviation Administration (FAA) for a final aeronautical review/approval of Site C. Deconfliction of military and civilian air traffic will be accomplished through the establishment of Class D airspace in conjunction with an air traffic control tower at Site C. Air traffic flying in Class D airspace at altitudes of 2,500 feet or below will be required to contact the control tower in accordance with FAA regulations. Air traffic control personnel at the tower will facilitate the sequencing of aircraft inbound to the OLF and provide other air traffic with advisories regarding OLF operations.

The Navy will prepare/update and implement an Air Installations Compatible Use Zones (AICUZ) plan for NAS Oceana, MCAS Cherry Point, and OLF Site C. This will ensure that the local communities understand the

Navy's operational mission and will assist the local communities in land use planning decisions.

The Navy will develop and implement a Bird/Animal Strike Hazard (BASH) reduction plan for the OLF similar to those that are effectively utilized at various East Coast Navy installations to manage the bird-aircraft collision risk. Use of bird detection radar to evaluate bird movements prior to scheduled FCLP operations will be considered. A BASH reduction plan will be prepared in conjunction with an Integrated Natural Resource Management Plan for the undeveloped portions of Site C.

The Navy will work with Washington and Beaufort counties to minimize the impact of the potential loss of property tax revenue to the greatest extent possible. The Navy will explore strategies for contracting with the local jurisdictions for the provision of necessary services such as utility support and/or maintenance. The Navy will also consider development of mutually beneficial partnerships with Washington and Beaufort counties to enhance the provision of mutually required utility services.

Response to Comments Received Regarding the Final Environmental Impact Statement

The Navy received comments on the FEIS from 3 Federal agencies, 2 members of Congress and elected state officials, 11 state agencies, 6 local governments, and numerous citizen groups and private citizens. Many of these comments simply stated support for or opposition to the preferred home basing alternatives and the preferred OLF site. Others reiterated comments that were received on the DEIS and responded to in the FEIS. Comments of general support or opposition and comments not raising new substantive issues are not addressed in the ROD. New issues raised in comments received during the 30-day public review period are addressed below.

Several commentators suggested that a supplemental EIS was necessary to address new home basing alternatives and new sites for a new OLF, or to address perceived changes in the scope of the proposed action. The range of home basing alternatives and alternative sites for a new OLF that were analyzed in the EIS represented a reasonable range of alternatives as required by NEPA, allowed the Navy to take the requisite hard look at environmental impacts, and provided a logical basis for a reasoned decision. The purpose and need for the proposed action remained constant—provide facilities and functions to support homebasing and operation of Super Hornet aircraft assigned to the Atlantic Fleet. Therefore, supplemental analysis is unnecessary.

Many of the comments received suggested that an OLF at Site C in Washington County would be damaging to the environment. To the contrary, Federal ownership and management of up to 30,000 acres of land that is currently an agricultural monoculture will create significant opportunities to enhance the environment in and around Site C. The FEIS clearly lays out all anticipated environmental impacts from construction and operation of an OLF.

Several of the comments received suggested that the FEIS understated impacts on wildlife at Site C, including impacts on the nearby Pocosin Lakes National Wildlife Refuge (NWR). Specific concerns raised in comments included impacts from the exclusion of animals/birds on the approximately 30,000-acre area the Navy would acquire, impacts on foraging and roosting waterfowl from aircraft overflights/noise, and overall impacts on the Pocosin Lakes NWR. While these issues were fully addressed in the FEIS, they are summarized here to help ensure the public has a better understanding of the issues.

Because Site C is located in a non-urbanized area within the Atlantic Flyway, the site will have an elevated BASH risk level during the fall and winter months. However, the BASH risk level will be similar to that which is currently being effectively managed at other East Coast military installations.

Significant concentrations of migratory waterfowl occur within five miles of Site C in the vicinity of the Pungo Unit of Pocosin Lakes NWR. The results of a bird radar survey completed at the site indicate that periods of time exist during which a significant number of bird species move through the airspace that will be used by aircraft operating at Site C. However, the overall amount of time when bird concentrations will cause an elevated bird/aircraft strike risk is minimal in comparison to low-risk periods. In addition, the radar survey indicated that daily peaks in bird movements and hourly trends in bird concentrations were easily detectable. Based on these factors, the use of bird detection radar at Site C will greatly reduce the risk posed by birds.

A relatively small portion of the low-level flight tracks at Site C, where flight altitudes will range from 2,000 to 2,500 feet AGL, will be located above or adjacent to significant snow goose and tundra swan loafing and foraging areas located outside of the Pocosin Lakes NWR boundary. Although flight altitudes along this portion of the flight tracks indicate that the BASH risk will not be considered severe, overflights down to 2,000 feet AGL may cause snow geese to flush more frequently from their loafing and feeding sites. The Navy will work with the United States Fish and Wildlife Service (USFWS) and state resource agencies to evaluate site-specific mitigation measures to reduce potential impacts to snow goose populations.

There is a misconception that the Navy would attempt to manipulate land use to discourage waterfowl foraging, loafing, nesting and roosting within all of the approximately 30,000-acre area proposed for acquisition. The Navy has no such intent. As stated in the FEIS, the Navy plans to out-lease significant portions of the land at Site C to allow for continued agricultural production. As clearly evidenced by such use at other military air stations, farming activities are compatible with aircraft operations. The FEIS states that management activities to discourage bird/animal foraging, loafing, nesting and roosting would be implemented in areas immediately adjacent to the airfield and not on the entire 30,000 acres. It is anticipated that the majority of the land acquired at Site C will be out-leased and that there will be no restrictions on the types of crops that can be grown. There are 215,000 acres of agricultural foraging habitat potentially available to waterfowl within 15 miles of the Pocosin Lakes NWR. The construction and operation of an OLF at Site C will directly impact less than 5% of available foraging habitat within 15 miles of the Pocosin Lakes NWR.

The Navy would develop an Integrated Natural Resources Management Plan (INRMP) for Site C. Preparation of the INRMP requires coordination with the USFWS and the North Carolina Wildlife Resources Commission (NCWRC). The INRMP will outline the overall natural resource management objectives of the OLF and ensure that these objectives are designed to protect and preserve the mission of the OLF and all on-station natural resources such as wetlands, water quality and plant and animal species. Cooperation between the USFWS, NCWRC, the Navy and other resource agencies will help to ensure effective management of wildlife and other natural resources at Site C. The INRMP would serve as a guide to maximize natural resources management opportunities consistent with the OLF mission. INRMPs have proven to be effective natural resources management

tools on other naval installations and military bases around the country.

There will be no low-level over-flight of the Pocosin Lakes NWR and noise levels there are expected to be near ambient levels. The FEIS and the supporting noise study provide a comprehensive analysis of noise impacts from operation of an OLF at Site C. Site-specific noise modeling was conducted at the Pocosin Lakes NWR and DNL noise information was augmented with sound exposure level data to ensure an adequate assessment of noise impacts was provided.

Several of the comments received suggested that an OLF at Site C would result in adverse impacts to the bald eagle and red wolf, both federally listed threatened or endangered species. The Navy, with the assistance of the USFWS, identified endangered animal and plant species that could be affected by the construction and operation of an OLF at all proposed OLF locations, including Site C. The bald eagle is known to occur in the general vicinity of Site C. Site C does not contain nesting, roosting, or perching habitat for the bald eagle; therefore, the presence of bald eagles at Site C will be limited to incidental occurrences by individuals traveling over the site during migration or those that travel greater than average distances from nest sites to forage. Based on the absence of suitable nesting, roosting, or perching habitat, and studies suggesting that noise has a minimal effect on bald eagles, the Navy determined that an OLF at Site C was not likely to adversely affect the bald eagle.

Site C is located in an area important to the growth and recovery of the wild red wolf population. Wild red wolves could potentially occur in Pocosin Lakes NWR, approximately five miles east of the site. Based on a lack of reproductive and shelter habitat, wild red wolves would be considered only transient at Site C, if present. As previously discussed, no low-level flight tracks will be located above Pocosin Lakes NWR, and noise levels in the refuge will increase by an insignificant amount because of aircraft operations at Site C. Therefore, the Navy determined that an OLF at Site C was not likely to adversely affect red wolves occurring in Pocosin Lakes NWR.

Pursuant to the requirements of section 7 of the Endangered Species Act, the Navy consulted with the USFWS on potential impacts to the endangered species present at Site C. The USFWS concurred with the Navy's determination that construction and operations of an OLF in Washington County is not likely to adversely impact endangered species.

One of the comments received criticized the Navy for failing to consider the requirements of the Migratory Bird Treaty Act (MBTA). As discussed in the EIS, construction and operation of an OLF at Site C will not result in the intentional taking of any migratory birds. The Navy is instituting a BASH program in order to minimize any incidental effects from military readiness activities on birds found in the vicinity of Site C, including migratory birds.

Some of the comments received expressed concern that the FEIS did not discuss the exact number of buildings at the OLF site and how much land would be fenced, the future expansion possibilities, and exactly how the Navy plans to manage the OLF site. Specific OLF construction plans will be dictated by the unique characteristics of the site. Although the Navy does not know at this time the exact number of buildings or structures that will be constructed at the OLF or the extent of the area of the OLF that will be enclosed by a fence, the FEIS estimates that about 500 acres of the core area will be directly impacted by construction activities. The Navy took this approach in the FEIS to allow for flexibility in the design and construction of the OLF to ensure minimization of the environmental impacts. The level of analysis in the FEIS is sufficient to allow the Navy to make an informed decision. Management of the OLF site will similarly depend on the characteristics of the site chosen. A fence will enclose the core area. There currently are no plans to construct a fence around the entire 30,000-acre acquisition area. Future expansion of the OLF site currently is not contemplated. However, should the Navy in the future contemplate either expansion of the OLF and/or a significant change in operations at the OLF, preparation of additional analysis under NEPA would be completed prior to any decision to implement such changes.

Many of the comments received suggested that the Navy's BASH analysis was incomplete and inaccurate. The Navy recognized the importance of BASH early in the EIS process and met with FWS and other interested parties on many occasions. The Navy used the Bird Avoidance Model (BAM) to assist in the screening of OLF alternative sites. The Draft and Final EIS included a detailed BASH analysis of all OLF sites and recognized that BASH was a serious concern for some of the sites under consideration. Because of concerns identified with Site C during the EIS process, the Navy conducted several additional site visits between December 2002 and February 2003 and also performed a bird radar survey towards the end of the wintering waterfowl season. The bird radar survey at Site C was one data point relied on in the overall BASH assessment of all OLF sites prepared by an independent contractor with significant BASH program management experience. Additional BASH analysis included an evaluation by the Naval Safety Center's BASH Program Manager and by individuals currently working BASH issues at other naval air facilities. The Navy determined that a comprehensive BASH prevention program can be implemented at Site C and that the proposed flight operations can be conducted there in a safe manner. The BASH analysis process is discussed in detail in Section 12 of the FEIS.

One of the comments received questioned why the cost of a BASH program was not included in the FEIS. Because a BASH plan would be specific to a particular OLF site, the Navy did not attempt to develop cost estimates for BASH efforts at each of the OLF sites. A BASH plan would be developed as part of an overall INRMP for the facility. The Navy recognizes that there will be a cost to implement an INRMP at the OLF site and that those costs would include a comprehensive BASH program.

One of the comments received suggested that two large permanent conservation easements would be impacted by construction and operation of the OLF. The Navy, working with the local Natural Resource Conservation Service office, identified all permanent conservation easements in the vicinity of the OLF site. Although there are conservation easements bordering the noise contours associated with the OLF, there are no known conservation easements in the core area where construction would occur.

One of the comments received suggested that the environmental costs of building an OLF at Site E (Craven County, North Carolina) are grossly overstated, the wetlands at Site E are of marginal value, and that the presence of wetlands on the site should not be used as an excuse for eliminating it from serious consideration. As outlined in the FEIS, approximately 500 acres of wetlands would be filled if an OLF were constructed at Site E. The Navy concurs that wetlands at Site E may be of marginal value and that wetland mitigation opportunities are available at Site E that would result in a significant positive gain to wetland functions and values. For those very reasons Site E

was not eliminated from serious consideration as an OLF site.

Some of the comments received suggested that the Navy failed to meet its obligations under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations. Executive Order 12898 requires that disproportionately high and adverse impacts to minority and low-income populations be clearly identified and considered by Federal agencies as they propose and execute actions. The Navy did identify and consider environmental justice issues as required by Executive Order 12898. The Navy used data from census tracts and compared race and income data for the entire census tract against regional information in an effort to present a conservative analysis of impacts to minority and low-income populations.

Some of the comments received suggested that the cumulative impacts analysis in the EIS is flawed because the cumulative effects section did not include the environmental impacts on several bombing ranges, such as Piney Island, Brant Island Shoal, Dare County, and Tyrell County, and on airspace designated as a Military Operating Area (MOA). The FEIS analyzed whether the basing of the Super Hornets would change the existing use of those ranges. The conclusion reached in the FEIS was that use of these ranges would remain approximately the same or decrease. Similarly, the Navy does not anticipate any increase in the use of the MOAs because of Super Hornet home basing or a new OLF. Therefore it was not necessary to include those impacts in the cumulative effects analysis.

One of the comments received suggested that an OLF at Site C is inconsistent with the North Carolina Coastal Zone Management Plan. The enforceable policies of the Washington County Coastal Area Management Plan were analyzed in the EIS. The Navy concluded that construction and operation of an OLF at Site C was consistent to the maximum extent practicable with the enforceable policies of the North Carolina Coastal Zone Management Plan. The North Carolina Department of Environmental and Natural Resources concurred with the Navy's determination.

Conclusions

In determining where to base F/A–18E/F Super Hornet aircraft on the East Coast in support of the Atlantic Fleet and where to site an OLF, I considered the following: Operational and readiness requirements; costs associated with the construction, operation, and maintenance of aircraft and facilities; manpower requirements and costs; the analysis of environmental and socioeconomic effects contained in the EIS; relevant federal and state statutes and regulations; and the comments received on the EIS from federal, state, and local agencies, nongovernmental organizations, and individual members of the public. After carefully weighing all of these factors, I have determined that ALT 6, dual-siting Super Hornet aircraft at NAS Oceana (eight fleet squadrons and the FRS) and MCAS Cherry Point (two fleet squadrons) with a new OLF sited in Washington County will best meet the needs of the Navy while minimizing the environmental impacts associated with basing the Super Hornet.

Dual-siting the Super Hornet squadrons between NAS Oceana and MCAS Cherry Point effectively uses the Navy's infrastructure at NAS Oceana, taking advantage of and using the capacity created with the transitioning of the Tomcat and older Hornet aircraft currently stationed there. The geographic proximity of aircraft at NAS Oceana and MCAS Cherry Point allows for the most efficient use of training ranges and OLF capacity by all the Super Hornet squadrons, as well as other aircraft based at both NAS Oceana and MCAS Cherry Point.

ALT 6 will maximize use of existing facilities and limit capital investment requirements at both NAS Oceana and MCAS Cherry Point. Construction at NAS Oceana will involve installation of a Flight Line Electrical Distribution System (FLEDS) on the existing parking apron, reconfiguration of Building 240, and internal renovations to 3 hangars. Construction at MCAS Cherry Point will include installation of a FLEDS, internal renovations to two hangars, and a new training facility, ordnance magazine, and combined medical/dental clinic. ALT 6 provides the lowest one-time construction costs and 30-year life cycle costs of any of the dual-siting alternatives considered.

Implementation of ALT 6 provides some mitigation of noise impacts at NAS Oceana and NALF Fentress. The net impact of aircraft inventory reductions and dual-siting is a 29% reduction in the number of aircraft stationed at NAS Oceana (91 fewer aircraft) compared to baseline year 2000 conditions. The number of aircraft operations at NAS Oceana is projected to decrease by 37%, and the number of operations at Naval Auxiliary Landing Field (NALF) Fentress is projected to decrease by 58%. While homebasing two Super Hornet fleet squadrons at MCAS Cherry Point will increase the number of aircraft stationed at MCAS Cherry Point by 16% (24 additional aircraft) over baseline year 2000 conditions, the number of operations is projected to increase by only 6%.

A new OLF in Washington County is essential not only for support of the Super Hornet operations under ALT 6 but also for surge conditions and future operational needs. As a result of Carrier Strike Group and Expeditionary Strike Group operational requirements generated during operations Enduring Freedom in Afghanistan and Iraqi Freedom, we now understand the critical need for surge capacity for training of multiple carrier air wings. The capacity at NALF Fentress is insufficient to accommodate FCLP requirements of more than one carrier air wing and an FRS simultaneously. The new OLF will enhance the fidelity and quality of carrier landing training under all circumstances and ensure that the Navy's Fleet Response Plan, developed to institutionalize a continuous surge capability of up to six to eight carriers in reaction to world events, can be fully carried out.

The new OLF will accommodate the FCLP operations of the Super Hornet squadrons homebased at both NAS Oceana and MCAS Cherry Point. An estimated 31,650 FCLP operations will be conducted at the new OLF annually. None of the Super Hornet squadrons or personnel will be stationed at the OLF. The facility will be operated primarily through contract personnel. Navy will acquire approximately 23,000 acres in Washington County and 7,000 acres in Beaufort County for construction and operation of a new OLF. An 8,000-foot runway and ancillary facilities will be constructed within a core area. Land surrounding the core area will be owned and controlled by the Navy and managed to promote development and land uses that are compatible with airfield operations. Any resident or business required to relocate will receive relocation assistance as provided for by Federal law and regulations. By acquiring the property, the Navy will be able to ensure that FCLP training can take place in an environment free from limitations due to surrounding populations, thereby providing superior training for Navy aircrews. This is in contrast to the pressure from residential encroachment around NALF Fentress that has resulted in deviations from standard FCLP training. While FCLP training will continue to be conducted at NALF Fentress, encroachment pressures are going to increase, as evidenced by the 44% growth in population within a 5-

mile radius of NALF Fentress between 1990 and 2000.

An OLF located at Site C in Washington County—an area of low population density with compatible surrounding land uses, minimal environmental impacts, and centrally located between MCAS Cherry Point and NAS Oceana—will give the Navy critical operational flexibility and enhanced responsiveness to meet emergent threats to national security and provide the greatest potential as a valuable training asset for current and future years.

ALT 6 maximizes the use of existing infrastructure at both NAS Oceana and MCAS Cherry Point, achieves economies of scale in support, maintenance, training, and personnel requirements, optimizes effective FCLP training, and reduces or minimizes environmental impacts at all affected locations. It provides the best solution for the Navy, the affected communities, and the taxpayer.

Dated: September 3, 2003.

Hansford T. Johnson,

Assistant Secretary of the Navy (Installations and Environment).

[FR Doc. 03–22938 Filed 9–9–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 10, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 5, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Section 704 Annual Performance Report (Parts I and II).

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 319.

Burden Hours: 11,165.

Abstract: Section 706(d), 721(b)(3), and 725(c) of the Rehabilitation Act of 1973, as amended (Act) and corresponding program regulations in 34 CFR parts 364, 365, and 366 require centers for independent living, Statewide Independent Living Councils (SILCs) and Designated State Units (DSUs) supported under Parts B and C of Chapter 1 of Title VII of the Act to submit to the Secretary of Education (Secretary) annual performance information and identify training and technical assistance needs.

Requests for copies of the proposed information collection request may be accessed from *http://www.edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2337. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–23076 Filed 9–9–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–000]

Proposed Information Collection and Request for Comments

September 5, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), and 5 CFR 1320.13 of the Office of Management and Budget (OMB) regulations, the Federal Energy Regulatory (Commission) is providing notice of its request to OMB for emergency processing of a proposed collection of information in connection with the ''Policy Statement on Natural Gas and Electric Price Indices'' issued in Docket No. PL03–3–000. The Commission is soliciting public comment on the specific aspects of the information collection described below.

DATES: The Commission and OMB must receive comments on or before September 17, 2003. Because the Commission has requested OMB to process the proposed collection of information in Docket No. PL03–3–000 on an emergency basis, comments on this collection of information should be filed with OMB, attention FERC Desk

Officer, as soon as possible. The Commission is requesting that OMB make a determination on this information collection requirement by September 19, 2003.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov* . Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. A copy of the comments should also be served on OMB: FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ted Gerarden, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Ted.Gerarden@ferc.gov* or (202) 502–6187; Rafael Martinez, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Rafael.Martinez@ferc.gov* or (202) 502–6336.

SUPPLEMENTARY INFORMATION: This reporting requirement is intended to determine whether the Policy Statement on Natural Gas and Electric Indices, 104 FERC ¶ 61,121 (July 24, 2003), is having the desired effect of encouraging more voluntary reporting of energy trade data to support the formation of accurate, reliable and transparent prices for natural gas and electricity.

Price indices are widely used in bilateral natural gas and electric commodity markets to track spot and forward prices. Uncertainty over industry expectations and government regulatory guidelines, however, has inhibited the number of transactions voluntarily reported to index developers, resulting in a lack of confidence in the reliability of energy price indices. The Commission determined that steps were needed to strengthen confidence in the day-ahead, month-ahead and forward natural gas markets and the day-ahead and forward electricity markets by encouraging comprehensive reporting of energy transactions to price index developers and by encouraging price index developers to provide useful information about liquidity to the industry.

The Policy Statement provided the industry with the Commission's views on desirable characteristics of a price index and the standards companies should use when reporting energy transactions to index developers. In addition, the Commission adopted a ''safe harbor'' provision for market participants. If the market participants adopt and follow the standards set out in the Policy Statement, the Commission will presume that transaction data submitted to index developers is accurate, timely and submitted in good faith, and the Commission will not penalize inadvertent errors.

The Policy Statement is intended to increase voluntary participation in the price formation process, with the expectation that greater participation in turn will give all industry participants more confidence in the liquidity and transparency of reported prices.

The Commission will monitor developments under the Policy Statement closely over the next several months and assess the degree to which voluntary reporting increases, as well as how index developers and data providers implement the Commission's recommended standards. If voluntary reporting does not increase to the point that indices are sufficiently robust to support a healthy market, or if the standards recommended by the Commission herein are not widely adopted, the Commission will consider further action to ensure accurate, dependable, and trustworthy wholesale price information.

The information collection will help the Commission understand whether the Policy Statement standards are being adopted by the industry and whether market participants are reporting bilateral energy transactions to any greater degree than before the Policy Statement was issued. The information reported will be of a general nature, concerning each respondent's practices with respect to reporting energy trade information. The survey will not seek specific trade data.

The information to be collected will assist the Commission to determine whether the Policy Statement is having a beneficial effect and, if not, what further steps the Commission can take to encourage voluntary participation in price formation or to mandate price reporting. This information will enable Commission staff to carry out the mandate of the Policy Statement to monitor price formation for natural gas and electricity.

The Commission needs to gauge reaction to the Policy Statement more quickly than this in order to determine whether further steps are needed to increase the accuracy, reliability and transparency of price indices before the winter heating season. The industry has made it clear to the Commission that the issue of price formation is of critical importance and that time is of the essence in providing administrative guidance that will improve the current situation.

Nature of Information Collection: The survey will be sent to no more than 300 market participants. The participants selected will include producers, generators, marketers, industrial users, and commercial customers for natural gas and/or electricity. The companies will be sellers or purchasers of large quantities of energy likely to engage in multiple transactions at different locations to market natural gas and/or electricity or to serve their energy needs. The companies will be ones that engage in bilateral arm's length energy trades in the physical (cash) markets. Entities that trade in financial instruments only will not be included in the survey.

The survey consists of 20 questions, ten concerning current activity since issuance of the Policy Statement and ten parallel questions concerning activity before the Policy Statement. The survey seeks information about whether the participant engaged in bilateral energy trades and, if so, whether the participant trades in natural gas or electricity (or both). The survey asks the participant whether it is currently reporting trade data and, if not, why not, and whether few, some, many, or all trades were reported.

The survey asks how the participant reports trade data and what elements of trade information are reported. The survey asks the participant if they have adopted the guidelines for trade data reporters in the Policy Statement and, if so, to provide information to the Commission about the standards of conduct adopted. The survey consists primarily of ''yes/no'' questions or multiple choice questions, but respondents may also provide a narrative response to any question.

The Commission proposes to collect information from the surveyed market participants two times: an initial response due October 1, 2003 and a supplemental response due March 1, 2004. The supplemental response is to determine whether there have been any changes from the initial response. This followup is necessary to determine whether the Policy Statement is having the desired effect of encouraging more voluntary reporting of price information to price index developers.

Background: The Commission's statutory obligations under the Natural Gas Act (NGA), 15 U.S.C. 717, the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301, and the Federal Power Act,

16 U.S.C. 791, are to maintain just and reasonable rates for jurisdictional sales of natural gas and electricity and for natural gas transportation and power transmission, to protect consumers of natural gas and electricity from the exercise of monopoly power, and to establish a regulatory framework that improves the competitive structure of the natural gas and electric power industries. The current regulatory model is a hybrid that has evolved from total regulatory control of monopoly interstate natural gas pipelines and electric transmission facilities to a regulatory environment that fosters competition.

In this environment, the wholesale markets must be structured to promote competition. Robust price formation is a key element of such markets. Under market-based pricing, the Commission must ensure that wholesale prices for natural gas and electricity are formed in a robust market with sufficient information available to all participants to permit them to judge the liquidity of markets and accuracy of the prices reported.

To enable the Commission to fulfill this duty, the NGA, the NGPA, and the FPA all authorize the Commission to conduct investigations and collect information. In this case, the information relates to whether market participants are helping in price formation. In other words, the survey asks market participants whether they are reporting their energy trades to a developer of commercially available price indices or trading or having trades confirmed on electronic exchanges that generate indices from such electronic trades or confirmations.

Information Collection Statement: The Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.10 require OMB to approve certain reporting and recordkeeping requirements (collections of information) imposed by a federal agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date.

The proposed information collection request will be done in a two-stage survey (OMB Control No. to be assigned). The respondents will include producers, generators, marketers, industrial users, and commercial customers. Responses to the information collection request will be voluntary.

Burden Statement: The maximum public reporting burden for this collection is estimated as:

Information item	Initial response	Supplemental response
Number of respondents	300	300
Number of hours per respondent	5	2
Total hours	1,500	600
Grand total hours		2,100

Cost to respondents:

Total hours burden all respondents	Person hours per year [1]	Estimated salary per year [2]	Total cost
2,100	1,040	$117,041	$236,332.79

[1] Because this information collection has been submitted for approval under OMB's emergency processing procedures, the Commission will only collect data for a six month period. As a result, for computation of the work hours per year factor, the hours have been cut in half.

[2] Because of the variation of salaries for professional and clerical staff among the respondents and in order to use an average, the Commission is assuming that the ''salary'' per employee within the energy industry is comparable to that of the Commission staff. This average takes into account the salaries and benefits of professional, clerical, and technical staff.

The average cost per respondent is $787.77.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses. Interested persons may send comments regarding these burden estimates or any other aspect on the proposed information collection, including suggestions for reductions of burden, to the FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503, phone (202) 395–7318 or by fax at (202) 395–7285. A copy of any comments filed with OMB should also be filed with the Commission. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov* . Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides interested persons an opportunity to inspect or copy contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426. Additionally, comments may be viewed and printed remotely 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23158 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–591–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 2003.

Take notice that on August 29, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective on October 1, 2003:

First Revised Sheet No. 456.
Original Sheet No. 456A.

CEGT states that the purpose of this filing is to add a new type of discount provision to Section 12.5(a) of the General Terms and Conditions that CEGT may include in a discount rate agreement without constituting a material deviation from CEGT's pro forma service agreement. CEGT states that this new provision would provide for discounts to be based on published index prices for specific receipt or delivery points or other agreed-upon published pricing reference points.

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 section 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). 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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23041 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–585–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

September 4, 2003.

Take notice that on August 29, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Ninth Revised Sheet No. 11A, to become effective October 1, 2003.

CIG states the tariff sheet is being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-For and Other Fuel Gas, Transportation Fuel Gas, and Storage Fuel Gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23036 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–594–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 4, 2003.

Take notice that on August 29, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, Fourth Revised Sheet No. 322. The sheet is proposed to become effective September 29, 2003.

CIG states that the tendered tariff sheet clarifies the minimum and maximum receipt and delivery pressure options provided in the Tariff.

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). 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 ''eFiling'' link.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23044 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–592–000]

Destin Pipeline Company, L.L.C.; Notice of Tariff Filing

September 4, 2003.

Take notice that on August 29, 2003, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to become effective October 1, 2003.

Destin states that purpose of this filing is to revise and clarify its current Supply Pool procedures under Section 2.3 of the General Terms and Conditions. In order to provide shippers on the Destin system with additional flexibility to aggregate their service agreements at a pool point and conform this service to the transactional requirements associated with transportation currently provided under Destin's Rate Schedules FT–1, FT–2 and IT, Destin is revising Section 2.3 and the Pool Balancing Agreement to accommodate this service.

Destin states that copies of this filing on all affected shippers and applicable 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). 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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23042 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–582–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 2003.

Take notice that on August 29, 2003, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No.1, effective October 1, 2003, the following tariff sheets:

Sixty-First Revised Sheet No. 8A.
Fifty-Third Revised Sheet No. 8A.01.
Fifty-Third Revised Sheet No. 8A.02.
Eleventh Revised Sheet No. 8A.04.
Fifty-Sixth Revised Sheet No. 8B.
Forty-Ninth Revised Sheet No. 8B.01.
Sixth Revised Sheet No. 8B.02.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. FGT explains that the fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. FGT states that both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

FGT states that copies of the filing were mailed to all customers served under the rate schedule affected by this filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23034 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–583–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 2003.

Take notice that on August 29, 2003, Great Lakes Gas Transmission Limited

Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2003:

Third Revised Sheet No. 0.
Sixth Revised Sheet No. 4A.
Fourth Revised Sheet No. 16A.
Fourth Revised Sheet No. 28.
Second Revised Sheet No. 50L.
Second Revised Sheet No. 50O.
Second Revised Sheet No. 50P.
Eighth Revised Sheet No. 65.
Fourth Revised Sheet No. 88.

Great Lakes states that these tariff sheets are being filed to incorporate administrative and conforming changes to the Great Lakes tariff. Great Lakes also states that none of the proposed changes will affect any of Great Lakes' currently effective rates and charges.

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). 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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23035 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–589–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff and of Offer of Settlement

September 4, 2003.

Take notice that on August 29, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Ninth Revised Sheet No. 4, proposed to become effective October 28, 2003.

Iroquois states that the purpose of its filing is to implement the terms of a Stipulation and Settlement Agreement (Settlement) filed concurrently with, and as a part of, the instant tariff filing. In accordance with the Settlement, the revised tariff sheet establishes four annual reductions to Iroquois' rates in the years 2004, 2005, 2006, and 2007, which over the term of the Settlement will reduce Iroquois' transportation rates by approximately 13% (*e.g.*, the 100% load factor interzone rate will be reduced from the existing level of $0.4234, to the January 1, 2007 level of $0.3700, for a total cumulative reduction of $0.0534).

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''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: September 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23039 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–586–000]

Petal Gas Storage, L.L.C.; Notice of Tariff Filing

September 4, 2003.

Take notice that on August 29, 2003, Petal Gas Storage, L.L.C. (Petal), tendered for filing as part of its FERC Gas Tariff, of the following tariff sheets, with an effective date of October 1, 2003:

Third Revised Sheet No. 105.
Third Revised Sheet No. 108.
Fourth Revised Sheet No. 109.
Fifth Revised Sheet No. 123.
Fifth Revised Sheet No. 126.
Fifth Revised Sheet No. 127.
Second Revised Sheet No. 210.
Second Revised Sheet No. 222.

Petal states that it submits the instant filing to make ministerial cleanup changes to its tariff, including updating the contact, address and payment information and creating a Title Page. Petal states that the instant filing is purely ministerial in nature and makes no substantive changes to the tariff.

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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket#'' and follow the instructions (call 202–502–8659 for assistance). 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.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23037 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–588–000]

Texas Gas Transmission, LLC (formerly) Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 4, 2003.

Take notice that on August 29, 2003, Texas Gas Transmission, LLC (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No.

36, to become effective November 1, 2003.

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 ''Fuel Retention'' as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Second Revised Volume No. 1. The revised EFRPs are proposed to be in effect for the annual period November 1, 2003, through October 31, 2004. In general, the overall impact appears to be predominately moderate to significant reductions in the EFRPs as compared to the EFRPs filed on August 30, 2002.

Texas Gas states that copies of the revised tariff sheet are being mailed to all parties on Texas Gas's official service list, to Texas Gas's jurisdictional customers, and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23038 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–590–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel and Electric Power Reimbursement Filing

September 4, 2003.

Take notice that on August 29, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 the following revised tariff sheets to become effective October 1, 2003.

Revised Volume No. 1.
Third Revised Sheet No. 15.
Twenty-Ninth Revised Sheet No. 15A.
Fifty-Third Revised Sheet No. 16.
Twenty-Ninth Revised Sheet No. 16A.
Fifty-First Revised Sheet No. 18.
Twenty-Ninth Revised Sheet No. 18A.
Twenty-Ninth Revised Sheet No. 19.
Twenty-Ninth Revised Sheet No. 20.
Original Volume No. 2.
Ninety-Seventh Revised Sheet No. 11B.

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement current percentage component of the Company's total fuel reimbursement percentages for gathering, storage and transportation services, and to the electric power reimbursement current rate component of the Company's total electric power reimbursement rates for storage and transportation services, pursuant to Williston Basin's Fuel and Electric Power Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

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). 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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23040 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–593–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 4, 2003.

Take notice that on August 29, 2003, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Eleventh Revised Sheet No. 4C, to become effective October 1, 2003.

WIC states that the tendered tariff sheet revises the Columbia Exit Fee Surcharge Credits applicable to WIC's maximum rate firm and interruptible shippers' transportation service on WIC's system.

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). 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: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23043 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–620–000]

Notice of Scoping Meetings, Site Visit and Soliciting Scoping Comments

September 4, 2003.

a. *Type of Application:* Subsequent License, Alternative Licensing Process.

b. *Project No.:* 620.

c. *Applicant:* NorQuest Seafoods, Inc. (NorQuest).

d. *Name of Project:* Chignik Hydroelectric Project.

e. *Location:* On Indian Creek, a tributary of Chignik Bay, in the Town of Chignik, Aleutian Islands, Alaska. The project occupies 38.89 acres of United States lands under the jurisdiction of the Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact:* Mr. Ron Soule, NorQuest Seafoods, Inc., 5245 Shilshole Avenue, NW, Seattle, WA 98107–4833, Phone: (206) 281–7022; Mr. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 W 33rd Avenue, #310, Anchorage, AK 99503, Phone: (907) 258–2420.

h. *FERC Contact:* John M. Mudre, (202) 502–8902,*john.mudre@ferc.gov.*

i. *Deadline for filing scoping comments:* November 7, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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.

Scoping 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.

j. The existing project consists of a 16.5-foot-high timber dam at the outlet of Upper Lake (a.k.a. Indian Lake), creating a reservoir of approximately 8 acres at the maximum reservoir elevation of 431 feet (local datum), a channel spillway, a 7,700-foot-long, 8-inch-diameter wood-stave and steel pipeline, a 60-kilowatt generating unit inside the applicant's fish cannery, the generator leads, and appurtenant facilities. No new facilities or changes in operation are proposed.

k. *Scoping Process:* NorQuest is using the Federal Energy Regulatory Commission's (Commission) alternative licensing process (ALP). Under the ALP, NorQuest has prepared a draft Preliminary Draft Environmental Assessment (PDEA) and draft license application for the Chignik Project. These documents were filed with the Commission on August 4, 2003, provided to interested parties, and posted on the Chignik Relicensing Web site on the Internet at *http://www.polarconsult.net/Chignik/index.html.*

NorQuest expects to file the PDEA and the license application for the Chignik Hydroelectric Project with the Commission by October 6, 2003. Commission staff will then conduct its environmental review of the proposed project in support of the Commission's decision in this proceeding, utilizing, in part, information contained in the PDEA. Although staff's intent is to prepare an Environmental Assessment, (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, these scoping meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings and site visit identified below, and to solicit your scoping comments.

l. *Scoping Meetings:* NorQuest and the Commission staff will hold two scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in staff's EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Meeting

Monday, October 6, 2003, 7 to 9 pm, NorQuest Seafoods Cannery, Chignik, Alaska.

Daytime Meeting

Wednesday October 8, 2003, 1 to 4 pm, Polarconsult Alaska, Inc., 1503 West 33rd Avenue, Suite 310, Anchorage, Alaska.

To help focus discussions, interested parties should review the applicant's draft PDEA, which has been distributed to the parties on the mailing list. Copies of the draft PDEA also will be available at the scoping meetings. The draft PDEA is also 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.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues identified for analysis in the draft PDEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in Commission staff's EA; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The daytime meeting will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Although there will be no stenographer at the evening meeting, comments at that meeting will be noted and incorporated into the record. Written comments will be accepted at both meetings and can

also be filed with the Secretary until November 7, 2003 (*see* ''j.'' above).

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

m. *Site Visit:* NorQuest will conduct a walking tour of the project on Tuesday, October 7, 2003, beginning at 9 a.m. Participants should assemble at that time at NorQuest's cannery in Chignik. Participants should prepare for a walk of several miles and potentially inclement weather. Anyone having questions concerning the site visit should contact Dan Hertrich at the address or phone listed in ''g.'' above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23032 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RM01–8–000 ER02–2001–000]

Federal Energy Regulatory Commission

September 4, 2003.

Revised Public Utility Filing Requirements Electric Quarterly Reports; Notice of Electric Quarterly Reports Workshop

On April 25, 2002, the Commission issued Order No. 2001,[1] a final rule which requires public utilities to file Electric Quarterly Reports. Order 2001-C, issued December 18, 2002, instructs all public utilities to file these reports using Electric Quarterly Report Submission Software. This notice announces a workshop for EQR users to be held Monday, September 29 and Tuesday, September 30, 2003, at FERC headquarters, 888 First Street, NW., Washington, DC. The meeting will run from 1 p.m. to 5 p.m. on Monday and from 10 a.m. to 4 p.m. on Tuesday.

At the workshop, Commission staff and EQR users will discuss:

- Control area naming conventions;
- Standardized names for trading hubs for the Specific Location fields;
- Product Names and definitions;
- Day-Ahead vs. Real Time reporting;
- An EQR refiling policy;
- Export data function improvements; and
- Other user issues.

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002); reh'g denied, Order No. 2001–A, 100 FERC ¶ 61,074, reconsideration and clarification denied, Order No.2001–B, 100 FERC ¶ 61,342 (2002).

This is intended to be a working meeting with considerable discussion of detailed elements of the EQR.

All interested parties are invited to attend. Documents to be discussed at the meeting will be posted on the EQR Users Group and Workshops page on the Commission's Web site at *http://www.ferc.gov* /docs-filing/eqr/groups-workshops.asp. For those unable to attend in person, limited access to the workshop will be available by teleconference. (WebEx, used for previous meetings, will not be used.)

Those interested in participating are asked to e-mail *eqr@ferc.gov* to register. There is no registration fee. In addition to the Workshop sessions noted above, there will be a working group session on Monday, September 29, 2003, from 9 a.m. to 11:30 a.m., to help frame some of the more challenging issues. This session will not be available via teleconference.

Interested parties wishing to file comments may do so under the above-captioned Docket Numbers. Those filings will be 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

For additional information, please contact Steven Reich of FERC's Office of Market Oversight & Investigations at (202) 502–6446 or by e-mail, *steve.reich@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–23033 Filed 9–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0169, FRL–7555–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Conflict of Interest, #1, EPA ICR Number 1550.05, OMB Control Number 2030–0023

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 02/29/2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 10, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0169, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jill Robbins, OAM, 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1052; fax number: (202) 565–2551; e-mail address: *robbins.jill@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0169, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public

disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those which are awarded contracts supporting the Superfund program.

Title: Conflict of Interest, Rule #1.

Abstract: Contractors performing at Superfund sites will be required to disclose business relationships and corporate affiliations to determine whether EPA's interests are jeopardized by such relationships. Because EPA has the dual responsibility of cleanup and enforcement and because its contractors are often involved in both activities, it is imperative that contractors are free from conflicts of interest so as not to prejudice response and enforcement actions. Contractors will be required to maintain a database of business relationships and report information to EPA on either an annual basis or when each work assignment is issued. Responses to the collection are required prior to award of a contract. Submissions will be protected from public release as Confidential Business Information in accordance with 40 CFR 2.201. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Public burden is estimated to average 1969 hours per respondent.

Annual EPA number of respondents covered by this collection is estimated to be 90. The total respondent burden hours is estimated to be 177,210. At an average cost of $110,067.10 for each submission, the annual cost to the respondents is $9,906,039. The number of respondents may fluctuate in any given year based upon how many contracts are active at the Agency. Nominal capital or start up costs are expected. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 3, 2003.

Leigh Pomponio,

Manager, Policy and Oversight Service Center.

[FR Doc. 03–23058 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0170, FRL–7556–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Invitation for Bids and Request for Proposals (IFBs and RFPs) EPA ICR Number 1038.10, OMB Control Number 2030–0006

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 10, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0170, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jill Robbins, OAM, 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1052; fax number: (202) 565–2551, e-mail address: *robbins.jill@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0170, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When

EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those companies or organizations, large and small businesses, that want to provide the EPA with supplies or services.

Title: Invitation for Bids and Request for Proposals (IFBs and RFPs).

Abstract: EPA requires contractors to submit information in order to be considered for the award of a contract. Information requested includes: prices for the supplies/services requested, information on past performance, technical and cost information, and general financial and organizational information. Information provided by vendors in response to an RFP/IFB is used to evaluate which vendor will provide the best product in terms of quality, timeliness and price. Response to IFBs/RFPs are required to be considered for a contract award. The legal authority for this collection is 41 U.S.C. 253., contractor confidential business information submitted in connection with an IFB or RFP response is protected from public release in accordance with 40 CFR 2.201 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden estimate for responding to IFBs is 8 hours per submission. Annual collection by the Agency is estimated to be 298 bids. At an average cost of $503.57 for each submission, the annual cost to respondents is $150,063.86. Burden for responding to RFPs is estimated at 251 hours per submission. Annual receipt of proposals by the Agency is expected to be 1224. At an average cost of $15,837.86 the annual cost for RFP information collection is estimated at $19,385,540. The total respondent burden for both IFBs and RFPs is 309,608 hours. Total annual cost for IFBs and RFPs is estimated at $19,535,603. This number fluctuates year to year based on how many IFBs and RFPs are released at the Agency. Nominal capital or start up costs are expected. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 3, 2003.

Leigh Pomponio,

Manager, Policy and Oversight Service Center.

[FR Doc. 03–23063 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7556–6]

Notice of Charter Renewals of the Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: The Charter for the Environmental Protection Agency's Children's Health Protection Advisory Committee (CHPAC); will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2 section 9(c). The purpose of CHPAC is to provide advice and recommendations to the Administrator of EPA on issues associated with development of regulations, guidance and policies to address children's health risks.

It is determined that CHPAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Joanne Rodman, Designated Federal Officer, CHPAC, U.S. EPA, OCHP MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

Dated: September 3, 2003.

Joanne Rodman,

Acting Director, Office of Children's Health Protection.

[FR Doc. 03–23059 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7556–2]

Request for Nominations to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill several vacancies on the Good Neighbor Environmental Board. For this round of recruitment, given the goal of maintaining diverse representation across sectors and geographic locations, tribal representatives and representatives from academic

institutions in the state of Arizona are especially encouraged to apply. Suggested deadline for receiving nominations is Friday, September 19, 2003. Appointments will be made by the Administrator of the Environmental Protection Agency. Appointments are scheduled to be announced during October 2003.

ADDRESSES: Submit nomination materials to: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA 94105, T: 415–972–3437, F: 415–947–3537, e-mail *koerner.elaine@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, Good Neighbor Environmental Board, EPA Region 9 Office, WTR–4, 75 Hawthorne St., San Francisco, CA 94105, T: 415–972–3437, F: 415–947–3537, e-mail *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the U.S. President and Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the U.S. side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. Board members typically contribute 10–15 hours per month to the Board's work. The Board membership position is voluntary; travel expenses are covered.

The following criteria will be used to evaluate nominees:

- Residence in one of the four U.S. border states.
- Professional knowledge of, and experience with, environmental infrastructure activities and policy along the U.S.-Mexico border.
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations.
- Representation of a sector or group that is involved in border region environmental infrastructure.
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies.
- Willingness to serve a two-year term as an actively-contributing member, with possible re-appointment to a second term.

Nominees' qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups. Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

Dated: August 29, 2003.

Elaine M. Koerner,

Designated Federal Officer.

[FR Doc. 03–23061 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7556–3]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

The purpose of the meeting is to discuss the NACEPT Council agenda for FY 04 and agree on appropriate venues to address the topics in a timely and efficient manner. NACEPT will discuss a number of issues, including environmental technology, EPA's Report on the Environment, and emerging trends facing the agency. In addition, NACEPT will report on the work of its subcommittees.

DATES: NACEPT will hold a two day public meeting on Wednesday, September 24, 2003, from 9 a.m. to 5 p.m. and Thursday, September 25, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Mark Joyce, Designated Federal Officer using the contact information below. The public is welcome to attend all portions of the meeting.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov,* 202–233–0068, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mark Joyce at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 29, 2003.

Mark Joyce,

Designated Federal Officer.

[FR Doc. 03–23060 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0313; FRL–7326–3]

EPA-USDA Committee to Advise on Reassessment and Transition; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency-United States Department of Agriculture Committee to Advise on Reassessment and Transition (EPA-USDA CARAT) will hold a public meeting on October 1-2, 2003. An agenda is being developed and will be posted by September 22, 2003, on EPA's website. This meeting will focus on recent case studies for the following selected commodities: Almonds, carrots,

cranberries, peaches, potatoes, and walnuts. This first round of case studies was selected because of current pest management problems either from regulatory action, pest resistance, or a lack of adequate control measures. The CARAT Transition Work Group met on July 17–18, 2003, to discuss these case studies and to develop recommendations for presentation to EPA and USDA at this meeting.

DATES: The meeting will be held on Wednesday, October 1, 2003, from 9 a.m. to 5 p.m., and Thursday, October 2, 2003, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Hotel Washington, 515 Pennsylvania Avenue NW., Washington, DC. The telephone number to the hotel is (202) 638–5900. The Hotel Washington is approximately 2½ blocks from the Metro Center Station and about a 15 minute taxi ride from Ronald Reagan Washington National Airport.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs, Mail code 7501C, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 703–308–4775; fax number: 703–308–4776; e-mail address: *Fehrenbach.Margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0313. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An agenda is being developed and will be posted by September 22, 2003, on EPA's website at *www.epa.gov/pesticides/carat*.

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

II. Background

The Committee to Advise on Reassessment and Transition (CARAT) was established in accordance with the Federal Advisory Committee Act to provide advice and counsel to the Administrator of EPA and the Secretary of Agriculture regarding strategic approaches for pest management planning and tolerance reassessment for pesticides as required by the Food Quality Protection Act of 1996 (FQPA). Through CARAT, EPA and the USDA are working together to ensure smooth implementation of FQPA through use of sound science, consultation with stakeholders, increased transparency, and reasonable transition for agriculture. CARAT is composed of a balanced group of participants from the following sectors: Pesticide user, grower and commodity groups; industry and trade associations; food processors and distributors; environmental/public interest and farmworker groups; Federal, State and Tribal governments; public health organizations; and academia. The CARAT Work Group on Transition was established to identify barriers to the development and adoption by users of new, safer and effective pest management techniques and to formulate recommendations for Federal agency actions that, in partnership with the range of stakeholders, will reduce or eliminate these barriers.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed under Unit I.B.1.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides, Pests, Risk assessment.

Dated: September 2, 2003.

Jim Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–22936 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0263; FRL–7321–2]

Dimethoate; Receipt of Requests for Amendment to Remove Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The companies that hold the pesticide registrations of products containing dimethoate have submitted requests to modify their technical labels to remove uses on certain crops. These crops consist of apples, grapes, cabbage, collards, spinach, head lettuce, broccoli

raab, fennel, tomatillo, lespedeza, and trefoil. It is necessary to cancel use on apples, grapes, cabbage, collards, spinach, and head lettuce as part the process of revising the dimethoate human health risk assessment.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0263, must be received on or before October 10, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8180; fax number: (703) 308–7042; e-mail address: *dobak.pat@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders may be interested in dimethoate availability and use on apples, grapes, cabbage, collards, spinach, head lettuce, broccoli raab, fennel, tomatillo, lespedeza, and trefoil, including environmental, human health, and agricultural advocates; the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket (ID) number OPP–2003–0263. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

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

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit

comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0263. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0263. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0263.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0263. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide 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 docket ID 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.

II. What Action is the Agency Taking?

This notice announces the amended registration requests by Cheminova, Inc., BASF, Gowan, Drexel, and Microflo for the deletion of certain uses from their products containing dimethoate. The uses requested for deletion are: Apples, grapes, cabbage, collards, spinach, head lettuce, broccoli raab, fennel, tomatillo, lespedeza, and trefoil. In addition, the registrants waived the 180–day comment period for these use deletions.

Dimethoate is a systemic organophosphate insecticide registered for use on a wide variety of fruit, vegetables, grains, ornamentals, and forestry uses. The registered uses on apples, grapes, cabbage, collards, spinach, and head lettuce have been identified as significantly contributing to the dietary risks associated with human consumption of these crops. The other registered uses included in this notice, broccoli raab, fennel, tomatillo, lespedeza, and trefoil, were added to the requests based on follow-up to previously submitted comments stating that these crops would not be supported for reregistration. This notice announces EPA's receipt of the use deletion requests and a 30–day public comment period to provide input regarding the requests. The Agency believes that the impact to growers on deleting broccoli raab, fennel, tomatillo, lespedeza, and trefoil will be minimal. Although there is significant use on apples, grapes, cabbage, collards, spinach, and head lettuce, the technical registrants have elected to delete these uses in order to address dietary risks from dimethoate. The following table includes the names and registration numbers for the affected products:

MANUFACTURING-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration No.	Product
Cheminova	4787–7	Chemathoate Technical
BASF	7969–32	Perfekthion Manufactures' Technical
Gowan	10163–211	Gowan Dimethoate Technical
Drexel	19713–209	Drexel Dimethoate Technical
Micro Flo	51036–279	Dimethoate Technical

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit

such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 10, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation order is issued. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 27, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–22937 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–7]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 405 of the Water Quality Act of 1987 added section 402(p) to the Clean Water Act (CWA) which requires the EPA to develop a phased approach to regulating storm water discharges under the NPDES program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

EPA Region 4 published a final NPDES general permit for storm water discharges from construction activities that are classified as ''associated with industrial activity'' on March 31, 1998, (63 FR 15622) and modified the permit on April 28, 2000 (64 FR 25122). The general permit established Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans (SWPPPs), monitoring requirements for discharges to 303(d) listed water bodies, and requirements to conduct site inspections for facilities with discharges authorized by the permit. This notice requests comments on the draft reissuance of the above referenced general permit for discharges of storm water from construction activities ''associated with industrial activity'' on Indian Country lands where EPA Region 4 is the permit issuing authority.

DATES: Comments relative to this draft permit are not required; however, if you wish to submit comments, the comments must be received by November 10, 2003.

ADDRESSES: Persons wishing to comment on or object to any aspects of this permit reissuance or wishing to request a public hearing, are invited to submit the same in writing within sixty (60) days of this notice to the Water Management Division, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Ann Brown.

FOR FURTHER INFORMATION CONTACT: The proposed NPDES general permit, fact sheet and other relevant documents are on file and may be inspected any time between 9 a.m. and 4 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, fact sheet or other relevant documents may be obtained by writing the United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Ann Brown, or calling (404) 562–9288. In addition, copies of the draft NPDES general permit, fact sheet or other relevant documents may be downloaded at *www.epa.gov/region4/water/permits/stormwater.html.*

Contact Mr. Floyd Wellborn, telephone number (404) 562–9296, or Mr. Michael Mitchell, telephone number (404) 562–9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, NPDES and Biosolids Permits Section, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION:

I. Procedures for Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the proposed NPDES general permit received within the 60-day period will be considered in the formulation of final determinations regarding the permit reissuance.

After consideration of all written comments, the requirements and policies in the Act, and all appropriate regulations, the EPA Regional Administrator will make a

determination regarding the general permit reissuance. If the determination is substantially unchanged from those announced by this notice, the Administrator will so notify all persons submitting written comments. If the determination is substantially changed, the Administrator may issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15, except for a general permit as cited by 40 CFR 124.71. Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21, as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit.

II. Background

A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 added section 402(p) to the CWA, which directed the EPA to develop a phased approach to regulate the storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' Construction activities that disturb at least five acres of land or are part of a larger plan of development and have point source discharges to waters of the U.S., are defined in 40 CFR 122.26(b)(14)(x) as an ''industrial activity.'' Upon the advent of the Phase II storm water regulations, these activities became referred to as large construction activities.

Phase II of the storm water program was published in the **Federal Register** on December 8, 1999. Phase II includes sites disturbing at least one acre of land and less than five acres, as well as sites less than one acre of land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity is defined at 40 CFR 122.26(b)(15)(i).

B. Significant Changes From the 1998 General Permit and the Subsequent 2000 Modification

1. The organization and numbering of the permit has been changed from the March 1998 (63 FR 15622) permit and the April 2000 (64 FR 25122) permit modification to mirror the organization and numbering of the national permit issued by various other EPA regions in the July 2003 **Federal Register** (68 FR 39087). This change also will support the use of the NOI form used to apply for coverage under the general permit. The NOI directs the applicant to certain sections of the permit. Therefore, it is imperative that the permit sections cited correspond to the topics referenced in the NOI.

2. Coverage for discharges from small construction activities has been added to the eligibility provisions.

3. The eligibility conditions were clarified regarding facilities discharging to water bodies with Total Maximum Daily Loads (TMDLs).

4. Waivers have been added for qualifying discharges from small construction activities.

5. The permit coverage area has been changed. Today's proposed reissuance no longer covers facilities on non-Indian lands in the State of Florida. It does continue to cover facilities on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina.

6. The NOI has been changed from the previous permit. See page 78118 of the December 20, 2002, **Federal Register** (67 FR 78116) for a detailed discussion on the changes.

C. Summary of Terms and Conditions of the Proposed General Permit

1. Discharges Covered

Operators of large, five acres and greater, and small, one acre to less than five acres, construction activities on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges specifically listed in the permit.

2. Limitations on Coverage

The proposed general permit retains the eligibility restrictions from the previous permit. The permit does not regulate post-construction discharges, storm water discharges commingled with non-storm water discharges, except as noted below, discharges previously covered by another NPDES, discharges which cause or contribute to a violation of a water quality standard, discharges which adversely affect threatened or endangered species or their critical habitat, or discharges which adversely affect a listed or proposed to be listed historic place or resource. In addition, the permit includes a new restriction on discharges of storm water to waters for which a TMDL has been developed. Discharges of storm water from large and small construction activities that do not meet the eligibility requirements of the proposed general permit would be required to submit an individual permit application.

3. Deadlines and Permit Application Process

To obtain discharge authorization under the proposed general permit, dischargers must submit an NOI, which requires basic information about the facility owner/operator, location and discharge(s). NOI due dates, for construction activities on Indian lands in Alabama, Florida, Mississippi and North Carolina, are as follows:

i. Ongoing construction activities previously covered by an NPDES permit, must submit an NOI within 60 days of the effective date of this permit.

ii. New construction activities, after the effective date of this permit, must submit an NOI at least 48 hours prior to the commencement of any construction activity (*e.g.*, the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).

4. Storm Water Pollution Prevention Plans

The proposed general permit requires operators covered by the permit to develop and implement a SWPPP. All SWPPPs must be developed in accordance with sound engineering practices and developed specific to the site. The SWPPP must be prepared prior to submission of the NOI.

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action in ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal

governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act (APA) or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' APA section 551(4) defines rule as ''an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency . . . '' APA section 551(6) defines orders as ''a final disposition . . . of an agency in a matter other than rule making but including licensing.'' APA section 551(8) defines ''license'' to ''include . . . an agency permit . . . '' The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. APA section 551(5) defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' By its terms, section 553 applies only to rules and not to orders, exempting by definition permits.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 401, ''Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law).'') UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the RFA. That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rule making pursuant to section 553(b) of the APA, or any other law.''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' by definition under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide an opportunity for a hearing. Therefore, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

VI. Paperwork Reduction Act

EPA HQ has reviewed the requirements imposed on regulated facilities resulting from the proposed construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the construction general permit for large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040–0188) in previous submissions made for the NPDES permit program under the provisions of the CWA. Information collection requirements of the construction general permit for small construction activities were submitted to OMB (OMB Control No. 2040–0211) for review and approval and will be published in a separate **Federal Register** notice.

Carol Kemker,

Acting Director, Water Management Division.

[FR Doc. 03–23062 Filed 9–9–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act Notice of Public Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons that the Advisory Committee on Diversity for Communications in the Digital Age has been established and is holding its first meeting, which will be held at the Federal Communications Commission in Washington, DC.

DATES: September 29, 2003 at 2 p.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, Commission Meeting Room, Room TW–C305, 445 12th St. SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane E. Mago, Designated Federal Officer of the Committee on Diversity, or Maureen C. McLaughlin, Alternate Designated Federal Officer of the Committee on Diversity, 445 12th St. SW., Washington, DC 20554; telephone (202) 418–2030, e-mail *Jane.Mago @fcc.gov, Maureen.Mclaughlin@fcc.gov.* Press Contact, Audrey Spivak, Office of Public Affairs, 202–418–0512, *aspivak@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Diversity Committee was established by the Federal Communications Commission to examine current opportunities and develop recommendations for policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. The Diversity Committee will tap the expertise of high-level players in the communications sector as well as the financial and technology communities. The Diversity Committee will prepare periodic and final reports to aid the FCC in its oversight responsibilities and its regulatory reviews in this area. In conjunction with such reports and analyses, the Diversity Committee will make recommendations to the FCC concerning the need for any guidelines, incentives, regulations or other policy approaches to promote diversity of participation in the communications sector. The Diversity Committee will also develop a description of best practices within the communications sector for promoting diversity of participation.

Information concerning the activities of the Diversity Committee can be reviewed at the Committee's Web site: *http://www.fcc.gov/DiversityFAC.* Material relevant to the September 29th meeting will be posted there.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However,

admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission's Web site: *www.fcc.gov.*

The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22971 Filed 9–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2626]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 3, 2003.

Petitions for Reconsideration and Clarification has been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by September 25, 2003. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Commission's Rules-Competitive Bidding Procedures (WT Docket No. 97–82).

Number of Petitions Filed: 2.

Subject: In the Matter of the Implementation of sections 309(j) and 337 of the Communications Act of 1934 as Amended (WT Docket No. 99–87);

Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies.

Number of Petitions Filed: 19.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22967 Filed 9–9–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Richard Larry and Lois Voorhees, Omaha, Nebraska; Patricia Lee and James A. Bohart, Harvard, Nebraska; and Steven Lowe and Deborah L. Voorhees, Harvard, Nebraska; to retain voting shares of Harvard State Company, Harvard, Nebraska, and thereby indirectly retain voting shares of Harvard State Bank, Harvard, Nebraska.

Board of Governors of the Federal Reserve System, September 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22975 Filed 9–9–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 2003.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Sun West Capital Corporation, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Sun West Bank, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, September 4, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22976 Filed 9–9–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–03–02]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document finalization and posting.

SUMMARY: The JFMIP is seeking announcement of document finalization and posting for the JFMIP document entitled,''Inventory, Supplies, and Materials System Requirements'' dated September 2003. The document is an update of the Federal Financial Management System Requirements (FFMSR) document addressing standard financial requirements for Federal logistics systems. The document is intended to assist agencies when developing, improving or evaluating inventory held for sale, operating materials and supplies, and stockpile materials systems. It provides the baseline functionality that agency systems must have to support agency missions and comply with laws and regulations. This document augments

the existing body of FFMSR that define financial system functional requirements that are used in evaluating compliance with the Federal Financial Management Improvement Act (FFMIA) of 1996.

DATES: For release as soon as possible.

ADDRESSES: The document is available on the JFMIP Web site: *www.jfmip.gov.*

FOR FURTHER INFORMATION CONTACT: Elvon Lloyd at *elvon.lloyd@gsa.gov.*

SUPPLEMENTARY INFORMATION: The FFMIA of 1996 mandated that agencies implement and maintain systems that comply substantially with FFMSR, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial system requirements documents as a key benchmark that agency systems must meet to substantially comply with systems requirements provisions under FFMIA. To support the provisions outlined in the FFMIA, the JFMIP is updating obsolete requirements documents and publishing additional requirements documents.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 03–22952 Filed 9–9–03; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 37500–37502, dated June 24, 2003) is amended to reorganize the Office of Equal Employment Opportunity, Office of the Director.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Office of Equal Employment Opportunity and insert the following:

Office of Equal Employment Opportunity (CA9). The Office of Equal Employment Opportunity (OEEO) is located in the Office of the Director, Centers for Disease Control and Prevention (CDC). The Director, OEEO, serves as the principal advisor to the Director, CDC, on all equal employment opportunity matters. The Office: (1) Develops and recommends for adoption CDC-wide OEEO policies, goals, and priorities to carry out the directives of the U.S. Office of Personnel Management, U.S. Equal Employment Opportunity Commission, and Department of Health and Human Services (DHHS) equal employment opportunity policies and requirements that are mandated by Title VII, Civil Rights Act of 1964; Age Discrimination in Employment Act (ADEA); Rehabilitation Act of 1973; Civil Service Reform Act; 29 CFR 1614, Federal Sector Equal Employment Opportunity; Executive Order 11478, Equal Employment Opportunity in the Federal Government; (2) provides leadership, direction, and technical guidance to CDC OEEO managers and staff for the development of comprehensive OEEO programs and plans; (3) coordinates and evaluates agency OEEO operations and plans, including affirmative action; (4) develops plans, programs, and procedures to assure the prompt receipt, investigation, and resolution of complaints of alleged discrimination by reason of race, sex, age, religion, national origin, handicap, or by reason of reprisal or retaliation; (5) coordinates the development of comprehensive special emphasis programs to assure full recognition of the needs of women, minorities, and the handicapped in hiring and employment; (6) identifies needs for OEEO functions within CDC and assures the development of a training curriculum in OEEO for all CDC supervisory personnel; (7) prepares, or coordinates the preparation of, reports and analyses designed to reflect the status of employment of women and minorities at CDC and maintains liaison with DHHS and other organizations concerned with equal employment opportunity; (8) ensures effective coordination of OEEO activities with CDC personnel and training programs, and with CDC Centers/Institute/Offices (CIOs) manpower planning and support programs in the health professions; (9) develops a system of structured reviews and evaluations of CDC OEEO activities to assure effective operations and accountability, including the Department's Major Initiatives Traction System for OEEO; (10) assists in assuring the adequate allocation of resources for OEEO including the establishment of guidelines for recruiting, selection, and training of agency OEEO personnel; (11) develops and directs research and evaluation studies to focus on, and improve the effectiveness of, OEEO program activities; (12) provides direct support for OEEO program activities in CDC.

Dated: July 30, 2003.

William Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22987 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 47065–47076, dated August 7, 2003) is amended to reorganize the Financial Management Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement of the Financial Management Office and insert the following:

Financial Management Office (HCAJ2). (1) Provides leadership and coordination in the development and administration of CDC's financial management policies; (2) develops budget submissions for CDC; (3) collaborates with CDC's Office of Program Planning and Evaluation in the development and implementation of long-range program and financing plans; (4) participates in budget reviews and hearings; (5) manages CDC's system of internal budgetary planning and control of funds; (6) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures; (7) conducts CDC-wide manpower management (including productivity measurement) activities; provides accounting and auditing services; (8) prepares financial reports; (9) serves as the focal point for domestic and international travel policy, procedures and interpretation; (10) provides legislation reference services; (11) plans, directs, and conducts internal quality assurance reviews; (12) analyzes data and makes recommendations to assure

effective safeguards are in place to prevent fraud, waste and abuse; (13) assists in identifying or conducting special financial management training programs; and (14) maintains liaison with the Office of the Secretary, Department of Health and Human Services, and other Government organizations on financial management matters.

Office of the Director (HCAJ21). (1) Provides leadership and guidance in all areas of financial management; (2) serves as a CDC witness in budget hearings before Committees of Congress, Office of Management and Budget, and Department of Health and Human Services; (3) participates with top management in program planning and policy determinations, evaluations conferences, and decisions concerning financial resources; (4) provides a centralized source for current information on financial management legal and regulatory requirements governing the prevention and control of diseases; (5) advises the CDC Deputy Director for Program Management concerning reprogramming of funds; and (6) provides consultation and assistance in financial management to State and local health departments when requested by CDC officials.

Financial Policy and Internal Quality Assurance Activity (HCAJ212). (1) Provides leadership, consultation, guidance and advice on financial policy and internal quality assurance matters for CDC; (2) develops, analyzes, and evaluates financial management polices, guidelines, and services which have CDC-wide impact; (3) works with personnel from all disciplines within CDC to identify the areas in which financial policy needs to be strengthened; (4) reviews, assesses, and recommends financial policy that is consistent with internal controls and the hierarchy of Federal and Department of Health and Human Services policies and procedures; (5) ensures that resources are safeguarded against fraud, waste, and abuse; managed economically and efficiently; and desired results are achieved; (6) reviews and independently assesses the soundness, adequacy, and application of budgetary and accounting controls; (7) reviews the reliability and integrity of financial and budget information and the means used to identify, measure, classify, and report such information; (8) reviews the adequacy and effectiveness of systems and procedures having an impact on expenditures of funds and use of resources; (9) assesses the reliability and accuracy of accounting and budgetary data and reports developed within CDC; and (10) identifies problems and weaknesses in internal controls and provides reliable information for management to base corrective action.

Accounting Branch (HCAJ22). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops accounting and travel policies and procedures for CDC; (2) provides financial information for management purposes, effective control and accountability of all funds, and suitable integration of CDC accounting with the accounting operations of the U.S. Treasury; (3) coordinates activities of the Accounting Branch with the FMO Director, the FMO Budget Branch, the FMO Financial Services Branch, the Financial Policy and Internal Quality Assurance Activity, and the FMO Financial Systems Branch; (4) coordinates accounting and travel policy issues with the HHS Office of Financial Policy; (5) reviews and develops accounting systems to comply with requirements of HHS and the General Accounting Office and maintains an integrated system of accounts to meet the budgetary and accounting requirements of CDC; (6) reviews and implements the legal, accounting and reporting requirements of the Chief Financial Officers' Act, the Federal Managers' Financial Integrity Act, the Principles of Appropriation Law and other regulatory requirements; (7) compiles all accounting information for the 5-Year Financial Management Plan which provides CDC's financial management vision and objectives for the ensuing 5 year period; (8) develops strategies for employee training and professional development; and (9) compiles and submits the annual financial statements required by the Chief Financial Officers' Act.

Debt and Property Management Section (HCAJ223). (1) Compiles and submits the quarterly HHS Debt Management report which reports the status of all unpaid debts due to CDC from the public; (2) compiles and submits the annual Treasury report of debts due to CDC; (3) performs all debt collection activities in accordance with the Debt Collection Act of 1982 and in accordance with requirements provided by HHS; (4) prepares customer billings; (5) collects and records all amounts billed to customers; (6) controls billings and collections processed on the On-line Payment and Collection System (OPAC/IPAC) related to debt collection; (7) reconciles accounts receivable subsidiary records to the CDC general ledger receivable accounts; (8) coordinates CDC's debt collection activities with FMO's Financial Services Branch and with CDC program administrative offices; (9) coordinates all debt collection activities with the U.S. Justice Department and with private collection agencies' (10) prepares and controls daily deposits which are delivered to the Federal Reserve Bank; (11) performs property accounting activities including maintenance of general ledger property accounts and reconciliation with the CDC Personal Property System; and (12) maintains travel advance records and reconciles subsidiary records to general ledger advance accounts.

Cincinnati Accounting Section (HCAJ222). (1) Maintains a system of accounts to meet the budgetary and accounting requirements of the NIOSH accounting point; (2) provides financial information for management purposes, effective control and accountability of all accounting point funds, and integration of NIOSH accounting with the account and reporting operations of CDC and the U.S. Treasury; (3) coordinates the NIOSH accounting point accounts payable and receivable activities including auditing of vouchers; (4) reviews the NIOSH accounting point system for compliance with CDC, HHS and General Accounting Office requirements; and (5) reconciles NIOSH accounting point general ledger accounts including cash, property and receivables.

General Ledger Section (HCAJ224). (1) Compiles and submits the Report of Budget Execution which reports the obligations incurred against the current year appropriation; (2) compiles and submits the monthly Statement of Transactions report to the U.S. Treasury which reports the CDC cash disbursements by appropriation; (3) reconciles general ledger cash accounts with the U.S. Treasury monthly disbursements and receipts; (4) performs daily maintenance on the general ledger accounts including the asset, liability, capital and budgetary accounts; (5) makes recommendations for improvements to the accounting system and monitors internal controls; (6) analyzes the general ledger accounts, prepares system-wide reconciliations and interprets the effect of transactions on the CDC's financial resources; (7) develops new reports to support budget requirements and to support the needs of CDC management; (8) controls input of all funding transactions; (9) performs daily maintenance of accounting system tables; and (10) controls grant awards processed through the Payment Management System (PMS) including submission of grant obligations to PMS, recording of disbursements received from PMS and reconciliation of the general ledger accounts.

Budget Branch (HCAJ23). (1) Provides leadership, consultation, guidance, and advice on budgetary matters to CDC; (2) prepares consolidated appropriation budget estimates including narrative justifications; (3) conducts studies in budget planning to determine proper relationship between program planning and acquisition of funds; (4) develops criteria to be used in estimating program needs; (5) conducts CDC-wide manpower management (including productivity measurement) activities; (6) develops expenditure information for preparation of quarterly and annual budgets; (7) designs and prepares reports, tables, and analyses to demonstrate fiscal requirements; (8) serves as the primary CDC focal point for planning, organizing, and administering a range of activities for legislative issues related to Congressional appropriation legislation matters; (9) summarizes Congressional and legislative positions on national public health program issues in order to establish impact on CDC budgetary requirements; (10) reviews and analyzes new or amended appropriation legislation or report language concerning public health programs, health related research activities, and scientific research pertinent to CDC's mission and responsibilities and prepares related issues papers; (11) in coordination with CIOs, develops appropriation report language related to budget formulation submissions; (12) develops strategy and background documentation regarding appropriation legislative issues and prepares related materials; (13) develops appropriation legislative background materials for presentation to HHS, Office of Management and Budget (OMB) and Congressional Appropriations Committees; (14) assists the Director, FMO, as the CDC representative at appropriations hearings; (15) responds to inquiries regarding appropriation budget-related policy issues; and (16) develops training strategies on legislative issues for the professional development of staff.

Financial Systems Branch (HCAJ25). (1) Responsible for the analysis, design, programming, implementation, enhancement and documentation of automated accounting systems and subsystems for FMO; (2) provides consultative services to systems implementers within CDC, the Department and other Federal agencies on a broad range of issues including policy, data integrity, systems integration and interfacing issues as they relate to financial management systems; (3) provides technical support and assistance to various committees, teams and users in the integration with FMO financial systems and the access and interpretation of financial system data; and (4) responsible for hardware and software support for microcomputers and local area network(s) within FMO.

Financial Services Branch (HCAJ26). (1) In conjunction with the Financial Policy and Internal Quality Assurance Activity, develops and implements policies and procedures for all accounts payable and disbursement functions at CDC; (2) coordinates activities of the Financial Services Branch with the FMO Director, FMO Accounting Branch, FMO Budget Branch, FMO Financial Policy and Internal Quality Assurance Activity, and FMO Financial Systems Branch; (3) coordinates the development of new financial systems to automate accounts payable and disbursement operations, and maintains and serves as the CDC focal point on all existing automated payment and disbursement systems; (4) reviews obligation documents and payment requests from a variety of private sector and government sources to determine the validity and legality of the requests, and provides electronic authorization to the Department of the Treasury to issue checks or electronic funds transfers for valid payment requests; (5) compiles and submits a variety of cash management and travel reports required by the Department of the Treasury and various other outside agencies; (6) acts as liaison with the CIOs and outside customers to provide financial information, resolve problems and provide training and advise on payment, travel and disbursement issues; (7) serves as the CDC subject matter expert on all financial matters dealing with international travel, assignments and payments; and (8) analyzes internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators.

Cash Management and Quality Control Section (HCAJ262). (1) Overall responsibility for policies, procedures, internal controls and systems related to section payment and disbursement activities; (2) analyzes and reconciles disbursements made for CDC by other Federal activities, and insures that disbursements are consistent with Federal Appropriations Law requirements, GAO policies, interagency elimination entry requirements, and other governing regulations; (3) overall responsibility for all financial matters dealing with international travel, assignments and payments; (4) serves as the focal point at CDC for vendor, employee and CIO payment and disbursement questions and resolution of payment and disbursement problems; (5) acts as CDC liaison on all payment issues related to the implementation of the Government Purchase Card Program; (6) maintains contract advance records and coordinates the recording and reconciling of subsidiary records to general ledger advance accounts; (7) serves as the CDC focal point for cashier and imprest fund issues; (8) analyzes year-end unliquidated obligations for compliance with Federal Appropriations Laws and the Economy Act, and recommends funding changes to CIO's; and (9) prepares and reconciles all U.S. Treasury Department reports and transmissions and serves as the primary point of contact for all U.S. Treasury issues; (10) performs ongoing quality control reviews of various payment and disbursement processes and systems in the Financial Services Branch, including reviews to ensure compliance with the Prompt Payment Act and to validate the legality, propriety and accounting treatment of travel and non-travel payments at CDC, including reviews of payments processed by the Cincinnati office; (11) identifies recurring problems in payment processes and recommends corrective actions or identifies required training to correct the deficiency; (12) serves as the focal point for all Federal Income Tax issues for CDC payments, reconciles tax withholding general ledger accounts, and prepares all monthly, quarterly and annual reports to the Internal Revenue Service; and (13) establishes local policy and procedures on electronic payments and maintains the automated file containing vendor payment address and banking information.

Payment and Travel Services Section (HCAJ263). (1) Develops and implements policies and procedures related to payment processes and systems and ensures appropriate internal controls are in place and functioning to ensure the integrity and legality of CDC payments; (2) analyzes and approves payment for all equipment, supplies, travel, transportation and services procured by CDC, and ensures the validity, legality and proper accounting treatment of expenditures processed through the Accounts Payable module of the CDC Financial Management System; (3) provides expert level guidance, oversight, and interpretation of policies, laws, rules and regulations for the CIO's on all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel,

domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, *etc.*; (4) serves as the Subject Matter Expert and focal point for the development of new financial systems to automate accounts payable operations and serves as the focal point for payment systems issues for CDC; (5) researches and analyzes appropriations law issues at CDC and provides guidance consistent with legal and regulatory guidelines; (6) compiles and submits a variety of management and payment performance reports required by various outside agencies; (7) analyzes various internal reports to provide management information on topics such as interest expenses, workload, and various other performance indicators; (8) coordinates all aspects of CDC's Electronic Commerce Program in the Financial Services Branch; and (9) analyzes a variety of accounting and travel system reports to ensure that obligations are liquidated in a timely manner.

Dated: August 28, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22986 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 68 FR 47065–47076, dated August 7, 2003) is amended to reorganize the Procurement and Grant Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Procurement and Grants Office and insert the following:

Procurement and Grants Office (HCAJ7). (1) Advises the Director, CDC, and the Director's Staff, and provides leadership and direction for CDC acquisition, assistance, and material management activities; (2) plans and develops CDC-wide policies, procedures, and practices in acquisition, assistance, and material management areas; (3) obtains research and development, services, equipment, supplies, and construction through acquisition processes; (4) maintains functions relating to personal property, transportation, and warehousing operations; (5) awards, administers, and terminates contracts, purchase orders, grants, and cooperative agreements; (6) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions, assistance, and material management operations to ensure adherence to laws, policies, procedures, and regulations; (7) maintains liaison with HHS, GSA, GAO, and other Federal agencies on acquisition, assistance, and material management policy procedure, and operating matters.

Office of the Director (HCAJ71). (1) Provides leadership and guidance in all areas of Procurement and Grants Office (PGO) activities; (2) provides technical and managerial direction for the development of CDC-wide policies, procedures, and practices in the acquisition, assistance, and material management areas; (3) participates with senior management in program planning, policy determinations, evaluations, and decisions concerning acquisition, assistance, and material management; (4) provides direction for award, administration, measures of effectiveness and termination of contracts, purchases orders, grants, and cooperative agreements; (5) maintains a continuing program of reviews, evaluations, inquiries, and oversight activities of CDC-wide acquisitions, assistance, and material management operations to ensure adherence to laws, policies, procedures, and regulations; (6) maintains liaison with HHS, GSA, GAO and other Federal agencies on acquisition, assistance, and material management policy, procedure, and operating matters; (7) processes data for and maintains the contract information system for CDC and HHS; (8) provides technical and managerial direction for the development, implementation and maintenance of the Integrated Contracts Expert (ICE) System on a CDC-wide basis; (9) operates CDC's Small and Disadvantaged Business Program and provides direction and support to various other socioeconomic programs encompassing the acquisition and assistance activities; (10) provides cost advisory support to acquisition and assistance activities with responsibility for initiating requests for audits and evaluations and providing recommendations to contracting officer or grants management officer, as required, participates in negotiations with potential contractors and grantees, develops overhead rates for profit and nonprofit organizations, and provides professional advice on accounting and cost principles in resolving audit exceptions as they relate to the acquisition and assistance processes; (11) Develops and implements organizational strategic planning goals and objectives.

Acquisition and Assistance Field Branch (AAFB) (HCAJ72). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for NIOSH and NCHS through a variety of contractual mechanisms (competitive and non-competitive); (2) Plans, directs, and conducts assistance management activities for NIOSH and NCHS through the awards of through grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to request for management information from Office of Director , headquarters, regional staffs, NIOSH, NCHS and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to NIOSH and NCHS project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specification/statement of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management

functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for NIOSH and NCHS; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with NIOSH and NCHS components in carrying out their missions; (15) establishes Branch goals, objective, and priorities and assures their consistency and coordination with the overall objectives of PGO; (16) the acquisition and assistance functions in support of NIOSH and NCHS are accomplished with field office locations located in Pittsburgh, PA; Morgantown, WV; Cincinnati, OH; Spokane, WA; and Hyattsville, MD.

Acquisition and Assistance Branch A (HCAJ74). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch B (HCAJ75). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC through a variety of contractual mechanisms (competitive and non-competitive); (2) plans, directs, and conducts assistance management activities for CDC through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staffs, CDC program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolved audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CDC project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specifications/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Acquisition and Assistance Branch C (HCAJ78). (1) Plans, directs, and conducts the acquisition of non-personal services, supplies, equipment, research and development, studies, and data collection for CDC/ATSDR through a variety of contractual mechanisms (competitive and non-competitive); (2) Plans, directs, and conducts and assistance management activities for CDC/ATSDR through the awards of grants and cooperative agreements (competitive and non-competitive); (3) reviews statements of work and assistance applications from a management point of view for conformity to laws, regulations, and policies, and negotiates and issues contract, grant and cooperative agreement awards; (4) provides

continuing surveillance of financial and administrative aspects of acquisition and assistance supported activities to assure compliance with appropriate HHS and CDC policies; (5) gives technical assistance, where indicated, to improve the management of acquisition and assistance supported activities and responds to requests for management information from Office of Director, headquarters, regional staff, CDC/ATSDR program offices and the public; (6) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (7) provides for the collection and reporting of business management and programmatic data, and analyzes and monitors business management data on grants and cooperative agreements; (8) assures that contractor and grantee performance is in accordance with contractual and assistance commitments; (9) provides leadership and guidance to CD/ATSDR project officers and program officials; (10) provides leadership, direction, procurement options and approaches in developing specification/statements of work and contract awards; (11) plans, directs, coordinates, and conducts the grants management functions and processes in support of assistance awards, including cooperative agreements, discretionary grants, block grants, and formula grants, to State and local governments, universities, colleges, research institutions, hospitals, and other public and private organizations, small businesses, and minority- and/or women-owned businesses for CDC/ATSDR; (12) participates with top program management in program planning, policy determination, evaluation, and directions concerning acquisition and assistance strategies and execution; (13) maintains Branch's official contract and assistance files; (14) maintains a close working relationship with CDC/ATSDR program office components in carrying out their missions; (15) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Construction and Facilities Management Branch (HCAJ76). (1) Directs and controls acquisition planning activities to assure total program needs are addressed and procurements are conducted in a logical, appropriate, and timely sequence; (2) plans, directs, and conducts the acquisition of non-personal services, institutional support services, architect-engineering services, construction of new buildings, alterations and renovations, and commodities and equipment in support of CDC/ATSDR facilities, utilizing a wide variety of contract types and pricing arrangements; (3) provides leadership, direction, procurement options and approaches in developing specification/statements of work and contract awards; (4) performs contract and purchasing administrative activities including coordination and negotiation of contract modifications, reviewing and approving contractor billings, resolving audit findings, and performing close-out/termination activities; (5) performs simplified acquisition activities in support of CDC/ATSDR program offices; (6) assures that contractor performance is in accordance with contractual commitments; (7) provides leadership and guidance to CDC/ATSDR project officers and program officials; (8) Participates with senior program management in program planning, policy determination, evaluation, and directions concerning acquisition strategies and execution; (9) plans, directs, and coordinates activities of the Branch; (10) maintains Branch's official contracts files; (11) maintains a close working relationship with Facilities Management and other CDC components in carrying out their missions; (12) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with overall objectives of PGO.

International and Territories Acquisition and Assistance Branch (HCAJ77). (1) Plans, directs and conducts the acquisition of a wide variety of services, research and development, studies, data collection, equipment, materials, and personal and nonpersonal services in support of CDC's International operations, utilizing a wide variety of contract types and pricing arrangements; (2) plans, directs and conducts assistance management activities for CDC's International programs; (3) provides leadership, direction, and acquisition options and approaches in developing specifications/statements of work and grants announcements; (4) participates with top program management in program planning, policy determination, evaluation and directions concerning acquisition and grants strategies and execution; (5) provides innovative problem-solving methods in the coordination of International procurement and grants for a wide range plan with partners in virtually all major domestic and international health agencies dealing with United Nations Foundation health priorities/issues to include resolution of matters with the Department of State; (6) executes contracts and grants in support of International activities; (7) provides business management oversight for contracts and assistance awards.

Materiel Management Branch (HCAJ73). (1) Implements CDC-wide policies, procedures, and criteria required to implement Federal and Department regulations governing materiel management and transportation management; (2) evaluates operations to determine procedural changes needed to maintain effective management; (3) provides technical assistance to other parts of CDC on matters pertaining to materiel management, transportation management, fleet management; agent cashier services; (4) develops, designs, and tests materiel management systems and procedures; (5) represents CDC on inter- and intra-departmental materiel and transportation management committees; (6) maintains liaison with the Department and other Federal Federal agencies on materiel management and transportation and traffic management matters; (7) establishes Branch goals, objectives, and priorities and assures their consistency and coordination with the overall objectives of PGO.

Dated: August 28, 2003.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22985 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0053]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food and Drug Administration Interstate Shellfish Dealer's Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Interstate Shellfish Dealer's Certificate'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management

Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 2003 (68 FR 34979), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0021. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22958 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1994P–0036]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Labeling: Trans Fatty Acids in Nutrition Labeling; Nutrient Content Claims and Health Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Trans Fatty Acids in Nutrition Labeling; Nutrient Content Claims and Health Claims'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 2003 (68 FR 41434 at 41497), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0515. The approval expires on July 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22959 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0075]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Administrative Detention and Banned Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 2003 (68 FR 37846), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0114. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22960 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0198]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Medicated Feed Mill License; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 8, 2003 (68 FR 47331). The document announced the submission of the proposed collection of information entitled ''Requirements for Medicated Feed Mill License'' to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. The document was published with an inadvertent error. This document corrects that error.

DATES: Effective September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 4B–41, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–20201, appearing on page 47331 in the **Federal Register** of Friday, August 8, 2003, the following correction is made:

1. On page 47332, in the second column, the title ''Medicated Feed Mill License Application—21 CFR Part 515 (OMB Control Number 0910–0037)'' is corrected to read ''Medicated Feed Mill License Application—21 CFR Part 515 (OMB Control Number 0910–0337)''.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22957 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0384]

Hoffmann-La Roche, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for TEGISON (etretinate) Capsules held by Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110. Hoffmann-La Roche has requested that approval of this application be withdrawn because the product is no longer marketed, thereby waiving its opportunity for a hearing.

DATES: Effective September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a letter dated September 23, 1999, Hoffmann-La Roche requested that FDA withdraw approval of NDA 19–369 for TEGISON (etretinate) Capsules, stating that it had discontinued marketing the product. The letter also stated that TEGISON had been replaced by NDA 19–821 for SORIATANE (acitetrin) and that TEGISON was not withdrawn for safety reasons. In FDA's acknowledgment letter of December 30, 2002, the agency informed Hoffmann-La Roche that TEGISON (etretinate) Capsules, a treatment for psoriasis, was removed from the market, under § 314.150(d) (21 CFR 314.150(d)), because it poses a greater risk of birth defects than SORIATANE (acitretin), the product that replaced TEGISON. Acitretin, the active metabolite of etretinate, has a much shorter half-life than etretinate. Thus, acitretin poses a risk of serious birth defects for a shorter period of time than etretinate after a woman stops taking the drug product. Hoffmann-La Roche waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105(a)), approval of NDA 19–369, and all amendments and supplements thereto, is hereby withdrawn, effective September 10, 2003.

Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 355(a) and 331(d)).

Dated: August 5, 2003.

Steven K. Galson,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 03–22956 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 21 U.S.C. 360kk(f).

Date and Time: The meeting will be held on October 1, 2003, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Richard Kaczmarek, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0865, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an informal review of ongoing activities associated with electronic products.

Following the overview, FDA will discuss proposed amendments to the U.S. performance standard for sunlamp products (21 CFR 1040.20) and certain initiatives of international standards organizations concerning sunlamp products.

In the afternoon, there will be a presentation regarding proposed amendments to the diagnostic x-ray system performance standard (21 CFR 1020.30). Following this, the final topic will be public health considerations of x-ray security screening systems and the development of policies for safe use of these systems.

Background information on the discussion topics will be posted under the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2003 and scroll down to TEPRSSC.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 19, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:30 a.m., and between 3 p.m. and 3:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 19, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 3, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–22961 Filed 9–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–36]

Notice of Proposed Information Collection: Comment Request; Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* November 10, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages.

OMB Control Number, if applicable: 2502–0547.

Description of the need for the information and proposed use: HUD is committed to preventing predatory sales practices. To do so, it will not insure mortgages on properties re-sold within 90 days and will require that only the owner-of-record be permitted to sell the property if FHA will insure the subsequent mortgage. Leanders will be required to provide evidence of the date of the last resale and the date it occurred.

Agency form numbers, if applicable. None.

Estimation of the total numbers of hours needed to prepare the information collection included number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 7,500; the number of respondents is 750,000 generating approximately 750,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is less than 1 minute.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 3, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–23023 Filed 9–9–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Revised Recovery Plan for the Gila Trout (*Oncorhynchus gilae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the final revised Recovery Plan for the Gila trout (*Oncorhynchus gilae*). The Gila trout is native to relatively undisturbed high altitude mountain streams in Arizona and New Mexico. Historically, Gila trout occurred in the Verde and Agua Fria drainages, Arizona, and in the upper Gila drainage in New Mexico. Gila trout may also have been indigenous to Eagle Creek, Arizona, and some tributaries of the San Francisco River, New Mexico. Although formerly locally abundant, competition and hybridization with non-native trout, habitat degradation from improper livestock grazing and timber harvest practices, catastrophic forest fires, drought, and floods caused widespread declines. Recovery tasks include establishing additional populations of Gila trout; protecting existing populations and habitat; and continuing to obtain information needed to address conservation issues.

ADDRESSES: Persons wishing to receive the Final Revised Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, New Mexico, 87113. The recovery plan will also be available through the Fish and Wildlife Region 2 Web site at: *http://southwest.fws.gov/.*

FOR FURTHER INFORMATION CONTACT: Field Office Supervisor, New Mexico Ecological Services Field Office, at the above address; telephone 505/346–2525, facsimile 505/346–2542.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The draft revised recovery plan was submitted for

technical and agency review. Information presented during the public comment period has been considered in the preparation of this final recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The Gila trout was listed as endangered on March 11, 1967, under the Federal Endangered Species Preservation Act of 1966. Federal status of the fish as endangered was continued under the Endangered Species Act of 1973. The threats facing the survival and recovery of this species are competition and hybridization with non-native trout species (*e.g., Oncorhynchus mykiss, Salmo trutta*), improper forest management practices, improper grazing management practices, severe drought, catastrophic wildfires, and floods.

This recovery plan supersedes the recovery plan finalized for the species in 1993. The plan includes new scientific information about the species gathered since 1993 and provides objectives and actions needed to downlist then delist the species. Recovery activities designed to achieve these objectives include establishing additional populations of Gila trout; protecting existing populations and habitat; continuing to obtain information needed to address conservation issues; and continuing to provide information and coordinating recovery of this species. The recovery plan provides criteria for delisting and reclassification (*i.e.*, from endangered to threatened).

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 3, 2003.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 03–22988 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–5410–00–B178; CACA 44998]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: An application has been filed for the conveyance of the Federally owned mineral interest in the tract of land described below in this notice. Publication of this notice temporarily segregates the mineral interests in the public lands covered by the application from appropriation under the mining and mineral leasing laws while the application is being processed.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4677.

SUPPLEMENTARY INFORMATION: The tract of land referred to above in this notice consists of 160 acres of land, situated in Los Angeles County, and is described as follows:

San Bernardino Meridian, California

T. 5 N., R.17 W.,
Sec. 29, S1/2NE1/4;
Sec. 29, N1/2SE1/4

Under certain conditions, section 209(b) of the Federal Land Policy and Management Act of 1976 authorizes the sale and conveyance of the Federally owned mineral interests in land when the non-mineral, or so called ''surface'' interest in the land is not Federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

In accordance with section 209(b) of the 1976 Act, on December 10, 2002, an application was filed for the sale and conveyance of the Federally owned mineral interest in the above-described tract of land. Publication of this notice segregates, subject to valid existing rights, the Federally owned mineral interests in the public lands referenced above in this notice from appropriation under the general mining and mineral leasing laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate: (i) Upon issuance of a patent or other document of conveyance as to such mineral interests; (ii) upon final rejection of the application; or (iii) two years from the date of filing the application, whichever occurs first.

Authority: 43 CFR 2720.1–1(b).

Dated: September 2, 2003.

Howard Stark,

Chief, Branch of Lands Management.

[FR Doc. 03–22972 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–40–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 extension of an information collection (1010–0071).

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 203, ''Relief or Reduction in Royalty Rates.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATE: Submit written comments by October 10, 2003.

ADDRESSES: You may submit comments either by 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 (1010–0071). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 203, Relief or Reduction in Royalty Rates.

OMB Control Number: 1010–0071.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended by Pub. L. 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the

Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic without royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination is done on a case-by-case basis. By regulation published January 15, 2002, (67 FR 1862) production from leases in the same water depth and area issued after November 28, 2000, also can qualify for royalty suspension in addition to any that may be included in their lease terms.

In addition, Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133 110 Stat. 1321, April 26, 1996) authorize MMS to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. 30 CFR 203.3 states that, ''We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief.''

The MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impact on both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the Government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 8,550 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Reporting or recordkeeping requirement 30 CFR part 203	Average number annual responses	Hour burden	Annual burden hours
	Application Fees		
OCS Lands Act Reporting			
Application—leases that generate earnings that cannot sustain continued production (end-of-life lease).	1 Application	100	100
	Application 1 × $8,000 = $8,000*		
Application—apart from formal programs for royalty relief for marginal producing lease (expect less than one per year).	1 Application	250	250
	Application 1 × $15,000 = $15,000*		
§ 203.55 Renounce relief arrangement (seldom, if ever used; minimal burden to prepare letter)	1 Letter	1	1
§§ 203.81, 203.83 through 203.89 required reports	Burden included with applications.		
OCS Lands Act Reporting Subtotal	3 responses	N/A	351
	Processing Fees = $23,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000	2,000
	Application 1 × $19,500 = $19,500		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-act or post-2000 deep water leases).	1 Application	2,000	2,000
	Application 1 × $34,000 = $34,000*		
Application—short form to add or assign pre-Act lease	1 Application	40	40
	Application 1 × $1,000 = $1,000		

Reporting or recordkeeping requirement 30 CFR part 203	Average number annual responses	Hour burden	Annual burden hours
Application—preview assessment (seldom if ever used as applicants generally opt for binding determination by MMS instead).	1 Application	900	900
	Application 1 × $46,600 = $46,600		
Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect less than one per year).	1 Application	1,000	1,000
	Application 1 × $49,000 = $49,000		
Redetermination	1 Redetermination ...	500	500
	Application 1 × $16,000 = $16,000*		
§§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report	2 Reports	20	40
§§ 203.70, 203.81, 203.90, 203.92 Submit post-production development report	2 Reports*	50	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter).	1 Letter	1	1
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2	2
§§ 203.81, 203.83 through 203.89 Required reports	Burden included with applications		0
DWRRA Reporting Subtotal	16 Reponses	N/A	8,183
	Processing Fees = $166,100		
Recordkeeping Burden			
§ 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request.	2 Recordkeepers	8	16
Total Annual Burden	21 Responses	N/A	8,550

*CPA certification expense burden also imposed on applicant.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are two non-hour costs associated with this information collection. The estimated non-hour cost burden is $414,000 (rounded). This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is $189,000 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants. Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. MMS estimates approximately five submissions each year at an average cost of $45,000 per report, for a total estimated annual cost burden of $225,000.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) 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, on April 21, 2003, MMS published a **Federal Register** notice (68 FR 19572) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 203.82 provides the OMB control number for the information collection requirements imposed by the 30 CFR 203 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

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 10, 2003.

Public Comment Policy: MMS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that their home address be withheld from the record, which will be honored to the extent allowable by the law. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. However, anonymous comments will not be considered. MMS 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 Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 9, 2003.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 03–22973 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 256, ''Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.''

DATES: Submit written comments by November 10, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference ''Information Collection 1010–0006'' in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

OMB Control Number: 1010–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify filing fees for these transfer applications.

The MMS uses the information required by 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.
- Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.
- Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Verify that lessees have adequate bonding coverage. Respondents must submit their bonds certification forms: ''Form MMS–2028, Outer Continental Shelf Mineral Lessee's and Operator's Bond,'' and Form MMS–2028A, ''Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond.'' The MMS uses these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: The frequency of reporting is annual and on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees, as well as the affected States and local governments.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 16,329 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 256	Reporting requirement	Hour burden
Subparts A, C, E, H, L, M	None	0
Subparts G, H, I, J: 256.37, 256.53, 256.68, 256.70, 256.71, 256.72, 256.73	Request approval for various operations or submit plans or applications. [Burden included with other approved collections in 30 CFR 250.].	0
Subpart B: 256.16, 256.17, 250.20	Submit response to request/call for information, comments, and interest in areas for mineral leasing, including information from States/local governments.	4
Subpart D: All sections		
Subpart F: 256.31	States or local governments submit comments/recommendations on size, timing or location of proposed lease sale.	4
Subpart G: 256.35, 256.46(d), (e)	Establish a Company File for pre-qualification purposes; submit updated information	2
256.41, 256.43, 256.46(g)	Submit qualification of bidders for joint bids and statement or report of production	4½
256.44, 256.46	Submit bids and required information	5
256.47(c)	File agreement to accept joint lease on tie bids	3½
256.47(e)(1), (e)(3)	Request for reconsideration of bid rejection. [Exempt as defined in 5 CFR 1320(h)(9).]	0
256.47(f), (i), 256.50	Execute lease (includes submission of evidence of authorized agent and request for dating of leases).	1
Subpart I: 256.54	OCS Mineral Lessee's and Operator's Bond (form MMS–2028)	¼
256.54	OCS Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond (form MMS–2028A).	¼
256.52(f)(2), (g)(2)	Submit authority for Regional Director to sell Treasury or alternate type of securities	2
256.53(c), (d), (f); 256.54(d)(3)	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	2½
256.55	Notify MMS of any lapse in previous bond/action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	½
256.56	Provide plan/instructions to fund lease-specific abandonment account and related information; request approval to withdraw funds.	11
256.57	Provide third-party guarantee, indemnity agreement, related notices, and annual update; notify MMS if guarantor becomes unqualified.	16½
256.57(d)(3), 256.58	Notice of and request approval to terminate period of liability, cancel bond, or other security	½
256.59(c)(2)	Provide information to demonstrate lease will be brought into compliance	14
Subpart J: 256.62, 256.64, 256.65, 56.67	File application for assignment or transfer for approval	1
256.64(a)(7)	File required instruments creating or transferring working interests, etc., for record purposes	½
256.64(a)(8)	Submit non-required documents, for record purposes, which respondents want MMS to file with the lease document. [Accepted on behalf of lessees as a service, but MMS does not require nor need the filings.].	0
Subpart K: 256.76	File written request for relinquishment	1
All Subparts	General departure and alternative compliance requests not specifically covered elsewhere in Part 256.	1

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved ''non-hour cost'' burden for this information collection is a total of $414,000. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($185 per application) or to file non-required documents for record purposes ($25 per filing).

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) 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.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; 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 Federal Register Liaison Officer: Denise Johnson, (202) 208–3976.

Dated: August 9, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–22974 Filed 9–9–03; 8:45 am]

BILLING CODE 4310–MR–U

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 7, 2003.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Loews Coronado Bay Hotel, 4000 Coronado Bay Road, Coronado, CA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 3, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–23011 Filed 9–9–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure have proposed amendments to the following rules:

Appellate Rules: 4, 26, 27, 28, 28.1, 32, 32.1, 34, 35, and 45.

Bankruptcy Rules: 1007, 3004, 3005, 4008, 7004, and 9006.

Civil Rules: 5.1, 6, 24, 27, and 45, Admiralty Rules ''B'' and ''C''.

Criminal Rules: 12.2, 29, 32, 32.1, 33, 34, 45, and 59.

The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules* on the Internet.

The Judicial Conference Committee on Rules of Practice and Procedure submits these amendments for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 16, 2004. All written comments on the proposed rule amendments can be sent by one of the following four ways: electronic mail via the Internet at *http://www.uscourts.gov/rules*; regular mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002; or facsimile to Peter G. McCabe at (202) 502–1755. In accordance with established procedures all comments submitted on the proposed amendments are available for public inspection.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Los Angeles, California, on January 20, 2004, and in Washington, DC, on January 26, 2004;
- Bankruptcy Rules in Washington, DC, on January 30, 2004;
- Civil Rules in Houston, Texas, on January 9, 2004; and
- Criminal Rules in Atlanta, Georgia, on January 23, 2004.

Those wishing to testify must contact the Secretary at the address above in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 3, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–23012 Filed 9–9–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Paul A. Heinrich and Charles Vogel Enterprises, Inc.,* Case No. 03–C–0075–S (W.D. Wis.), was lodged with the United States District Court for the Western District of Wisconsin on August 26, 2003.

This proposed Consent Decree concerns a complaint filed by the United States against Charles Vogel Enterprises, Inc. (''Vogel''), pursuant to subsections 309(b) and (d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b), (d), to obtain injunctive relief from and impose civil penalties against Vogel for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring Vogel to pay a civil penalty and to cooperate fully with the United States in its further proceedings against the remaining Defendant.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to the Office of the United States Attorney, Western District of Wisconsin, Attention: Leslie K. Herje, P.O. Box 1585, Madison, WI 53701–1585. Please refer to the matter of *United States* v. *Heinrich,* DJ Reference No. 90–5–1–1–16504.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Wisconsin, P.O. Box 432, Madison, WI 53701–0432. In addition,

the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Scott A. Schacter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 03–23072 Filed 9–9–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *IMC Phosphates Co.,* Civil Action No. 8:03–cv–1814–T–17MSS (M.D. Fla.), was lodged with the United States District Court for the Middle District of Florida on August 27, 2003. This proposed Consent Decree concerns a complaint filed by the United States of America against IMC Phosphates Co., pursuant to Section 301 of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for self-reported violations of the terms and conditions of Clean Water Act section 404 permits for three properties located in Polk, Hardee and Hillsborough Counties, Florida. The proposed Consent Decree prohibits IMC Phosphates Co. from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the Clean Water Act and its implementing regulations, requires restoration and monitoring of the impacted sites as well as preservation of a 139-acre parcel and the payment of a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Daniel W. Eckhart, Assistant U.S. Attorney, 80 N. Hughey Avenue, Suite 201, Orlando, Florida and refer to DJ# 90–5–1–4–05140 and civil action number 8:03–cv–1814–T–17MSS.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, 80 North Huhey Avenue, Orlando, Florida. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj/gov/enrd/open.html.*

Daniel W. Eckhart,

Assistant United States Attorney, United States Attorney's Office, Orlando, Florida.

[FR Doc. 03–23073 Filed 9–9–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 26, 2003, a proposed Consent Decree in *United States* v. *Nassau Metals Corporation* (M.D.Pa.), C.A. No. 4:CV–03–1484, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought response costs incurred and to be incurred by the Environmental Protection Agency (''EPA''), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607, in connection with the clean-up of the Eastern Diversified Metals Site, located in Schuylkill County, Pennsylvania. Further, the United States sought an order, pursuant to Section 106 of CERCLA, requiring defendant Nassau Metals Corporation (''Nassau'') to complete the clean-up of the Site.

Under the Consent Decree, Nassau will implement the remedy selected in the November 21, 2001 Record of Decision for operable unit four. Implementation of this remedy will cost approximately $14 million and will complete the clean-up of the Site. In addition, Nassau will pay future costs incurred by EPA in connection with the Site.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Nassau Metals Corporation,* DOJ Ref. No. 90–11–3–223/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Federal Building, Room 220, Harrisburg, PA 17108; and U.S. EPA Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy the Consent Decree only from the Consent Decree Library, please enclose a check in the amount of $24.75, or enclose a check in the amount of $74.75 for the Consent Decree and the Exhibits thereto (.25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–23075 Filed 9–9–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Under 28 CFR 50.7, notice is hereby given that on August 22, 2003, a proposed settlement agreement *In The Matter of Stoody Company, Debtor,* Chapter 11, No. 01–52847–399, was lodged with the United States Bankruptcy Court for the Eastern District of Missouri.

The United States' claims in this action arise under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California, that may present an imminent and substantial endangerment to public health or welfare or the environment.

The settlement agreement resolves Debtor Stoody Company's liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in the Environmental Protection Agency's 1998 Interim Record of Decision.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In The Matter of Stoody Company, Debtor,* D.J. Ref. 90–11–2–354/9. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The settlement agreement may be examined at the Office of U.S. Attorney, Civil Division, 111 South 10th Street, 18th Floor, St. Louis, Missouri or at the U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, California. During the public comment period the settlement agreement also may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the settlement agreement may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.00 (12 pages @ 25 cents per page reproduction cost), payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–23074 Filed 9–9–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,834]

Agilent Technologies, Inc., Information Technology Division (IT), Colorado Springs, CO; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 17, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Agilent Technologies, Inc., Information Technology Division (IT), Colorado Springs, Colorado was signed on June 16, 2003, and published in the **Federal Register** on July 3, 2003 (68 FR 39976).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Agilent Technologies, Inc., Information Technology Division (IT), Colorado Springs, Colorado, engaged in computer consulting services combined with providing information technology. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner appears to imply that the petitioning worker group should be considered eligible for TAA on the basis that they served as secondary upstream supplier to a trade certified firm.

In fact, in order to be eligible for TAA, workers must produce an article. Further, in order to meet TAA eligibility requirements as secondary upstream suppliers, the worker group must produce a component part of the product that was the basis of the TAA certification for the customer firm.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22996 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,878]

Cannondale Corporation Bicycle Plant Now Known as Cannondale Bicycle Corporation, Bedford, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on April 25, 2003, applicable to workers of the Cannondale Corporation, Bicycle Plant, Bedford, Pennsylvania. The notice was published in the **Federal Register** on May 9, 2003 (68 FR 25060).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of bicycles, clothing and accessories.

New information shows that Cannondale Corporation, Bicycle Plant became known as Cannondale Bicycle Corporation in May 2003, following bankruptcy in early 2003. Workers separated from employment as the subject firm had their wages reported under a separated unemployment insurance (UI) tax account for Cannondale Bicycle Corporation.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Cannondale Corporation, Bicycle Plant who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,878 is hereby issued as follows:

All workers of Cannondale Corporation, Bicycle Plant, now known as Cannondale Bicycle Corporation, Bedford, Pennsylvania, who became totally or partially separated from employment on or after February 10, 2002, through April 25, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22999 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,405]

Dorr-Oliver Eimco USA, Inc. Formerly Known as Eimco Processing Company, Salt Lake City, UT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 13, 2003, applicable to workers of the Dorr-Oliver Eimco USA, Inc., Salt Lake City, Utah. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6212).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of liquid/solid separation equipment.

New information shows that Dorr-Oliver Eimco USA, Inc., formerly known as Eimco Process Equipment Company, was formed following a merger in November 2002 between GL&V/Dorr-Oliver and Eimco Process Equipment Company, a Division of Baker Hughes, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Dorr-Oliver Eimco USA, Inc. who were adversely affected by a shift in production to Mexico, Canada and India.

The amended notice applicable to TA–W–50,405 is hereby issued as follows:

''All workers of Dorr-Oliver Eimco USA, Inc., formerly known as Eimco Process Equipment Company, Salt Lake City, Utah, who became totally or partially separated from employment on or after December 20, 2001, through January 13, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 25th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23001 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,908]

Halliburton Formation Evaluation Machine Shop Including Workers of Jet Research Corporation, Alvarado, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 4, 2003, applicable to workers of Halliburton Formation Evaluation Machine Shop, Alvarado, Texas. The notice was published in the **Federal Register** on March 19, 2003 (68 FR 13332).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of Jet Research Corporation, Alvarado, Texas, employed at Halliburton Formation Evaluation Machine Shop, Alvarado, Texas.

The Jet Research Corporation employees were engaged in the production and support of logging tools for oil drilling at the Alvarado, Texas location of the subject firm.

The intent of the Department's certification is to include all workers of Jet Research Corporation, Alvarado, Texas working at Halliburton Formation Evaluation Machine Shop, Alvarado, Texas who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–50,908 is hereby issued as follows:

''All workers of Halliburton Formation Evaluation Machine Shop, Alvarado, Texas, including workers of Jet Research Corporation, Alvarado, Texas producing logging tools for oil drilling at Halliburton Formation Evaluation Machine Shop, Alvarado, Texas, who became totally or partially separated from employment on or after February 13, 2002, through March 4, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 21st day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22998 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,588]

Murray Engineering, Inc. Complete Design Service, Flint, MI; Notice of Negative Determination On Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Murray Engineering, Inc.* v. *U.S. Secretary of Labor,* No. 03–00219.

On February 5, 2003, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) for the workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan (hereafter referred to as Murray Engineering). The determination was based on the investigation's finding that the workers' firm provided industrial design and engineering services and did not produce an article in accordance with Section 222 of the Trade Act of 1974. On February 24, 2003, the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Murray Engineering, Inc., Complete Design Service, Flint, Michigan was published in the **Federal Register** (68 FR 8620).

The initial TAA investigation showed that workers at Murray Engineering supplied design and engineering solutions for general manufacturing industries. Workers of Murray Engineering drafted designs and drawings, which were then sent to customers either copied on to a computer disk or CD-Rom, printed out on paper, or electronically. The investigation also revealed that workers of Murray Engineering did not supply components to either a TAA-certified company or an affiliate of a TAA-certified company.

In a letter dated February 19, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The Department

affirmed its finding that the workers of Murray Engineering were not eligible to apply for TAA on the basis that they did not produce a product within the meaning of Section 222 of the Trade Act. Accordingly, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration on March 31, 2003. The Notice was published in the **Federal Register** on April 15, 2003 (68 FR 18264).

In the request for reconsideration, the petitioner made three assertions: (1) That the workers produced a product; (2) that the Department may have been misled by part of the company's name, ''Complete Design Service,'' thinking that the company did not produce a product; and (3) that the Department prematurely concluded the workers were service workers because of the company's name.

In the reconsideration investigation, the Department reviewed the description of the design services provided by the subject firm and determined that, regardless of the mode of conveyance, engineering drawings and schematics prepared by subject firm were services, and not considered production within the meaning of the Trade Act. A review by the Department of the initial investigation and the subsequent reconsideration investigation revealed that no conclusion was drawn based on the company's name. Further, the Department did not rely on the company's name during this voluntary remand investigation.

On April 30, 2003, the petitioner filed a Notice of Appeal in the Court of International Trade. The Department's motion for Voluntary Remand was granted on June 25, 2003.

On August 1, 2003, plaintiff's counsel sent the Department a letter containing arguments for certification. This letter makes two assertions: (1) The Department wrongly determined that the workers of Murray Engineering did not produce an article, and (2) even if the Department was correct in its determination that designs are not an article, the workers of Murray Engineering are adversely affected secondary workers and, as such, are eligible to apply for trade adjustment assistance.

The first issue is whether the workers of Murray Engineering produce an article.

Plaintiff's August 1, 2003 letter relies on *Nagy* v. *Donovan,* 6 Ct. Int'l Trade 141, 145, 571 F. Supp. 1261, 1264 (Ct. Int'l Trade 1983), to support the position that the designs are articles. *Nagy* held, among other things, that workers who either create or manufacture a tangible commodity or transform a thing into a new or different thing produce an article. The letter asserts that the designs can be reproduced on paper and, therefore, are a tangible commodity. The letter further asserts that without the designs, the customer could not produce the machines that make the tools, and, therefore, the designs are ''part and parcel'' of the machines and sometimes incorporated into the body of the machines when the operating instructions are mounted into the machine or fixture.

In its remand investigation, the Department contacted Murray Engineering company officials and issued a detailed information request seeking new information as well as clarification of previously submitted information. The main purpose of this review was to ascertain whether the work performed by the petitioning worker group should be construed as production or service.

Information supplied by the company on remand indicates that Complete Design Service does industrial design for general manufacturing industries, applying design & engineering solutions through AutoCAD and Unigraphics by designing intricate custom drawings that are customized to customer specifications. These custom drawings are delivered to the customer by any or all of the following: (a) Printed drawing on paper, (b) CD or computer diskette, (c) electronic mail.

The customer contacts Complete Design Service with the purchase order and instructions of the job to be done. An employee is assigned to the job and is given all of the pertinent information for the job. The employee then begins the design, in AutoCAD or Unigraphics (computer design programs). Periodically throughout the design process, the customer reviews the design-in-progress to assess whether modifications are necessary. When the design is 100% completed, it is saved on the subject firm's network and given to the customer in their required format (*e.g.*, plotted on paper, on CD or diskette, or e-mailed). The company further states that the customer could not build their products without these designs. The customer pays for the custom designs either by the design or on an hourly basis.

The Department traditionally has deemed designs of any type generated by computer as a service. Electronically generated engineering designs, drawings, and schematics are not tangible commodities. This is supported by the fact that they are not marketable products listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States.

However, if workers draft designs by hand, the drawings they produce are classified under HTS number 4906.00.00.00 (''Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; handwritten text; photographic reproduction on a sensitized paper and carbon copies of the forgoing''). Workers of the subject firm clearly do not fall into this classification, because they produced all designs electronically. That the HTS referenced here is updated periodically and was last published in 2003 supports that the USITC continues to distinguish electronic designs from designs by hand.

Further support that Murray Engineering workers did not produce an article is found in examining what items are subject to a duty. Throughout the Trade Act, an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule, an article will have a value that makes it marketable, fungible, and interchangeable for commercial purposes.

However, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational and design products that historically could be sent in letter form and that currently can be electronically transmitted are not listed in the HTS. Such items are not the type of work products that customs officials inspect and that the Trade Adjustment Assistance program was generally designed to address. Further, informal discussions in the past with several USITC analysts clarified those factors that were used to classify design and drawing work as service instead of production. The USITC industry analysts identified designs as services because the value of the intellectual service is greater than the cost of the materials used to store or transfer it. The analysts also stated that tariffs are based on the cost of the media (such as paper, CD, or computer disk) and not on the value of the service.

In addition, the 2002 edition of the North American Industrial Classification System (NAICS), a standard used by the Department to categorize products and services, designates ''establishments primarily engaged in drawing detailed layouts,

plans, and illustrations of * * * components from engineering * * * specifications'' as ''drafting services'' (NAICS 541340). Another code that describes ''engineering in the design, development, and utilization of machines'' (emphasis added) is classified within a code that signifies services (specifically, NAICS 541330).

Workers of Murray Engineering neither make a product nor transform an existing product into something new and different. The Department thoroughly investigated and could not find any evidence that workers of Murray Engineering produced any articles or that the petitioners transformed anything into something new and different; to the contrary, the evidence cited above supports a conclusion that the Murray workers did not produce an article. Consequently, they are not eligible for certification as production workers.

The second issue is whether the workers of Murray Engineering are adversely-affected secondary workers.

In the August 1, 2003 letter to the Department, the plaintiff asserts that: (1) Murray Engineering was a supplier of designs to a TAA-certified company (Lamb Technicon, Machining Systems, Warren, Michigan) and that such supply is related to the article that was the basis for certification (automated metal removal equipment, transfer lines, and dial transfers); and (2) Lamb Technicon accounted for at least twenty percent of Murray Engineering's production or sales or otherwise must have contributed importantly to the workers' separations. These assertions appear to be provided in an attempt to show that the subject firm workers should be certified as eligible to apply for TAA on the basis of serving as secondary upstream suppliers.

In order to be eligible as secondary suppliers, the petitioning worker group must have produced a component part of the product that is the basis of the TAA certification. Because Murray Engineering did not produce a component part of the automated metal removal equipment produced by Lamb Technicon, they were not secondary suppliers of a TAA-certified facility, as required by the relevant TAA legislation. Even if, as plaintiff asserts, the subject firm workers' design specifications were sometimes mounted or affixed on their customers' manufacturing equipment, such mounting or affixment were not necessary for the equipment to function properly and, thus, were not component parts.

Further, the subject firm's business with Lamb Technicon ceased prior to the beginning of the investigative period. The subject firm workers' petition was dated January 15, 2003 and instituted on January 16, 2003. Therefore, the relevant investigative period is 2001 and 2002. However, according to the subject firm official, Murray Engineering did no business with Lamb Technicon after 1999. Therefore, Lamb Technicon did not account for at least twenty percent of Murray Engineering's production or sales, nor did loss of business with this customer contribute importantly to the subject firm, during the relevant period.

Finally, the petitioner argues that Complete Design Service did the same work as Lamb Technicon and, thus, should be certified for TAA. The workers of Lamb Technicon were certified (TA–W–40,267 & TA–W–40,267A) based on the fact that the workers were engaged in employment related to the production of articles (automated metal removal equipment, transfer lines, and dial transfers). Any workers who may have been engaged in design and engineering solutions at Lamb Technicon were included in the certification because their separation was caused importantly by a reduced demand for their services due to a decline in manufacturing by their subject firm, or a parent firm, or a firm otherwise related to their firm by ownership or control. Additionally, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification, and the reduction must directly relate to the product impacted by imports. These conditions in meeting the TAA eligibility requirements were met for workers in support activities at Lamb Technicon. However, workers at Murray Engineering, Inc., Complete Design Center, Flint, Michigan do not meet these criteria and, thus, may not be certified based on Lamb Technicon's workers' certification.

Conclusion

Under section 222 of the Act, what is relevant to determining whether a worker group is eligible for TAA certification is whether the workers' firm or an appropriate subdivision of the workers' firm produced an article.

The workers' firm in this case is Murray Engineering, Complete Design Service, Flint, Michigan. The evidence clearly establishes that Murray Engineering does not produce, directly or through an appropriate subdivision, an article within the meaning of the Trade Act. Once the Department concludes that the workers' employer was not a firm that produced an article, it must conclude that the workers are not eligible for assistance. Because the petitioners are employees of a firm or subdivision that does not produce an article within the meaning of the Trade Act, they are not eligible for certification.

As the result of the findings of the investigation on voluntary remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Murray Engineering, Complete Design Service, Flint, Michigan.

Signed at Washington, DC this 20th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23000 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5051]

Quality Fabricating, Inc., North Huntington, PA; Affirmative Finding Regarding Qualification as a Secondarily Affected Worker Group Pursuant to the Statement of Administrative Action Accompanying the North American Free Trade Agreement (NAFTA) Implementation Act

The Department of Labor herein presents the results of an investigation regarding qualification as a secondarily impacted firm, pursuant to the Statement of Administrative Action accompanying the North American Free Trade Agreement (NAFTA) Implementation Act.

In order for an affirmative finding to be made, the following requirements must be met:

(1) The subject firm must be a supplier—such as of components, unfinished or semi-finished goods—to a firm that is directly affected by imports from Mexico or Canada of articles like or directly competitive with articles produced by that firm or shifts in production of such articles to those countries; or

(2) The subject firm must assemble or finish products made by a directly-impacted firm; and

(3) The loss of business with the directly affected firm must have contributed importantly to worker separations at the subject firm.

The investigation revealed that requirements (1) and (3) are met.

Quality Fabricating, Inc., North Huntington, Pennsylvania, produces

sheet metal component parts, which it supplied to a manufacturer of cable television amplifiers. Evidence revealed that this customer, to whom the subject firm supplied sheet metal component parts, shifted production to Mexico while reducing purchases from the subject firm. The subject firm's employment declined, in part, because of the loss of this customer.

Based on this evidence, I determine that workers of Quality Fabricating, Inc., North Huntington, Pennsylvania, qualify as secondarily affected pursuant to the Statement of Administrative Action accompanying the North American Free Trade Agreement Implementation Act.

For further information on assistance under Title I of the Workforce Investment Act (WIA), which may be available to workers included under this determination, contact:

Ms. Diane Bosak, Chief Operating Officer, Team Pennsylvania Workforce Investment Board, 901 North Seventh Street, Harrisburg, Pennsylvania 17120, Telephone: (717) 772–4966, FAX: (717) 783–4660.

Signed in Washington, DC this 9th day of May, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22994 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,009]

Robert Bosch Tool Corporation (Formerly the Vermont American Corporation) Engineering Center, Louisville, KY; Notice of Negative Determination Regarding Application for Reconsideration

By a letter postmarked July 17, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 28, 2003 and published in the **Federal Register** on June 19, 2003 (68 FR 36845).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Robert Bosch Tool Corporation, Engineering Center, Louisville, Kentucky, engaged in the production of one-of-a-kind machinery utilized at other affiliated company facilities, was denied because the ''contributed importantly'' or shift in production group eligibility requirements of Section 222 of the Trade Act of 1974 were not met. Increased imports did not contribute importantly to worker separations at the subject plant and the company did not shift production to a foreign source.

The petitioners produced machinery which is used to manufacture power tools. They allege that they should be certified eligible for TAA because manufacturing divisions of Robert Bosch have shifted production of power tools and/or power tool components to foreign countries.

Despite their indication that they are ''secondary workers'', it is not clear from the wording of the reconsideration request whether the petitioners are appealing on the basis of primary or secondary impact.

Given that the initial investigation revealed that there was no import impact or shift of production of the subject firm product (machines for producing power tools) to a foreign source, the petitioning worker group would have to supply a TAA certified affiliated facility in order to be eligible for certification under primary impact. The initial investigation revealed that, although there are three Robert Bosch Corporation facilities that are under active TAA certification, none of these facilities were supplied by the subject facility.

In order to be eligible for TAA certification under secondary impact, the petitioning worker group must either supply a component part of a product that is the basis of a TAA certification for a customer firm (upstream supplier), or assemble or finish a product that is the basis of TAA certification for a customer firm (downstream producer). As the petitioners produce a machine that produces power tool components, they are neither an upstream supplier nor a downstream producer of power tool components.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22997 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,402 and TA–W–50,402A]

Tillotson Healthcare Corporation Now Known as North Country Manufacturing, Dixville Notch, New Hampshire; Tillotson Healthcare Corporation, Rochester, New Hampshire; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 10, 2003, applicable to workers of Tillotson Healthcare Corporation, Dixville Notch, New Hampshire. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6211).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of medical examination gloves.

New information shows that Dynarex Corporation purchased Tillotson Healthcare Corporation on January 30, 2003. The subject firms' Dixville Notch, New Hampshire location is now known as North Country Manufacturing. Workers separated from employment at the Dixville Notch, New Hampshire location had their wages reported under a separate unemployment insurance (UI) tax account for North Country Manufacturing.

Information also shows that worker separation occurred at the Rochester, New Hampshire location of Tillotson Healthcare Corporation. The workers provide distribution and warehousing services for the Dixville Notch, New

Hampshire production facility of the subject firm.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Tillotson Healthcare Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,402 is hereby issued as follows:

''All workers of Tillotson Healthcare Corporation, now known as North Country Manufacturing, Dixville Notch, New Hampshire (TA–W–50,402) and Tillotson Healthcare Corporation, Rochester, New Hampshire (TA–W–50,402A), who became totally or partially separated from employment on or after November 21, 2001, through January 10, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 12th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23002 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,459]

Tingley Rubber Corporation, South Plainfield, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 5, 2003 in response to a worker petition which was filed on behalf of workers at Tingley Rubber Corporation, South Plainfield, New Jersey.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,814, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22995 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06385]

Ameriphone, Inc., A Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA; Notice of Revised Determination On Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Ameriphone, Inc.* v. *U.S. Secretary of Labor* (Court No. 03–00243).

The Department's initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter ''Ameriphone''), was issued on September 11, 2002 and published in the **Federal Register** on September 27, 2002 (67 FR 61160). The denial was based on the finding that the workers at the subject facility did not produce an article as required by section 250 of the Trade Act of 1974.

On March 10, 2003, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for NAFTA–6385 and published in the **Federal Register** on March 18, 2003 (68 FR 12938).

In the request for reconsideration, the petitioner alleged that the workers were engaged in the final phase of production (inspecting, testing and modifying products) as well as prototype design and production. In the reconsideration investigation, the Department found that the articulated functions constituted a negligible portion of the work performed at the subject facility and that the workers were, in fact, service providers.

On voluntary remand, the Department contacted the company and requested detailed information regarding the workers' functions at the subject facility. The newly obtained information revealed that workers at the subject facility were engaged in production. The new information also revealed that a significant portion of the production performed at the subject facility was shifted to Mexico impacting workers at the subject plant.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that a shift of production to Mexico of products like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers of Ameriphone, Inc., Garden Grove, California. In accordance with the provisions of the Act, I make the following certification:

''All workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California, who became totally or partially separated from employment on or after June 24, 2001 through two years of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 18th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–23003 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Ergonomics, Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Ergonomics (NACE) is part of the Secretary's comprehensive approach for reducing ergonomics-related injuries and illnesses in the workplace. The committee was convened for the first time on January 22, 2003. This notice schedules the third NACE meeting. The public is encouraged to attend.

DATES: The Committee will meet on Wednesday, September 24, 2003, from 8:30 a.m. until approximately 4 p.m.

ADDRESSES: The Committee will meet at the Quality Hotel & Suites Courthouse Plaza, 1200 N. Courthouse Road, Arlington, Virginia 22201; Telephone (703) 524–4000. Submit comments, views, or statements in response to this notice to MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax: (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION: NACE was chartered for a two-year term on November 27, 2002, to provide advice and recommendations on ergonomic guidelines, research, and outreach and assistance. The committee has met on January 22, 2003, and May 6–7, 2003, in Washington, DC. This notice announces the third meeting of the committee, which will take place in the Washington, DC commuting area on September 24, 2003.

I. Meeting Agenda

The Committee's working groups on Research, Guidelines, and Outreach and Assistance will meet on the afternoon of September 23. The working groups will report back to the full Committee on September 24th and lead discussions about their respective topics. On the morning of September 24, Assistant Secretary John Henshaw will address the committee. The Committee will continue its discussions of OSHA's approach to addressing ergonomics and hear a presentation about the National Academy of Sciences Ergonomics study.

II. Public Participation

Written data, views, or comments for consideration by NACE on the various agenda items listed above may be submitted, preferably with copies for the NACE members, to MaryAnn Garrahan at the address listed above. Submissions received by September 17, 2003, will be provided to the committee members for consideration. Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee should notify MaryAnn Garrahan at the address noted above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Persons who request an oral presentation may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Persons with disabilities requiring special accommodations should contact Veneta Chatman (telephone: (202) 693–1912; Fax (202) 693–1635) by September 17, 2003.

A transcript of the meeting will be available for inspection and copying in the OSHA Technical Data Center, Room N–2625 (*see* **ADDRESSES** section above) telephone: (202) 693–2350.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC this 5th day of September, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–23095 Filed 9–9–03; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Notice of Meeting

September 3, 2003.

TIME AND DATE: 10 a.m., Thursday, September 11, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Cactus Canyon Quarries of Texas, Inc.,* Docket Nos. CENT 2002–80–M. CENT 2001–285–M, CENT 2001–286–M, CENT 2001–379–M, CENT 2001–363–M, and CENT 2001–364–M. (Issues include whether the Commission should grant interlocutory review on the question of whether the judge erred in denying the operator's motion to dismiss based upon the Secretary's delay in proposing penalty assessments and filing petitions for assessment of penalties.)

FOR FURTHER INFORMATION CONTACT: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–23206 Filed 9–8–03; 3:53 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act; Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME AND DATE: 9 a.m.–4:30 p.m. Tuesday, September 16, 2003.

STATUS: Open.

ADDRESSES: Omni Shoreham Hotel, Palladian Room, 2500 Calvert Street, NW., (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Tuesday, September 16, 2003 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda—88th Meeting of The National Museum Services Board at Omni Shoreham Hotel, Palladian Room, 2500 Calvert Street, NW

Tuesday, September 16, 2003

8:30 a.m.–9 a.m.—Continental Breakfast.

9 a.m.–12 p.m.—

I. Chairperson's Welcome.

II. Approval of Minutes from the 87th NMSB Meeting.

III. Director's Welcome and Remarks.

IV. Staff Updates.

15 Minute Break

V. Board Discussion on the Museum and Library Services Act: General Changes, Board Governance and Structure.

VI. Closing Remarks.

12–12:30 p.m.—Break.

1:30 p.m.–4:30 p.m.—Dialogue on Creating and Sustaining a Nation of Learners.

Robert Martin, Ph.D., Director, Institute of Museum and Library Services, John Falk, Ph.D., Director, Institute of Learning Innovation, Robert Coonrod, President, Corporation for Public Broadcasting, Andrea Camp, Senior Fellow, Civil Society Institute (invited).

Dated: August 29, 2003.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 03–23207 Filed 9–8–03; 3:53 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–237 and 50–249]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–19 and DPR–25 issued to Exelon Generation Company, LLC (EGC, the licensee) for operation of the Dresden Nuclear Power Station (DNPS), Units 2 and 3, located in Grundy County, Illinois.

The proposed amendment would allow the licensee to revise the Updated Final Safety Analysis Report to use the reactor building crane for heavy loads up to a total of 117 tons for removal and reinstallation activities for the reactor shield blocks prior to and during the Units 2 outage D2R18.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (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. 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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The current DNPS licensing basis does not consider a load drop accident involving the reactor building crane as a credible event for loads up to and including 110 tons. The proposed changes will allow use of the reactor building crane at DNPS during power operations to lift heavy loads up to 117 tons for removal and installation activities for the reactor shield blocks prior to and during the Unit 2 refueling outage (*i.e.*, D2R18). The reactor building crane has additional margin for a total lifted load of 117 tons with single failure proof features if a Design Basis Earthquake (DBE) is not assumed. The licensee has qualitatively demonstrated that the probability of a DBE occurring during the limited 24 hour duration of the request is very small. The probability of load drop accidents is not increased since the single-failure proof capacity of the reactor building crane exceeds the weight of the reactor shield blocks, assuming that no DBE occurs. Since no load drop is assumed to occur, the consequences of a load drop accident are not affected. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow use of the DNPS reactor building crane for a limited duration to lift heavy loads up to a total of 117 tons during removal and installation activities for the reactor shield blocks. The reactor building crane has additional margin for a lifted load of 117 tons with single failure-proof features if a DBE is not assumed. The probability of a DBE during the limited duration of the request is very small. Therefore, the single failure-proof features ensure that the proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The reactor building crane is rated for lifting loads up to 125 tons. The NRC has approved qualification of the DNPS reactor building crane as single failure-proof for loads of up to 110 tons. The proposed change allows use of the crane for a limited duration to lift loads up to 117 tons. Existing safety margins are enhanced when lifting loads up to 117 tons if a DBE is not assumed, and EGC has demonstrated that the probability of a DBE during the limited duration of the request is very small. Therefore, it is concluded that the proposed changes do 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.

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. 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 10, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike

(first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the 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 petition for leave to intervene and request for hearing 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 Senior Counsel, Nuclear; Exelon Generation Company, LLC; 4300 Winfield Road; Warrenville, IL 60555; attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 29, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of September, 2003.

For the Nuclear Regulatory Commission.

Maitri Banerjee,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23019 Filed 9–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (I&M or the licensee) for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendment would revise Technical Specification (TS) Limiting Condition for Operation (LCO) 3.6.5.1.d to replace the phrase ''Each ice basket'' with the phrase ''Ice baskets.'' This change would make the LCO consistent with associated TS Surveillance Requirement (SR) 4.6.5.1.b.2 and would allow the SR to define the detailed requirements for ice basket weight.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (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. 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 change involve a significant increase in the probability or the consequences of an accident previously evaluated?

Response: No.

I&M proposes to amend the CNP [Cook Nuclear Plant] TS to remove an inconsistency between the LCO that specifies the weight of ice in the ice condenser ice baskets and the associated SR. The existing LCO requires that each ice basket contain a specified minimum weight of ice. However, the SR allows the weight of ice in a sampled basket to be less than that specified in the LCO if the average ice weight in an expanded sample of baskets is at least that specified in the LCO. The proposed change consists of a wording change in the LCO to permit utilization of this existing allowance in the SR. There are no credible accidents initiated by the ice condenser. The relevant accident analyses assume a certain total mass of ice within the ice condenser and no bypassing of ice in the ice condenser. The proposed change does not affect these assumptions. Therefore, neither the probability of an accident nor the consequences of an accident will be significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows utilization of an existing allowance in the SR for the weight of ice in the ice condenser ice baskets. There are no credible accidents initiated by the ice condenser. The proposed change does not affect the design function of any component, or change any parameter that can initiate an accident. Therefore, no new accident initiators or precursors will be introduced, and the possibility of a new or different kind of accident will not be created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the margins associated with ice condenser ice mass assumed in the accident analyses. These analyses assume a certain total mass of ice in the ice condenser and no bypassing of ice within the ice condenser. The allowance to satisfy the SR by performing additional sampling and averaging of the results does not affect these assumptions. Therefore, there is no 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.

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. 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 10, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the 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 petition for leave to intervene and request for hearing 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 [insert attorney name and address], attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 3, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of September, 2003.

For the Nuclear Regulatory Commission.

Mohammed A. Shuaibi,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23018 Filed 9–9–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on September 16, 17, & 18, 2003, at Sandia National Laboratories (SNL), Albuquerque, NM.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Tuesday, Sept. 16, Wednesday Sept. 17, and Thursday, Sept. 18, 2003–8:30 a.m. Until the Conclusion of Business

The Committee will review SNL activities and aid SNL in development of guidance documents on source terms that will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (e.t.).

Dated: September 4, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–23020 Filed 9–9–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26173; 812–12940]

Matrix Capital Group, Inc., et al.; Notice of Application September 4, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: Matrix Unit Trust (''Matrix Trust''), Matrix Capital Group, Inc. (''Matrix''), and any registered unit investment trusts (''UITs'') organized in the future and sponsored by Matrix, or an entity controlling, controlled by or under common control with Matrix (collectively, the ''Depositor''), and their respective series (together with the Matrix Trust, the ''Trusts'', and each series of the Trusts, a ''Series''), request an order to permit the Trusts to acquire shares of registered management investment companies and UITs both within and outside the same group of investment companies.

Applicants: Matrix Trust and Matrix.

Filing Dates: The application was filed on March 18, 2003, and amended on August 29, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2003, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 666 Fifth Avenue, 14th Floor, New York, New York 10103.

FOR FURTHER INFORMATION CONTACT: John Yoder, Attorney-Adviser, at (202) 942–0544, or Todd Kuehl, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicants' Representations

1. Matrix Trust is a UIT registered under the Act. Each Series will be a series of a Trust, each a UIT which is or will be registered under the Act. Matrix, a New York corporation, is registered under the Securities Exchange Act of 1934 as a broker-dealer.

2. Applicants request relief to permit the Series to invest in (a) registered investment companies that are part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Trust (''Affiliated Funds''), and (b) registered investment companies that are not part of the same group of investment companies as the Trust (''Unaffiliated Funds,'' together with the Affiliated Funds, the ''Funds''). The Unaffiliated Funds may include UITs (''Unaffiliated Underlying Trusts'') and open-end or closed-end management investment companies (''Unaffiliated Underlying Funds''). Certain of the Unaffiliated Underlying Trusts or Unaffiliated Underlying Funds may be ''exchange-traded funds'' that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices.[1]

3. Applicants state that the requested relief will benefit unitholders by providing investors with a professionally selected, diversified portfolio of investment company shares through a single investment vehicle.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to acquire shares of a Fund and to permit a Fund to sell shares to a Series beyond the limits set forth in sections 12(d)(1)(A), (B), and (C).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Funds. To limit the control that a Series may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Depositor, the Series, and certain affiliates (individually or in the aggregate) from controlling an

[1] All Trusts that currently intend to rely on the requested order are named as applicants. Any other Trust that relies on the order in the future will comply with the terms and conditions of the application.

Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Unaffiliated Funds, applicants propose conditions 2 through 6, stated below, to preclude a Series and its affiliated entities from taking advantage of an Unaffiliated Fund with respect to transactions between the entities and to ensure that transactions will be on an arm's length basis.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in an Unaffiliated Underlying Fund in excess of the limit in Section 12(d)(1)(A)(i), the Series and Unaffiliated Underlying Fund will execute an agreement stating that the board of directors of the Unaffiliated Underlying Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Series.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that a condition to the order would provide that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules'')) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules. In addition, the trustee to a Series (''Trustee'') will waive or offset fees otherwise payable by the Series in an amount at least equal to any compensation (including fees paid pursuant to a plan adopted by an Unaffiliated Underlying Fund under rule 12b-1 under the Act (''12b-1 Fees'')) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that a Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and Affiliated Funds might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become affiliated persons if the Series acquires more than 5% of the Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent a Fund from selling shares to and redeeming shares from a Series.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Funds will be based on the net asset values of the Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. (a) The Depositor, (b) any person controlling, controlled by, or under common control with the Depositor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act sponsored or advised by the Depositor or any person controlling, controlled by, or under common control with the Depositor (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Series and its Depositor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Series Affiliate'') will not cause any existing or potential investment by the Series in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Series or a Series Affiliate and the Unaffiliated Fund or its investment adviser, sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, the board of directors of the Unaffiliated Underlying Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Underlying Fund to a Series or a Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and

(c) does not involve overreaching on the part of any person concerned.

4. No Series or Series Affiliate will cause an Unaffiliated Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each an ''Underwriting Affiliate''). An offering during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

5. The board of directors of an Unaffiliated Underlying Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchases by the Unaffiliated Underlying Fund of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in shares of the Unaffiliated Underlying Fund. The board of directors will consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from Underwriting Affiliates have changed significantly from prior years. The board of directors shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

6. An Unaffiliated Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than 6 years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first 2 years in an easily accessible place, a written record of each purchase made once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeded the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

7. Prior to an investment in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the board of directors of the Unaffiliated Fund and the investment adviser to the Unaffiliated Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period not less than 6 years from the end of the fiscal year in which any investment occurred, the first 2 years in an easily accessible place.

8. The Trustee will waive or offset fees otherwise payable by a Series in an amount at least equal to any compensation (including 12b–1 Fees) received by the Depositor or Trustee, or an affiliated person of the Depositor or Trustee, from an Unaffiliated Fund in connection with the investment by a Series in the Unaffiliated Fund.

9. Any sales charges and/or service fees (as those terms are defined in Rule 2830 of the NASD Conduct Rules) charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23050 Filed 9–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26172; 812–12895]

ISI Strategy Fund, Inc., et al.; Notice of Application September 4, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

Summary of Application: The requested order would permit ISI Strategy Fund, Inc. (''Fund'') not to reconstitute its board of directors to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for Los Angeles Capital Management and Equity Research, Inc. (''LA Capital'') to rely upon the safe harbor provisions of section 15(f).

Applicants: The Fund, International Strategy & Investment Inc. (''ISI'') and LA Capital.

Filing Dates: The application was filed on October 15, 2002 and amended on September 2, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o R. Alan Medaugh, ISI Strategy Fund, Inc., 535 Madison Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202)

942–0527, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. ISI, a Delaware corporation, serves as the investment adviser to the Fund and is registered under the Investment Advisers Act of 1940 (''Advisers Act''). LA Capital, a California corporation, serves as the sub-adviser to the Fund and is registered under the Advisers Act.

2. Until March 29, 2002, Wilshire Asset Management, the asset management division of Wilshire Associates, Incorporated (''Wilshire'') and an investment adviser registered under the Advisers Act, served as sub-adviser to the Fund pursuant to a sub-advisory agreement between Wilshire and ISI. On March 29, 2002, Wilshire spun off its asset management division into a separate, independent company, LA Capital (''Transaction''). Upon the consummation of the Transaction, Wilshire's investment sub-advisory agreement with the Fund was automatically terminated. Pursuant to a new sub-advisory agreement approved by the Fund's Board of Directors (''Board''), including a majority of directors who are not interested persons of the Fund, ISI or LA Capital as set forth in section 2(a)(19) of the Act, on March 27, 2002, LA Capital became the sub-adviser to the Fund effective March 29, 2002. On June 26, 2002, shareholders of the Fund approved the sub-advisory agreement with LA Capital. In connection with the Transaction, for the three year period beginning March 29, 2002, LA Capital has determined to seek to comply with the ''safe harbor'' provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, more than 25 percent of the Fund's Board would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act.

3. Applicants state that Mr. Carl Vogt is and has been a director of the Fund since 1995. Mr. Vogt is of counsel in the Washington, DC office of Fulbright & Jaworski L.L.P. (''Fulbright'').[1] Applicants state that the Los Angeles, CA office of Fulbright (''Fulbright LA'') has rendered general corporate legal services to and received legal fees from LA Capital in connection with the formation of LA Capital. Fulbright LA continues to provide general corporate legal services to LA Capital. Applicants state, however, that these services do not relate in any way to the Fund, the Act, or the Advisers Act. Applicants represent that the fees paid to Fulbright LA by LA Capital are expected to represent significantly less than 1% of Fulbright's total annual revenues. Applicants represent that Mr. Vogt has not participated in Fulbright LA's representation of LA Capital in any manner and will not be involved in such representation for as long as he is a director of the Fund. Applicants represent that Mr. Vogt has no professional or business relationships with LA Capital other than his position as a director of the Fund.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser as defined in Section 2(a)(3) of the Act) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A), which provides that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(iv) provides that any person or partner or employee of any person who has acted as legal counsel to the investment adviser or principal underwriter of an investment company at any time since the beginning of the last two fiscal years of such investment company is an interested person of such investment adviser or principal underwriter. Consequently, Mr. Vogt could be deemed to be an interested person of LA Capital as a result of Fulbright LA's representation of LA Capital.

2. The Fund currently has five directors, three of whom are not interested persons of ISI or LA Capital. Without the requested exemption, the Fund would have to reconstitute its Board to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act.

3. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, if the 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.

4. Applicants request an exemption under section 6(c) from section 15(f)(1)(A) of the Act. Applicants submit that the addition of directors to achieve the 75 percent disinterested director ratio required by section 15(f)(1)(A) would make the Board unduly large and unwieldy, unnecessarily increase the ongoing expenses of the Fund, and cause the Fund to incur additional expenses in connection with the selection and election of the additional directors.

5. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Fund will continue to treat Mr. Vogt as an interested person of the Fund and LA Capital for all purposes other than section 15(f)(1)(A) of the Act so long as Mr. Vogt is considered an ''interested person'' as defined in section 2(a)(19) of the Act. Applicants also state that the conditions to the requested order further would assure investor protection.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the Commission to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser.

[1] Mr. Vogt retired as a partner on December 31, 2001 and effective January 1, 2002, he became ''of counsel'' on a part-time basis to Fulbright. Mr. Vogt's compensation is based directly on the hours of service performed by him and billed to Fulbright's clients. Mr. Vogt currently receives as compensation a percentage of his own hours billed, or a percentage of the fees paid less expenses on fixed-fee arrangements. Mr. Vogt is not compensated in relation to Fulbright's overall profits and receives no economic benefit from legal representations by Fulbright in areas outside his own personal practice. Mr. Vogt does not have fixed hours of employment and sets his work schedule based on his clients' needs and he does not serve as a billing partner. Mr. Vogt does not render legal advice regarding any issues relating to investment companies or investment advisers. Mr. Vogt's practice involves solely aviation law, a specialized area of law distinct from any subject matter that LA Capital has consulted, or would consult, with Fulbright.

Applicants assert that these circumstances do not exist in the present case.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Fund, that director will be replaced by a director who is not an ''interested person'' of LA Capital or ISI within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of LA Capital or ISI.

2. Mr. Vogt will not be involved in Fulbright's representation of LA Capital.

3. Fees paid to Fulbright by LA Capital shall not, in the aggregate, exceed 1% of Fulbright's total revenues during any fiscal year.

4. Mr. Vogt will not be compensated in relation to the overall profits of Fulbright and will not receive any economic benefit from legal representation by Fulbright in areas outside of his own personal practice.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23049 Filed 9–9–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48434; File No. SR–NASD–2003–81]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Quote Decrementation in SuperMontage

September 3, 2003.

I. Introduction

On May 12, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4710 and the decrementation of Quotes/Orders of order delivery Electronic Communication Networks (''Order Delivery ECNs'') in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). On May 29, 2003, Nasdaq filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on June 12, 2003.[4] The Commission received one comment letter on the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Nasdaq proposes to modify the SuperMontage decrementation process when an Order-Delivery ECN declines,[6] partially-fills, or fails to respond to a non-directed order delivered to it within 30 seconds (''time-out'').[7] Currently, SuperMontage rules provide that when an Order Delivery ECN declines, partially-fills, or times-out, without immediately transmitting a revised attributable Quote/Order at an inferior price, SuperMontage will zero out all of the ECN's Quotes/Orders on the same side of the market at the price of the declined order (or better). Under this proposal, Order Delivery ECNs will not have all of their trading interest at the declined price level (or better) removed from the system. Instead, SuperMontage would only remove the total amount of each individual Quote/Order to which an order was delivered by SuperMontage.

Nasdaq provided the following example of how the proposed modification to the decrementation process would operate for an ECN alone at the inside that elected to enter three separate bid Quotes/Orders at the same price level in SuperMontage:

ECN Quote (#1)—1,000 shares @ 20.00
ECN Order (#2)—500 shares @ 20.00
ECN Order (#3)—300 shares @ 20.00

The inside aggregated bid shows 1,800 shares @ 20.00.

1. SuperMontage receives an 800 share market sell order.

2. In response, SuperMontage sends an 800 share delivery to ECN Quote (#1). Upon dispatch, SuperMontage immediately decrements ECN Quote (#1) by the amount of the delivery (800 shares) leaving a display quote of 1,000 shares in ECN Quote (#1) that remains available for execution.

3. The ECN declines to execute the 800 share delivery to ECN Quote (#1).

4. The ECN's decline results only in the immediate removal of ECN Quote (#1), *i.e.,* the 800 shares originally decremented and the 200 share remainder of ECN Quote (#1). Orders (#2) and (#3) remain in the system and continue to be eligible for execution.

The system reallocates the 800 shares from the incoming order in Step 1 against ECN orders (#2) and (#3), if not executed by a subsequent incoming order, before moving, if necessary, to the next best bid.[8]

Thus, under the proposal, only individual Quotes/Orders would be removed in full by a decline, partial-fill, or a time-out when no revised attributable Quote/Order is immediately transmitted at an inferior price; not all trading interest at the declined price level or better. Other ECN Quotes/Orders at a particular price level that are not part of a SuperMontage delivery resulting in a decline, partial-fill, or time-out would be retained in the system and remain available for execution, and are not traded through. Nasdaq represents that locked or crossed markets will not be created as a result of the proposed rule change.

III. Summary of Comments

The Commission received one comment letter from Bloomberg Tradebook, LLC (''Bloomberg'') on the proposed rule change.[9] Bloomberg neither explicitly supported nor opposed the proposed rule change, although it commented on decrementation generally, as well as on the proposed rule change. Bloomberg noted that conceptually, ''(d)ecrementation is a design feature of SuperMontage that is intended to preserve the continuity of the market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 29, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq replaced the proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 47993 (June 5, 2003), 68 FR 35246 (June 12, 2003).

[5] *See* letter from Kim Bang, Bloomberg Tradebook, LLC, to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated July 14, 2003 (''Bloomberg Letter'').

[6] An ECN's decline of a delivered order must comply with the Commission's Quote Rule, 17 CFR part 240. 11Ac1–1. NASD Regulation surveils for Quote Rule violations.

[7] *See* Securities Exchange Act Release No. 48196 (July 17, 2003), 68 FR 43777 (July 24, 2003) (Notice of filing and immediate effectiveness of File No. NASD–2003–108 to temporarily increase the non-directed order maximum response time for Order-Delivery ECNs in Nasdaq's SuperMontage System.)

[8] Nasdaq clarified under the proposal a subsequent incoming order could potentially execute against an ECN's remaining orders prior to the return of a declined order to the system. Telephone conversation between Thomas P. Moran, Associate General Counsel, Office of the General Counsel, to Marc McKayle, Special Counsel, Division, Commission on August 27, 2003.

[9] *See* Bloomberg Letter, *supra* note 5.

and to prevent locked and crossed markets.'' However, Bloomberg also opined that the current decrementation procedures unfairly discriminate against Order Delivery ECNs, cuts squarely against an ECN's obligations under the Order Display Rule,[10] are subject to being gamed by market participants, and implicate a broker-dealer's duty of best execution. In Bloomberg's view, ''[t]he problems decrementation has created * * * result from access fees ECNs are permitted to charge and the unwillingness of some market participants to pay those fees.'' Bloomberg believed that the Commission should address the access fee issue, and that all access fees, including fees charged by market centers, should be eliminated.

Bloomberg also believed that Nasdaq's proposed amendment would not reduce the adverse impact of decrementation on Order Delivery ECNs since each ECN's Quote/Order would still be subject to decrementation. In addition, Bloomberg did not believe that Nasdaq's proposed amendment would provide any practical benefit since ECNs manage their own internal matching engines and aggregate multiple orders for representation as a single Quote/Order in SuperMontage. Further, Bloomberg believed that the decrementation process could still be gamed since firms seeking to knock an ECN out of the quote in SuperMontage would still be able to do so.

In response to the Bloomberg Letter, Nasdaq stated that many of Bloomberg's comments extended beyond the narrow scope of the proposed rule change to modify SuperMontage's decrementation process to decrement only the ECN Quote/Order that an incoming order interacts with at a particular price level, as opposed to all of an ECN's available trading interest at a particular price level.[11] In Nasdaq's view, Bloomberg's comments were directed at the decrementation process generally, its impact on ECNs and their customers, and its relationship to ECN access fees. In response, Nasdaq noted that the Commission approved the SuperMontage decrementation process, and that Nasdaq was merely proposing to modify the process. Nasdaq emphasized that its current decrementation process and its proposed modification to the process retain the key component that declining Quotes/Orders be removed from the system. Further, Nasdaq stated that the only issue presented by the filing is the method of such removal; the proposed rule change does not seek to change ECN access fee standards. Therefore, according to Nasdaq, Bloomberg's views on eliminating access fees would be more properly expressed in a petition for Commission rulemaking.

Nasdaq also offered general comments regarding the decrementation process. Nasdaq explained that decrementation was proposed as part of the original SuperMontage proposal to address locked and crossed markets that occurred in Nasdaq prior to SuperMontage. Nasdaq noted that access fee disputes could result in locked and crossed markets that would not only shut down Nasdaq's automatic execution functionality, but also many internal order-execution systems of Nasdaq market participants, until the locks or crosses were resolved. Nasdaq also stated that decrementation allows Nasdaq to fairly balance the needs and desires of a wide variety of users by accomodating ECNs, by allowing them to receive and decline orders (as opposed to receiving executions) while eliminating locked and crossed markets.

With regard to Bloomberg's specific comments on the proposed rule change, Nasdaq emphasized its proposed modification to the decrementation process is an internal SuperMontage system change that imposes no new obligation on any market participant. Instead, the proposal is intended to make the current decrementation process more discerning and provide options to ECNs that voluntarily elect to change the way they represent their Quotes/Orders in SuperMontage. Nasdaq stated that the proposed rule change gives ECNs the option to mitigate decrementation by providing them, if they enter multiple Quotes/Orders, an increased opportunity for their individualized Quotes/Orders to interact with counterparties with which the ECN is willing to trade. Nasdaq stated it should not be precluded from altering its system to provide options to ECNs that choose to take the initiative to serve their customers better. According to Nasdaq, if an ECN chooses to enter individual representations of trading interest, Nasdaq's new processing would allow more of the ECN's customers to remain in the SuperMontage system longer, thereby increasing the potential interaction of those customers with orders from parties that will pay the ECN's access fee. Those ECNs that do not alter the way they represent their customers in SuperMontage would, in effect, continue to have their single quotes decremented in the same manner as the current SEC-approved process. According to Nasdaq, Bloomberg opposes a rule that forces them to do nothing, and will have no impact on them if they continue to do business as they do today.

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the Bloomberg Letter, and Nasdaq's response and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[12] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 15A.[13] Specifically, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Act because it is designed 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 transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[14] The Commission also finds that the proposed rule change is consistent with section 15A(b)(11) because it is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.[15]

While the Commission appreciates and considered Bloomberg's comments regarding decrementation generally, whether decrementation is consistent with the Act was decided on January 19, 2001, when the Commission approved decrementation in SuperMontage.[16] The ability of SuperMontage to decrement Quotes/Orders of Order Delivery ECNs is not at issue in the proposed rule change.[17] Instead, what is at issue is

[10] 17 CFR 240.11Ac1–4.

[11] *See* letter from Thomas P. Moran, Office of General Counsel, to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated July 30, 2003.

[12] 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).

[13] 15 U.S.C. 78*o*–3.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78*o*–3(b)(11).

[16] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2003)(''Original SuperMontage Approval Order'').

[17] *Id. See also Domestic Securities, Inc.* v. *Securities and Exchange Commission,* 333 F.3d 239 (DC Cir. 2003). The Court found, in pertinent part, that the Original SuperMontage Approval Order marked the consummation of the Commission's

whether the modification to the decrementation process, wherein SuperMontage can decrement only the single ECN Quote/Order that declines to trade with an order sent to it by the system, is consistent with the Act.[18] The Commission finds that it is.

The Commission notes that the amendment is essentially identical to the process as originally approved,[19] except that an ECN's Quotes/Orders would be removed from the system on an individual basis. Bloomberg stated that the proposal would not have any practical effect because it is the practice of ECNs to aggregate orders within the quote sent to SuperMontage. The Commission believes that Nasdaq has adequately responded to Bloomberg's comments. Nasdaq has correctly represented that the proposed rule change provides a new option for Order Delivery ECNs. The Commission recognizes that many proposed rule changes relating to a self-regulatory organization's trading system will require the affected market participants to either reprogram their internal trading systems or alter their business practices to ensure system compatibility and compliance. In that regard, this proposed rule change is not unique. The proposed rule change may allow ECNs that opt to change their method of quote management and submit individual orders to SuperMontage to mitigate the impact of access fee disputes on their ability to trade with participants with which no dispute exists. However, ECNs may also choose to continue aggregating multiple orders for representation, and decrementation, as a single Quote/Order in SuperMontage. Thus, while ECNs that do not reconfigure their trading systems or revise their quote management practices would not benefit from this proposed rule change, ECNs that choose to make the necessary operational and technological adjustments may benefit.

The Commission believes that Nasdaq's approach reasonably balances the interests of accommodating Order Delivery ECNs and providing an efficient trading system. Nasdaq represents that SuperMontage decrementation has eliminated the ECN access fee-related locked or crossed markets which caused the shutdown of Nasdaq's automatic execution functionality, and many internal order-execution systems, until the lock or cross was resolved. The Commission continues to believe that the SuperMontage decrementation process should help to reduce instances of locked and crossed markets and the problems associated with locked and crossed markets, while accommodating ECNs with an alternative to automatic execution.[20] The Commission also continues to believe that the reduction of locked and crossed markets in the Nasdaq market should improve market quality and enhance the production of fair and orderly quotations.[21] In the Commission's view, the NASD's proposal is reasonably designed to maintain the integrity of Nasdaq quotes by reducing the incidence of locking and crossing quotations displayed in Nasdaq. The proposal will continue to reduce locked and crossed markets because a declined order, if necessary, would decrement each ECN's individual Quote/Order. The Commission believes that the proposal, by retaining ECNs' trading interest that is not decremented by the incoming order in the system, could enhance SuperMontage liquidity and transparency, and provide ECN customers with an increased opportunity to have their orders executed by market participants that are willing to pay the ECN access fee.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–2003–81), as amended, is approved.[23]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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decisionmaking process concerning the system rules, including decrementation, and the rules finally determined the rights and obligations of the market and of each market participant who traded on the system.

[18] While the Commission acknowledges that ECN access fees maintain a significant tangential relationship to the SuperMontage decrementation process, the abolition of ECN fees is not at issue in this proposed rule change. Nasdaq recently submitted File No. NASD–2003–128 relating to ECN fees.

[19] *See* Original SuperMontage Approval Order, *supra* note 15.

[20] The Commission has concluded previously that continued locking and crossing of markets can negatively impact market quality. *Id. See also* Division of Market Regulation, The October 1987 Market Break 9–6 (February 1988) (Stating that the continued existence of locked and crossed markets indicates that the quotations for a security are suspect and may not provide an accurate reflection of the market for a security).

[21] *Id.*

[22] 15 U.S.C. 78s(b)(2).

[23] The proposed rule change will become effective within 60 days of the date of this Order. Telephone conversation between Thomas P. Moran, Associate General Counsel, Office of the General Counsel, to Marc McKayle, Special Counsel, Division, Commission on September 3, 2003.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48429; File No. SR–NYSE–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Continuing Annual Fees for ''Repackaged'' Securities

September 3, 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 28, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend section 902.02 of the Listed Company Manual (the ''Manual'') to implement certain changes to the continuing fees payable in connection with certain structured products known as ''repackaged'' securities and to reinstate the Exchange's ''15-year'' policy with respect to previously listed ''repackaged'' securities, as more fully described below.

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in brackets.

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

C. Continuing Annual Fee

* * * * *

Per Share Calculation—All issued shares including treasury shares are included in the calculation.

Continuing Annual Fees

(Effective January 1, 2003)

Per Share Rate—$930 per million

Minimum Fee—$35,000

* * * * *

Computation of Fee—Other Equity Issues—

The fee is the greater of the minimum of $5,000 per issue or the fee calculated on a per share basis. All issued shares are included in the calculation.

Special Rule for Repackaged Securities

Any issue of Repackaged Securities (as defined below), will be subject to the continuing annual fee schedule in effect at the time of listing of such issue, regardless of any changes to the fee schedule made thereafter.

For the purpose of this Para. 902.02.C., Repackaged Securities are securities listed under Para. 703.19 of this Manual, issued by a trust with a term of years, where the assets of the trust consist primarily of underlying fixed-income securities, and where the trust is funded (or a reserve is created) at issuance to cover the trust's principal obligations and associated expenses during the life of the Repackaged Securities.

Overall Fee Cap

In calculating the continuing listing fee for a listed company, the fees for all classes (or series) of listed securities of the company, excluding derivative products, fixed income products, and closed-end funds, are aggregated and the total continuing listing fee is capped at $500,000.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 1, 2003, the Exchange instituted certain changes to the Schedule of Current Listing Fees for NYSE listed securities, including an increase of continuing annual fees for NYSE listed securities and discontinuance of the ''15-year'' policy, which previously removed from the calculation of continuing annual fees any shares that have been listed on the NYSE for 15 years or more.[3] Following the implementation of these fee changes, certain of the Exchange's member firms brought to the attention of the Exchange that the increase in continuing annual fees and elimination of the Exchange's ''15-year'' policy had a significant negative impact on the economics of ''repackaged'' securities.

For purposes of this filing, a ''repackaged'' security is a security (such security referred to as a ''Repack'') issued by a trust the assets of which are primarily fixed-income securities.[4] The Repacks issued by the trust have set maturity dates which correspond to the maturity of the underlying securities and typically range from 25 to 50 years, but can be called prior to maturity, typically at par or face value. A typical Repack also offers a call protection period, generally five to seven years from issuance, and is subject also to a call of the underlying securities. The trusts themselves are structured to be relatively maintenance free and self-funded. Funds required for the maintenance of the trust, including any listing fees, are calculated based on the expected life of the Repacks and paid (or reserved for) on a present value basis at the time of initial issuance. As of January 1, 2003, there were approximately 150 Repacks listed on the Exchange.

Because of the Repack trusts' financial structure, any increase to applicable listing fees during the life of the Repack has significant economic and administrative implications for the trust and its depositor (also sometimes referred to as a trustor). The Exchange represents that when the Exchange increased its continuing annual fees for listed companies and discontinued its ''15-year'' policy,[5] the Repack trusts did not have sufficient funding to pay listing fees, and the trust depositor became responsible for providing significant additional—and unexpected—funding to the Repack trusts.

With respect to Repacks listed prior to January 1, 2003, the Exchange is proposing to (a) roll back the continuing annual fee increase that became effective on January 1, 2003, and (b) reinstate the ''15-year'' policy thereby removing from the calculation of continuing annual fees any underlying shares of Repacks listed on the NYSE for 15 years or more.[6]

In respect of Repacks listed after January 1, 2003, the Exchange proposes to provide that the continuing annual fee applicable to Repacks at the time of listing will remain in effect for the life of the security. The ''15-year'' policy will not be applicable to Repacks listed after January 1, 2003.

The Exchange believes that these fee changes will provide fee certainty for present and future Repacks by allowing trust depositors to reserve appropriately for continuing annual fees at the time of listing at the then effective fee schedule.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with the requirement of section 6(b)(4) of the Act,[7] which provides that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its 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 does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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[3] Securities Exchange Act Release No. 47115 (December 31, 2002), 68 FR 1495 (January 10, 2003) (File No. SR–NYSE–2002–62).

[4] Fixed-income securities include debt and trust preferred securities. Among the Repacks listed on the Exchange are: COBALTS℠, TRUCS℠, CorTS℠, PCARS℠, CBTC℠, PPLUS℠, SATURNS℠ and CABCO℠.

[5] *See supra* note 3.

[6] Note that to the extent that Repacks are typically called prior to 15 years, the Exchange's ''15-year'' policy would not ordinarily come into play. However, for Repacks listed prior to January 1, 2003, the effect of the ''15-year'' policy was included in the calculation of the funding needed for Repacks listed, so its removal going forward adversely affected the funding calculation for those Repacks.

[7] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–25 and should be submitted by October 1, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22982 Filed 9–9–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48435; File No. SR–NYSE–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Repealing Exchange Rule 500 and Amending Section 806 of the Listed Company Manual

September 3, 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 20, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 NYSE proposes to delete Exchange Rule 500 in its entirety and amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

Rules of Board of Directors

General Rules

* * * * *

[Removal from the List Upon Request of the Issuer

Rule 500. An issuer may apply to delist a security after complying with the following procedures:

(a) Stock of a domestic issuer:

(1) The issuer's audit committee and board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 record shareholders with the largest positions in the security written notice alerting them to the proposed delisting; such notice must specify the earliest possible date of such delisting (which date shall be not less than 20 business days nor more than 60 business days (or, subject to Exchange approval, such longer period as the issuer may request) after the later of the date the notice is sent or the press release is issued) and must include a statement that the issuer complied with paragraphs (a)(1) and (a)(2) above. The issuer must contemporaneously send to the Exchange a copy of such notice.

(b) Stock of non-U.S. issuer:

(1) The issuer's board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 U.S. record shareholders with the largest positions in the security written notice alerting them to the proposed delisting. The issuer must contemporaneously send to the Exchange a copy of such notice.

(c) All listed bonds: The issuer's board of directors must approve the application.

* * * Supplementary Material:

.10 Definition of ''stock'' and ''bond.''—Exchange Rule 4 defines the term ''stock,'' and Exchange Rule 5 defines the term ''bond.''

.20 Requirement to issue a press release.—Pursuant to paragraphs (a)(2) and (b)(2) of this Rule, the issuer must publish the press release in compliance with the Procedures of Public Release of Information in Para.202.06 of the Exchange's Listed Company Manual.

.30 Application to the Securities and Exchange Commission to withdraw a security from listing.—After an issuer complies with the procedures of this Rule, the issuer may file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. With respect to an issuer required to provide security holders with notice of the proposed delisting pursuant to paragraph (a) (3) of this Rule, the proposed date for such withdrawal from listing and registration must be the same date specified in its notice to security holders. The issuer must contemporaneously send to the Exchange a copy of the application.

.40 Delisting of multiple classes of securities.—If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.]

* * * * *

Listed Company Manual

* * * * *

806.00 Rule of the Exchange in respect of Removal From List upon Request of Company.

[Rule 500 in effect as of July 21, 1999 is as follows:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 500. An issuer may apply to delist a security after complying with the following procedures:

(a) Stock of a domestic issuer:

(1) The issuer's audit committee and board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 record shareholders with the largest positions in the security written notice alerting them to the proposed delisting; such notice must specify the earliest possible date of such delisting (which date shall be not less than 20 business days nor more than 60 business days (or subject to Exchange approval, such longer period as the issuer may request) after the later of the date the notice is sent or the press release is issued) and must include a statement that the issuer complied with paragraphs (a) (1) and (a) (2) above. The issuer must contemporaneously send to the Exchange a copy of such notice.

(b) Stock of non-U.S. issuer:

(1) The issuer's board of directors must approve the application;

(2) The issuer must publish a press release announcing its proposed delisting; and

(3) The issuer must send to at least each of its 35 U.S. record shareholders with the largest positions in the security written notice alerting them to the proposed delisting. The issuer must contemporaneously send to the Exchange a copy of such notice.

(c) All listed bonds: The issuer's board of directors must approve the application.

* * * Supplementary Material:

.10 Definition of ''stock'' and ''bond.''—Exchange Rule 4 defines the term ''stock,'' and Exchange Rule 5 defines the term ''bond.''

.20 Requirement to issue a press release.—Pursuant to paragraphs (a)(2) and (b)(2) of this Rule, the issuer must publish the press release in compliance with the Procedures of Public Release of Information in Para.202.06 of the Exchange's Listed Company Manual.

.30 Application to the Securities and Exchange Commission to withdraw a security from listing.—After an issuer complies with the procedures of this Rule, the issuer may file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. With respect to an issuer required to provide security holders with notice of the proposed delisting pursuant to paragraph (a) (3) of this Rule, the proposed date for such withdrawal from listing and registration must be the same date specified in its notice to security holders. The issuer must contemporaneously send to the Exchange a copy of the application.

.40 Delisting of multiple classes of securities.—If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.]

An issuer may apply to delist a security after its board approves the action and the issuer furnishes the Exchange with a copy of the board resolution certified by the secretary of the issuer. The issuer may thereafter file an application with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to delete Exchange Rule 500 in its entirety and to amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Amended Section 806 would require simply that a company furnish the Exchange with a certified board resolution evidencing board approval of the voluntary delisting.

Exchange Rule 500 describes the procedures a listed company must follow to voluntarily delist its securities from the Exchange. The original rule, adopted in 1939, required two-thirds of a company's outstanding shares to vote in favor of a delisting, with no more than ten percent of the shares opposing. In 1999, the requirement of a shareholder vote was eliminated, and since then the rule has required only board and audit committee approval, prior written notice to the company's 35 largest record holders, and a press release informing shareholders generally of the proposed delisting. [3]

In approving the 1999 amendment, the Commission requested that the Exchange review periodically the shareholder notification requirement of Rule 500 to determine whether it remained warranted and consistent with the protection of investors. In fulfillment of the Commission's request and in the context of the work the Exchange has done in re-examining its corporate governance standards for listed companies, the Exchange determined to reassess Rule 500. The Exchange has concluded that it is now appropriate to require only that a company voluntarily delisting its securities from the Exchange obtain the approval of its board and furnish the Exchange with a copy of the board resolution. The company would, of course, then be required under Commission rules to file an application with the Commission to withdraw the security from listing on the Exchange.[4]

The rationale for the requirement in the current rule that a company obtain a separate audit committee approval of a delisting was to insure that independent directors approved the decision.[5] In the work the Exchange has done during the last two years on corporate governance listing standards, the Exchange has learned that a majority independent board has already become prevalent among Exchange listed

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[3] *See* Securities Exchange Act Release No. 41634 (July 21, 1999), 64 FR 40633 (July 27, 1999) (SR–NYSE 97–31) (hereinafter referred to as the ''1999 SEC Approval Order''). Since the 1999 amendment, only one company has voluntarily delisted its common stock to move to Nasdaq. Several companies have used the rule to voluntarily delist bonds from the Exchange, which the NYSE represents that it understood to be motivated by a desire to reduce reporting burdens attendant to listing the bonds (the shareholder notification requirement does not apply to a voluntarily delisting of bonds). A similar motivation prompted a Swedish company with very few U.S. shareholders to delist its ADRs earlier this year so that it could avoid having to comply with U.S. reporting obligations. Finally, three small closed end funds moved to the American Stock Exchange because their declining net asset value placed them in danger of falling below NYSE continued listing requirements.

[4] *See* Rule 12d2–2(d) under the Act.

[5] *See* 1999 SEC Approval Order, footnote 16, and text accompanying footnotes 44 and 45.

companies.[6] After the Exchange's currently pending corporate governance proposals become final, a majority independent board will become an Exchange listing standard.[7] As a result, the Exchange believes that board approval of a voluntary delisting is all that must be required by the Exchange.

The Exchange further believes that neither advance notification to shareholders nor a company press release need be mandated under Exchange rules. In the case of a transfer of a listing from one market to another, both the company transferring and the market to which it is transferring are typically eager to publicize the event.[8] Practical considerations such as the need to make brokers and investors aware of a change in ticker symbol also serve to insure that a planned move is visible. In any event, companies are obligated to publicly disclose material events,[9] and the Exchange expects that a company that has made a final determination to voluntarily delist its securities from the Exchange would promptly disclose that determination to the public.[10]

The Exchange has for many years replicated Rule 500 in Section 806 of its Listed Company Manual, which is a separate compendium of rules applicable to listed companies. In making this change, the Exchange will delete Rule 500 in its entirety. The remaining requirement of board approval and notice thereof to the Exchange will be codified in section 806 of the Listed Company Manual.

2. Statutory Basis

The NYSE represents that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2003–23 and should be submitted by October 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23051 Filed 9–9–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Press Release from Investor Responsibility Research Center, March 7, 2002, available at *www.irrc.com/company/06062002_NYSE.html.*

[7] *See* Securities Exchange Act Release No. 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR–NYSE 2002–33). Under the Exchange's proposed standards, a controlled company will not be required to have a majority independent board. Here too, however, a board that is acceptable under the new Exchange standards should be appropriate to make a delisting decision.

[8] The company referred to in footnote 3 above that transferred to Nasdaq issued a press release announcing that fact approximately one month prior to the actual transfer.

[9] *See* Sections 202.05 and .06 of the Exchange's Listed Company Manual. The Exchange also notes that pending proposed amendments by the SEC to Form 8–K will require a Form 8–K filing when a company has taken definitive action to terminate a listing, including by reason of a transfer to another market. *See* Securities Exchange Act Release No. 46084 (June 17, 2002), 67 FR 42914 (June 25, 2002) (File No. S7–22–02).

[10] When reviewing this proposed rule change, members of the Exchange's Pension Managers Advisory Committee as well as members of the Exchange's Board of Directors observed that companies should not voluntarily delist from the Exchange without investors in their stock having advance notice of the event. For the reasons stated above, the Exchange believes that there will be adequate public notice. If, however, for some reason disclosure is not made by the company or a third party when such disclosure is warranted, then the Exchange itself will publicly announce the planned delisting.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48430; File No. SR–Phlx–2003–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 thereto, by the Philadelphia Stock Exchange, Inc. Relating to a System Change to a Pilot Program to Disengage AUTO–X the Automatic Execution Feature of the Exchange's Automated Options Market (AUTOM)

September 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on July 14, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On August 26, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 25, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the proposed rule change to clarify that the specified disengagement size would continue to be subject to the approval of the Options Committee and would be posted on the Exchange's Web site for each option.

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 Phlx proposes to amend Phlx Rule 1080, Philadelphia Stock Exchange Automated Options Market (''AUTOM'') and Automatic Execution System (''AUTO–X''),[4] to reflect a systems change to its pilot program concerning AUTO–X, whereby AUTO–X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given option meets the specified disengagement size for the option (the ''pilot''). The text of the proposed rule change is set forth below. Brackets indicate deletions.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(j) No change.

Commentary:

.01–.05 No change.

.06 Reserved.

.07 The specified disengagement size set forth in Rule 1080(c)(iv)(I) is subject to the approval of the Options Committee [and shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option]. The specified disengagement size for each option shall be posted on the Exchange's Web site.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Phlx Rule 1080.

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 Phlx Rule 1080, Commentary .07, to reflect a systems change to the pilot.[5] The pilot was originally approved on a six-month basis for a limited number of eligible options[6] and extended for an additional six-month period.[7] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[8] In December 2001, the pilot was extended again for an additional six-month period;[9] and extended again in May 2002,[10] November, 2002,[11] and, most recently, in May 2003.[12]

The pilot currently includes the following features:

• Once an automatic execution occurs via AUTO–X in an option, the system begins a ''counting'' program, which counts the number of contracts executed automatically for that option up to a certain size,[13] which causes AUTO–X to become disengaged for that option.

• When the number of contracts executed automatically for that option exhausts the specified disengagement size for the specific option within a 15 second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds in order to enable the specialist to refresh quotes in that option.

[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[7] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[8] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[9] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[10] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[11] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59).

[12] *See* Securities Exchange Act Release No. 47955 (May 30, 2003), 68 FR 34458 (June 9, 2003) (SR–Phlx–2003–29).

[13] Phlx Rule 1080(c)(iv)(I) provides that when the number of contracts automatically executed within a 15 second period in an option exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. The specified disengagement size is determined by the specialist and subject to the approval of the Exchange's Options Committee. The specified disengagement size for each option is listed on the Exchange's Web site.

• Upon the expiration of 30 seconds, automatic executions resume, the ''counting'' program is set to zero and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

Again, when the number of contracts automatically executed exhausts the specified disengagement size within a 15 second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the ''counting'' program and drop to manual, etc.

In April 2003, the Commission approved a proposal by the Exchange to provide automatic executions for eligible inbound orders (for the account(s) of both customers and broker-dealers) at the Exchange's disseminated price, up to the disseminated size, replacing the previous Exchange rule that allowed a pre-set ''AUTO–X guarantee'' size, in which eligible orders would be automatically executed up to that AUTO–X guarantee, regardless of the Exchange's disseminated size.[14] Previously, if the Exchange's disseminated size in a particular series was greater than the AUTO–X guarantee, eligible orders delivered via AUTOM for a size greater than the AUTO–X guarantee would be automatically executed at the AUTO–X guaranteed size, and the remainder of the order would be executed manually by the specialist at the disseminated price, up to the remaining disseminated size, in accordance with the Exchange's rules regarding firm quotations.[15]

Because the Exchange currently guarantees automatic executions for eligible orders up to the Exchange's disseminated size, the most recent pilot extension included Commentary .07 to Rule 1080, prohibiting specialists from setting the specified disengagement size to a number of contracts that is fewer than their largest disseminated size.

The Exchange has developed a new system that will automatically execute eligible orders up to the disseminated size in a given series regardless of the specified disengagement size. Thus, if the disseminated size exceeds the specified disengagement size for the series, and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, the order will be executed up to the disseminated size, followed by an

[14] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[15] *See* Phlx Rule 1082.

AUTO–X disengagement period of 30 seconds (if the specialist revises the quote in the series prior to the expiration of 30 seconds, AUTO–X will be automatically re-engaged). Because of the new system, it is no longer necessary to require that the specified disengagement size be greater than the largest disseminated size for any series in a given option. Therefore, the proposal would delete from Commentary .07 to Phlx Rule 1080 the provision that the specified disengagement size shall not be for a number of contracts that is fewer than the highest quotation size for any series in the given option.[16]

The Exchange believes that the new system should enable specialists to continue to fulfill their obligations to make fair and orderly markets during periods of peak market activity, while simultaneously enabling them to meet the requirement to provide automatic executions up to the disseminated size, regardless of whether the specified disengagement size is for a number of contracts that is less than the disseminated size.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5) of the Act,[18] in particular, in that it that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by providing automatic executions for eligible orders up to the Exchange's disseminated size, while continuing to enable Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

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.

[16] *See* Amendment No. 1, *supra* note 3.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[19] and Rule 19b–4(f)(5) thereunder.[20] The proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system pursuant to Rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest or for the protection of investors, or otherwise in furtherance of the purposes of the Act.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–52 and should be submitted by October 1, 2003.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(5).

[21] For the purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 26, 2003, the date Phlx filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22981 Filed 9–9–03; 8:45 am]

BILLING CODE 8010–01–P

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3539]

State of New York

As a result of the President's major disaster declaration on August 29, 2003, I find that Allegany, Cattaraugus, Chemung, Columbia, Delaware, Fulton, Greene, Livingston, Montgomery, Ontario, Rensselaer, Schuyler, Steuben, and Yates Counties in the State of New York constitute a disaster area due to damages caused by severe storms, flooding and tornadoes occurring on July 21, 2003 and continuing through August 13, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 28, 2003 and for economic injury until the close of business on May 31, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Albany, Broome, Chautauqua, Chenango, Dutchess, Erie, Genesee, Hamilton, Herkimer, Monroe, Otsego, Saratoga, Schenectady, Schoharie, Seneca, Sullivan, Tioga, Tompkins, Ulster, Washington, Wayne, and Wyoming Counties in the State of New York; Bradford, McKean, Potter, Tioga, Warren, and Wayne counties in the State of Pennsylvania; Bennington County in the State of Vermont; Berkshire County in the State of Massachusetts; and Litchfield County in the State of Connecticut.

The interest rates are:

For Physical Damage:

Homeowners With Credit Available Elsewhere: 5.625%.

Homeowners Without Credit Available Elsewhere: 2.812%.

Businesses With Credit Available Elsewhere: 5.906%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 2.953%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 5.500%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 2.953%.

The number assigned to this disaster for physical damage is 353911. For economic injury the number is 9W7900 for New York; 9W8000 for Pennsylvania; 9W8100 for Vermont; 9W8200 for Massachusetts; and 9W8300 for Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 29, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–23083 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3534]

State of Ohio

(Amendment #3)

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 establish the incident period as beginning on July 21, 2003 and continuing through August 25, 2003.

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 29, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–23084 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region III Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, September 25, 2003, at 8:30 a.m. at the Duquesne University, 600 Forbes Avenue, Room 713 Rockwell Hall, Pittsburgh, PA 15282, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Donald Nemchick in writing or by fax, in order to be put on the agenda. Donald Nemchick, SBA Business Information Center, 700 River Ave., Pittsburgh, PA 15212, phone (412) 322–6441, fax (412) 395–6562, e-mail: *wpbic@riversidecenterforinovation.com.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: September 2, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–23079 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region I Regulatory Fairness Board

The Small Business Administration Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Wednesday, September 24, 2003 at 9:30 a.m. at The Legislative Office Building, North State Street, Room 201–203, Concord, NH 03301, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact William Phillips in writing or by fax, in order to be put on the agenda. William Phillips, District Director, SBA New Hampshire District Office, 143 North Main Street, Suite 202, Concord, NH 03301, phone (603) 225–1400 Ext. 115, fax (603) 225–1409, e-mail: *william.phillips@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: September 2, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–23080 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Small Business Administration, Region I Regulatory Fairness Board

The Small Business Administration Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Tuesday, September 23, 2003 at 9:30 a.m. at The Vermont Statehouse, 115 State Street, Room 11, First Floor, Montpelier, VT 05602, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Vallerie H. Morse in writing or by fax, in order to be put on the agenda. Vallerie H. Morse, U.S. Small Business Administration, Vermont District Office, 87 State Street, Room 205, P.O. Box 605, Montpelier, VT 05601, phone (802) 828–4422, Ext. 211, fax (802) 82–4485, e-mail: *vallerie.morse@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: September 2, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–23081 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Small Business Administration, Region II Regulatory Fairness Board

The Small Business Administration Region II Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Friday, September 26, 2003 at 9:30 a.m. at the State University of New York, State University Plaza, SUNY Board Room, Albany, NY 12246, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Jim King in writing or by fax, in order to be put on the agenda. Jim King, Small Business Development Center, 41 State Street, Albany, NY 12246, phone (518) 443–5398 Ext. 0 or 800–732–7232, fax (518) 443–5275, e-mail: *J.King@nyssbdc.org.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: September 2, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–23082 Filed 9–9–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4475]

30-Day Notice of Proposed Information Collection: Form DS–1884, Petition To Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government; OMB Control Number 1405–0082

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government.

Frequency: Once per respondent.

Form Number: DS–1884.

Respondents: Aliens applying for Immigrant Visa under INA 203(b)(4).

Estimated Number of Respondents: 300 per year.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 50 hours per year.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached on 202–663–1163. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: August 28, 2003.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–23029 Filed 9–9–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 4479]

List of September 1, 2003, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Eligible for Trade in Rough Diamonds Under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, revising the previously published list of August 11, 2003 (68 FR 47626).

FOR FURTHER INFORMATION CONTACT: Jay L. Bruns, Special Negotiator for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–2857.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR part 592 (''Rough Diamond Control Regulations'')(68 FR 45777, August 4, 2003).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Section 3 of the Clean Diamond Trade Act (the Act), Section 2 of the Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of September 1, 2003, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b) of the Act. This list revises the list previously published on August 11, 2003 (68 FR 47626).

Angola—Ministry of Geology and Mines.

Armenia—Ministry of Trade and Economic Development.

Australia—Export Authority—Department of Industry, Tourism and

Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.
Republic of the Congo—Ministry of Mines and Geology.
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
Hungary—Ministry of Economy and Transport.
India—The Gem and Jewellery Export Promotion Council.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Poland—Ministry of Economy, Labour and Social Policy.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Slovenia—Ministry of Finance.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Dated: September 1, 2003.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–23031 Filed 9–9–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4478]

In the Matter of the Redesignation of the ''United Self-Defense Forces of Colombia'' Also Known as the ''Autodefensas Unidas de Colombia'' Also Known as ''AUC'' as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA''), continue to exist with respect to the United Self-Defense Forces of Colombia and its aliases. Therefore, effective September 10, 2003, the Secretary of State hereby redesignates that organization as a foreign terrorist organization pursuant to section 219(a) of the INA.

Dated: August 27, 2003.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 03–23028 Filed 9–9–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4477]

FY 2003 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (Title VIII)

Deputy Secretary of State Richard L. Armitage approved on May 29, 2003, the FY 2003 funding recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII Program, administered by the U.S. Department of State, seeks to build expertise on the countries of Eurasia and Central and East Europe through support to national organizations in the U.S. for advanced research, language and graduate training, and other activities conducted domestically and overseas. The FY 2003 grant recipients are listed below.

1. American Council of Learned Societies

Grant: $500,000 ($500,000–AEEB).

Purpose: To support institutional language training in the U.S., to include the Baltic States for the first time in 2005; individual language training fellowships, including the Baltic languages beginning in 2004; dissertation fellowships; Junior Scholars' Training Seminar; and post-doctoral research fellowships.

Contact: Andrzej W. Tymowski, Director of International Programs, American Council of Learned Societies, 633 Third Avenue, New York, NY 10017–6795.

Tel: (212) 697–1505, ext. 145, Fax: (212) 949–8058.

E-mail: ANDRZEJ@acls.org

2. American Councils for International Education

Grant: $525,000 ($425,000-Eurasia, $100,000–AEEB).

Purpose: To support fellowships for advanced Russian and Eurasian and East Central European languages; fellowships for the Combined Research and Language Training Program; and the Research Scholar/Junior Faculty fellowships.

Contact: Graham Hettlinger, Program Manager American Councils for International Education, 1776 Massachusetts Avenue, NW., Suite 700, Washington, DC 20036.

Tel: (202) 833–7522, ext. 168, Fax: (202) 833–7523.

E-mail: hettlinger@actr.org

3. The William Davidson Institute of the University of Michigan Business School

Grant: $245,000 ($145,000–Eurasia; $100,000–AEEB)

Purpose: To support grants for pre- and post-doctoral research projects on economic and business development and public policy to develop free markets in the Balkans, Central Asia and the Caucasus Region.

Contact: Kelly Janiga, Administrative Director, The William Davidson Institute, University of Michigan Business School, 724 East University Avenue, Ann Arbor, MI 48109–1234.

Tel: (734) 615–4562, Fax: (734) 763–5850.

Email: janigak@umich.edu

4. University of Illinois at Urbana-Champaign

Grant: $129,000 ($99,000–Eurasia; $30,000–AEEB)

Purpose: To support the Summer Research Laboratory, which provides dormitory housing and access to the University's library for advanced research, and the Slavic Reference Service, which locates materials unavailable through regular interlibrary loan; a CD burner and scanner; and a subscription for the virtual reference software—Docutek.

Contact: Merrily Shaw, Assistant to the Director of the Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820.

Tel: (217) 244–4721/333–1244, Fax: (217) 333–1582.

E-mail: mshaw2@uiuc.edu or *reec@uiuc.edu*

5. International Research and Exchanges Board

Grant: $756,000 ($481,000–Eurasia; $275,000–AEEB)

Purpose: To support Individual Advanced Research Opportunities providing pre- and post-doctoral research fellowships in Policy R&D; short-term travel grants; and a Regional Policy Forum on the Caucasus Region, in conjunction with the Woodrow Wilson Center.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 2121 K Street, NW., Suite 700, Washington, DC 20037.

Tel: (202) 628–8188, Fax: (202) 628–8189.

E-mail: jwarner@irex.org

6. National Council for Eurasian and East European Research

Grant: $1,210,000 ($925,000-Eurasia; $285,000-AEEB).

Purpose: To support the Policy Research Fellowships in Eurasia and Central and East Europe for junior post-doctoral scholars; the Ed A. Hewett Fellowship Program to allow a scholar to work on a Research project for a year while serving in a USG agency or U.S. embassy overseas; short-term research grants to focus on Central Asia, the Caucasus, and the Balkans; and the post-doctoral National Research Program of research contracts for collaborative projects and fellowship grants for individuals.

Contact: Robert Huber, President, National Council for Eurasian and East European Research, 910 Seventeenth Street, NW., Suite 300, Washington, DC 20006.

Tel: (202) 822–6950, *Fax*: (202) 822–6955.

E-mail: *dc@nceeer.org*

7. Social Science Research Council

Grant: $775,000 ($775,000-Eurasia).

Purpose: To support pre-doctoral fellowships, including advanced graduate and dissertation; post-doctoral fellowships; curriculum development and teaching fellowships; one dissertation workshop on understudied regions; and the institutional language programs for advanced Russian and other Eurasian languages.

Contact: Seteney Shami, Program Director, Social Science Research Council, 810 Seventh Avenue, 31st Floor, New York, NY 10019.

Tel: (212) 377–2700, *Fax*: (212) 377–2727.

E-mail: *shami@ssrc.org*

8. The Woodrow Wilson Center for International Scholars

Grant: $783,000 ($495,000-Eurasia; $288,000-AEEB).

Purpose: To support the residential programs for post-doctoral Research Scholars, Short-term Scholars and Interns; the Meetings Program for both the Kennan Institute and East European Studies; the Kennan Institute's Outreach and Publications; the Kennan Institute's Workshop on Immigration, Forced Migration and Refugees in Central Eurasia; and the East European Studies Program's Junior Scholars' Training Seminar with the American Council of Learned Societies.

Contact: Nancy Popson, Deputy Director, Kennan Institute, *Tel*: (202) 691–4100, *E-mail: popsonna@wwic.si.edu;* Martin Sletzinger, Director, East European Studies, *Tel:* (202) 691–4263, *E-mail: sletzinm@wwic.si.edu,* The Woodrow Wilson Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004–3027, *Fax:* (202) 691–4247.

Dated: September 2, 2003.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 03–23030 Filed 9–9–03; 8:45 am]

BILLING CODE 4710–32–U

TENNESSEE VALLEY AUTHORITY

Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir, Loudon and Monroe Counties, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to implement the preferred alternative identified in its Final Environmental Impact Statement (EIS), Rarity Pointe Commercial Recreation and Residential Development on Tellico Reservoir.

In implementing Alternative E, TVA has decided to take several actions related to the Rarity Pointe development: (1) Change the land use allocation of approximately 116 acres of TVA property following the 820-foot elevation as marked on the Tellico Reservoir and sell it for part of a privately planned residential resort and golf course community, (2) authorize the use of about 5 acres of TVA property, below the 820-foot elevation for a small (par-3) golf course, (3) approve plans for a marina with up to 349 wet and 200 dry storage boat slips using approximately 4 acres of TVA land below the 820-foot elevation, (4) change the land use allocation of about 17 acres of TVA property from natural resource conservation to recreation to allow the construction of greenway trailhead facilities and grant the Tellico Reservoir Development Agency (TRDA) a permanent easement over the property to manage the property for the designated uses, and (5) accept the transfer of 256 acres of property, designate this tract for recreation and natural resources conservation, and grant the TRDA a permanent easement over the property to manage the property for the designated uses.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–8517 or e-mail *rltoennisson@tva.gov*.

SUPPLEMENTARY INFORMATION: In May 2002, TVA received a request from LTR Properties (Rarity Communities) to make available property under TVA's control on Tellico Reservoir in Loudon County, Tennessee, for part of a residential resort and golf community that Rarity Communities was constructing. Rarity Communities already owned 539 acres of property adjacent to the TVA property that it was proceeding to develop. It wanted the TVA property to enhance and expand the development. TVA was asked to take three actions related to the Rarity Pointe development: (1) Release the land use allocations for approximately 116 acres of TVA property above the

820-feet elevation (Parcels 8 and 9) on the Tellico Reservoir from recreation and natural resource conservation and sell Rarity Communities the property for its planned residential resort and golf course community with 1,200 units; (2) approve of the use of about 5 acres of TVA property, below the 820-foot elevation for a small (par-3) golf course; and (3) approve a full service marina using approximately 4 acres of TVA property with shoreline stabilization, dredge, and up to 349 wet and 200 dry storage boat slips.

In August 2000 prior to receiving the Rarity Communities request, TVA adopted the preferred alternative in its Tellico Reservoir Land Management Plan Final EIS (2000 Land Plan). This plan allocated uses for 139 parcels of TVA land totaling 11,150 acres on Tellico Reservoir, including all of the TVA land sought by Rarity Communities. The allocated uses for the two parcels in the Lower Jackson Bend area comprising the 116 acres sought by Rarity Communities—recreation (46 acres) and natural resource conservation (70 acres)—are not consistent with the planned development and have to be changed to permit the development to proceed if the property is sold by TVA. Despite the conflict with the Year 2000 Land Plan, TVA decided to assess the merits of Rarity Communities' request because it was consistent with the overall purposes of TVA's Tellico project and would further implement that project. The request also was consistent with TVA's statutory responsibilities to promote economic development in the Tennessee Valley region.

Although implementation of the Tellico project is exempt from environmental review, TVA decided to review the Rarity Communities' request under the National Environmental Policy Act. TVA issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) on June 24, 2002. A public scoping meeting was held on July 16, 2002, and was attended by over 400 people. Because of the degree of public interest, TVA extended the scoping period. TVA received over 500 written or oral comments on the proposal with the majority of commenters objecting to the transfer of TVA public land to a private developer.

TVA decided to prepare an EIS. A Notice of Availability of the Draft EIS was published in the **Federal Register** on March 28, 2003. Following release of the Draft EIS, TVA held a public meeting at Loudon, Tennessee, on April 10, 2003, attended by 95 people. TVA received approximately 112 sets of written and oral comments during the public comment period. The Notice of Availability for the Final EIS was published in the **Federal Register** on June 28, 2003. Appendix B of the Final EIS contains summaries of and responses to the comments TVA received on the Draft EIS.

Both the U.S. Army Corps of Engineers (USACE) and the Tellico Reservoir Development Agency (TRDA) have proposed actions related to the proposal and were cooperating agencies on the EIS. The USACE must decide whether to permit construction of marina water use facilities, related dredging, and disturbance of wetlands. TRDA has been requested to transfer ownership of property currently designated for industrial use needed to mitigate the sale of TVA's property to Rarity Communities and agree to permanently manage the property for recreation and natural resource conservation. In addition, TRDA has agreed to permanently manage the 17.6 acres trailhead property for recreation purposes.

Alternatives Considered

TVA identified five alternatives for responding to Rarity Communities' request. Under any alternative, construction and operation of a commercial recreation and residential project was expected to continue (and is proceeding now) on the 539 acres of private land already owned by Rarity Communities.

Under *Alternative A,* the *No Action Alternative,* TVA would not approve any of the requested actions and the Year 2000 Land Plan would remain unchanged.

Under *Alternative B,* the *Applicants Proposal,* TVA would modify the Year 2000 Land Plan and make the requested land available for sale and development. TVA would approve the marina plans, and allow the construction of the par-3 golf course on TVA land.

Under *Alternative C,* the *Partial Land Sale with Mitigation Alternative,* TVA would approve the new marina plans, allow the construction of the par-3 golf course on TVA land, and modify the Year 2000 Land Plan to allow the sale of part of the requested land (about 49 acres total) for development of an additional larger ''championship'' golf course, but with enhanced mitigation measures including at least a 60 acre land exchange.

Under *Alternative D,* the *Small Golf Course and Marina with No Land Sale Alternative,* TVA would approve the marina plans, and allow the construction of the par-3 golf course on TVA land, but not make any of the requested land available for sale.

Under *Alternative E,* the *Applicant's Proposal with Mitigation,* TVA would approve the new marina plans, allow the construction of the par-3 golf course, and modify the Year 2000 Land Plan to allow the sale of the requested land for development as described under Alternative B, but with enhanced mitigation measures including a 256 acre land exchange.

TVA identified the Alternative E as the preferred alternative in both the Draft EIS and the Final EIS.

Decision

TVA has decided to implement the preferred alternative identified in the Final EIS, Alternative E. TVA has determined that Alternative E achieves both Rarity Communities' objectives for the development of a high quality residential and recreational community and the regional and economic development goals of the Tellico Project in a manner that reduces associated environmental impacts to acceptable levels.

TVA has worked closely with Rarity Communities and TRDA to identify and put in place a number of mitigation measures. Of critical importance is the Rarity Communities' willingness to provide property to offset the loss of the TVA lands and their inherent public values. As a consequence, more land and shoreline comes under public ownership for recreation and natural resource uses than is lost by the sale of the TVA property to Rarity Communities. Under this alternative, Rarity Communities also would support development of a greenway trail on the eastern shore of the reservoir, thus fulfilling a component of the Year 2000 Land Plan. TVA is adopting commitments under Alternative E to further minimize the potential for adverse impacts to the environment. This includes prohibition of docks and other water use facilities on the 116 acres to be sold by TVA. As requested by the U.S. Environmental Protection Agency (EPA), these commitments are listed below, under the Environmental Commitments section. With these mitigation measures, all practicable means to avoid or minimize environmental harm would be adopted.

In reaching this decision, TVA has carefully considered the comments and concerns voiced by the public. Based on the comments TVA received during the EIS and scoping review processes, the primary concern to opponents of the proposed action appears to be that adjusting the Year 2000 Land Plan to allow the Rarity Communities

development to expand onto TVA property would set a precedent for future deviations from the land plan. TVA does not agree that this decision will create a precedent for future decisions leading to deviations from the Year 2000 Land Plan and additional environmental impacts. Deviations from the Year 2000 Land Plan are completely within TVA's control and the decision announced here in no way requires or binds TVA to make similar decisions in the future. As EPA noted in its comments, flexibility and the ability to adapt to events are the hallmarks of good land plans. TVA always maintains the ability to modify its reservoir land plans as events dictate, subject to appropriate environmental review. As was done here, if TVA receives additional requests to deviate from the Year 2000 Land Plan, TVA would carefully review the merits of such requests. Only if a request has sufficient merit, would TVA undertake a detailed review of the request, including appropriate environmental review and stakeholder input. Reviews of any such future requests would include an assessment of the cumulative impacts of such requests with the Rarity Communities development as well as other actions impacting or foreseeably impacting Tellico Reservoir and the area.

As discussed here and in the EIS, TVA agreed to consider the merits of Rarity Communities proposal because it is consistent with and further implements the overall goals of TVA's Tellico project. However, consistency with Tellico project goals likely would not have been sufficient for TVA to agree to a deviation from the Year 2000 Land Plan so early in the plan's life. Rarity Communities' willingness to offset the loss to TVA public land by providing higher quality land elsewhere on the reservoir was, as stated above, a critical factor in TVA's decision to allow the expansion of Rarity Communities' development onto TVA property and to approve Rarity Communities' associated requests. This allows TVA to make the decision here that furthers the Tellico project's economic development goals while enhancing the Year 2000 Land Plan's recreation and natural resource management goals.

Environmentally Preferred Alternative

Because the Rarity Communities' development would occur and is occurring on private land adjacent to the TVA land, none of the alternatives, including the no action alternative (Alternative A), would be free of environmental impacts. However, TVA's analyses indicate that Alternative A would have fewer environmental impacts especially to resources on TVA's public lands. On balance, TVA has decided that the no action alternative is the environmentally preferable alternative. However, of the action alternatives, Alternative E has a number of environmentally attractive features and in TVA's judgment would have important environmental benefits. These include a net gain of accessible public land and shoreline on Tellico Reservoir allocated to natural resource conservation and recreation and on-site environmental protection measures related to design and construction of the Rarity Pointe golf courses, resort housing, marina, and other development that would otherwise be foregone. In addition, Alternative E would jump-start the development of a greenway trail on the eastern shore of the reservoir. The major environmental negative feature of Alternative E would be that it could be seen from another development on Tellico Reservoir, known as Tellico Village, and would therefore have negative visual effects for village residents and lake users within that view shed.

Environmental Commitments

For the reasons discussed in the Final EIS and summarized here, TVA is committing to the following measures to avoid, reduce, or mitigate the potential environmental impacts associated with these actions:

- A vegetated buffer zone of at least 50 feet will be retained by TVA and maintained along the shoreline from the summer pool level and around the periphery of Parcels 8 and 9 (the land transferred by TVA) in order to maintain continuity on the site, and reduce possible impacts to water quality and wetlands.
- In order to further minimize potential impacts to water quality and avoid wildlife exposure to pesticides, Rarity Communities will utilize golf course design and management practices approved by TVA and included in Tennessee Department of Agriculture guidelines and/or the certification of the golf courses by Audubon or similar organizations that reduce exposure to and impacts from golf course maintenance and that provide a method of tracking compliance with this commitment.
- Rarity Communities will replace forested wildlife habitat and recreation land lost from the development of Parcels 8 and 9 through a land exchange with TVA at the Wildcat Rock site as described in Alternative E. TVA and/or TRDA will maintain the acquired parcel for public recreation and natural resource management.
- Dead trees and mature trees greater than 14 inches in diameter will not be cut on any of the lands that comprise the development project, especially oaks and hickories with loose, shaggy bark, until Indiana bats are not likely to be present (October 15–March 31).
- Fully shielded light fixtures or those with internal low-glare optics (so no light is emitted from the fixture at angles above the horizontal) will be used in the development.
- The following commitments are required for dredging associated with the marina:

A. Silt curtains must be placed around the perimeter of the dredge area, so as to not allow silt laden water outside the work area.

B. All saturated spoil will be dewatered using berms, straw bales, silt fencing, or other silt control devices positioned in such a way as to not allow silt-laden water to re-enter the reservoir. The method of dewatering must be approved by TVA.

C. All dredged material must be removed to an upland site (above 820-foot elevation) and contained in a manner to prevent its return to any water body or wetland, and permanently stabilized to prevent erosion.

- Rarity Communities will mitigate impacts to wetlands (W4 and W5) by implementing the wetland mitigation plan in Appendix C of the Final EIS. In addition, in response to comments from the FWS, the following additional wetland mitigation measures will be established;

A. The height of the riprap behind the dredge will be no higher than the 814-foot elevation.

B. The marina parking lot will be located no closer to the shoreline than 55 feet from the 813-foot contour.

C. The area between the marina parking lot and shoreline will be maintained as a vegetated filter buffer with the larger vegetation (trees and shrubs) left in place, the larger vegetation may be side pruned.

- All of the general and the designated standard conditions for Section 26a and Land Use approvals identified in Appendix G of the Final EIS are conditions of 26a approval and will be placed in the 26a permit, including conditions 6b, 6f, 6g, and 6h, and implemented by Rarity Communities on all licensed and leased TVA property. Article 3 General Provisions, TVA Contract 60000A, will be adopted by Rarity Communities and implemented on all former TVA

property by Rarity Communities and its land owners.

• To minimize pollutant loading and prevent spilling fuel or wastewater, any fuel storage or dispensing facility located temporarily or permanently on development project property will comply with TVA Resource Stewardship (TVARS) Guidelines for Storage Tanks (4.5.5), including the preparation and implementation of a Spill Prevention and Control Plan. A marina sewage pump out station will be installed and operated according to TVARS Guidelines 4.5.3, and the marina will comply with TVARS Guidelines for Discharges (4.5.1) (*See* Appendix F of the Final EIS).

• Rarity Communities will construct a trail terminal on TVA Parcel 6 (Parcel 6A), consisting of a paved access road, paved parking lot for approximately 18 vehicles, walkways, 6 picnic sites, and restroom in accordance with TVA design specifications described Figure G–2 in Appendix G, and permit public ingress/egress across Rarity Pointe property to access the proposed greenway trail system on TVA's adjoining upstream and downstream property.

• TVA's deed transferring title of the approximately 116 acres to Rarity Communities will state that residential access for individual water use facilities will not be considered anytime in the future by TVA and that individual water use facilities are prohibited.

• To prevent an increase in future flood damages:

A. Rarity Communities and the operator of the marina will securely anchor all floating facilities to prevent them from floating free during major floods.

B. Any future facilities or equipment subject to flood damage would be located above the TVA Flood Risk Profile elevation of 817.0 feet MSL.

C. Any future development proposed within the limits of the 100-year floodplain, elevation 816.2 feet MSL, would be consistent with the requirements of Executive Order 11988.

D. All future development would be consistent with the requirements of TVA's Flood Control Storage Loss Guideline.

• TVA Cultural Resources will review the proposed dredge site area during low winter pool, prior to any disturbance, to verify the results of a previous archeological survey.

As appropriate, these commitments will be implemented through the documents transferring title to the TVA property, conveying easement rights, and/or TVA's approval of development project elements under section 26a of the TVA Act and TVA will remain responsible for enforcing compliance.

Dated: September 4, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 03–22989 Filed 9–9–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Primaris Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2003–9–1), Dockets OST–2003–14773 and OST–2003–14774.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Primaris Airlines, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign scheduled passenger air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than September 18, 2003.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–2003–14773 and OST–2003–14774 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: September 4, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–23046 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; General Aviation Certification and Operations Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; assignment of new tasks to the Aviation Rulemaking Advisory Committee (ARAC) and withdrawal of prior tasks.

SUMMARY: This notice announces the withdrawal of four prior ARAC tasks, and describes two new tasks assigned to and accepted by the ARAC. This notice informs the public of the ARAC activities and invites public participation in the ARAC working groups.

FOR FURTHER INFORMATION CONTACT: Mr. David Showers, Manager, Standards Office, 901 Locust, Kansas City, Missouri 64106, (816) 329–4110, *david.r.showers@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA set up the Aviation Rulemaking Advisory Committee (ARAC) to give recommendations to the FAA Administrator on aviation-related rulemakings. The Secretary of Transportation determined the formation and use of the ARAC are necessary and in the public interest in performing duties imposed on the FAA by law.

In 1992, the JAA and the FAA committed to harmonizing, where proper and to the maximum extent possible, the FAR (Federal Aviation Regulations) and JAR (Joint Aviation Requirements) rules and associated materials. However, since the new ARAC tasks will not result in a change to the FAR (*i.e.*, 14 CFR part 23) or the associated guidance material, formal harmonization with the JAR is not planned. The FAA will share the ARAC's recommendations and the FAA's actions on them with the JAA. Although the FAA is not currently planning rulemaking action as a result of these tasks, if such action is proper in the future, harmonization with the JAR will be undertaken.

New Tasks

The FAA assigned and the ARAC accepted the two tasks described in this section. Each task is to be done in two phases.

Task I: Develop safety standards suitable for all jet and high-performance airplanes up to 19,000 pounds, including those in the commuter category.

This task is intended to create safety standards that would be available to address future part 23 jets and high-performance airplane configurations. It would provide industry with a better understanding of potential requirements before committing to a project involving

these airplanes. The safety standards would include performance, systems, occupant protection, and other issues for jets and high-performance part 23 airplanes.

Task I: Phase 1

1.Define ''high performance'' as it relates to high-performance airplanes; and

2. Review 14 CFR part 23 as a benchmark and identify safety concerns that are not currently addressed for jet and high-performance part 23 airplanes. Give particular attention to commuter and other part 23 airplanes used in part 135 service.

3. As part of the evaluations, consider the following:

- Systems issues such as stick pushers and integrated flight controls
- Structures issues such as mach effects (compressibility) and bird strike
- Powerplant location issues
- Aircraft performance issues such as accelerate-stop distance, single-engine climb, mach buffet, stall speed
- Cabin safety issues, including Occupant Protection for Commuter Category Airplane Crashworthiness (Dynamic Seats), Fireblocking Provisions, Thermal/Acoustic Insulation
- Cockpit display issues (multifunction displays, primary flight displays)

Schedule Task I: Phase 1

The ARAC should complete phase 1 of task I and forward their recommendations to the FAA by March 10, 2004.

Task I: Phase 2

1. Recommend safety standards to address the safety concerns identified in phase 1 of task I, unless the project is withdrawn or changed by the FAA.

Schedule Task I: Phase 2

The ARAC should complete this task and forward their recommendations to the FAA by September 12, 2005.

Task II: Develop safety standards suitable for emerging propulsion-type technologies related to installing reciprocating engines in part 23 airplanes.

Task II would create safety standards that would be available to address installing equipment associated with known emerging propulsion-type technologies on part 23 airplanes. These standards would address technologies such as diesel engines, electronic engine and propeller controls, electronic engine displays, and so forth. They would give industry information on the possible safety requirements in these areas before they committed resources to a related project.

Task II: Phase 1

1. Review 14 CFR part 23 as a benchmark and identify safety concerns that are not currently addressed for emerging propulsion-type technologies related to the installation of reciprocating engines in part 23 airplanes.

2. As part of the evaluations, consider the following:

- Single lever power control (SLP)
- Electronic engine control (EEC) and propeller controls
- Fuel quantity calibration and low-fuel warning systems
- Diesel engine installations, which include consideration of the way fuels are addressed in part 23
- Electronic engine displays
- Other technologies the Committee finds suitable

Schedule for Task II: Phase 1

The ARAC should complete phase 1 of task II and forward their recommendations to the FAA by March 10, 2004.

Task II: Phase 2

1. Recommend safety standards to address the safety concerns identified in phase 1 of task II, unless the project is withdrawn or changed by the FAA.

Schedule for Task II: Phase 2

The ARAC should complete phase 2 of task II and forward their recommendations to the FAA by September 12, 2005.

ARAC Acceptance of Tasks

The ARAC accepted the tasks and has agreed to the schedules for completing the tasks. The Committee will assign the tasks to the newly formed working groups under General Aviation Certification and Operations Issues.

Working Group Activity

The working group will serve as staff to ARAC and help in the analysis of the assigned tasks. ARAC must review and approve the working groups' recommendations. If ARAC accepts the working groups' recommendations, they will forward them to the FAA as ARAC recommendations.

The Part 23 Jet and High-Performance Airplane Safety Standards Working Group and the Part 23 Emerging Propulsion-type Technologies Working Group are expected to comply with the procedures adopted by ARAC. As part of the procedures, the working groups are expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on General Aviation Certification and Operations issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations before proceeding with the work stated in item 3 below.

3. Draft the appropriate documents, required analyses, and any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider general aviation certification and operations issues.

Participation in the Working Group

Each working group will be composed of technical experts with an interest in the assigned task. Working group participants should be prepared to devote a significant portion of their time and resources to the ARAC task. A working group member need not be a representative or a member of the ARAC. Individuals who want to become a member of one of the working groups should contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. They should describe their interest in the task, and state the expertise they would bring to the working group. All requests to take part in these tasks must be received by October 10, 2003. The co-assistant chairs, the co-assistant executive directors, and the working group chair will review all requests and advise which requests they can grant.

Individuals chosen for membership in a working group are expected to represent their part of the aviation community and actively participate in the working group (*e.g.*, attend all meetings, provide written comments when requested, etc.). In addition, they are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the co-assistant chair, the co-assistant executive director, and the working group chair.

Meetings of the ARAC will be open to the public. Meetings of the working groups will not be open to the public, except those individuals selected as working group members. The FAA will make no public announcement of working group meetings.

Withdrawn Tasks

This notice also announces the withdrawal of four prior tasks assigned to the ARAC. Two of these tasks were

published on March 21, 2001 (66 FR 14427; 66 FR 14428), one on June 6, 2001 (66 FR 30500), and one on August 22, 2001 (66 FR 44201).

A description of the withdrawn tasks follows.

Occupant Protection and Safety Standards

The FAA tasked the ARAC to review occupant protection standards to address criteria for improved occupant protection commonly used on part 23 airplanes, and develop requirements to improve the safety of part 23 airplanes. The ARAC's recommendations were to include an assessment of—

1. Flammability Standards for Seat Fireblocking Provisions;
2. Standardization of Emergency Landing Dynamic Conditions;
3. Thermal/Acoustic Insulation Flammability;
4. Airworthiness Certification of Airplanes Used in Cargo/Passenger Combination Operations;
5. Emergency Exit Markings;
6. Emergency Exit Access; and
7. Electric Cables and Equipment.

To consolidate FAA and industry resources, the FAA withdraws this task and includes it in new Task I described in this notice. Although the entire withdrawn task is not included in the new task, the FAA has determined that the intended results from the withdrawn task will be accomplished with new Task I.

Propulsion Certification Requirements

The FAA tasked ARAC to review part 23 standards to evaluate criteria for propulsion technologies used on part 23 airplanes and requirements that would improve the safety of part 23 airplanes. The ARAC recommendations were to include an evaluation of—

1. Turbofan/jet installations;
2. Single level power controls;
3. Electronic engine controls;
4. Fuel quantity calibration and low fuel warning for reciprocating engines;
5. New technology reciprocating engines (for example, diesel engines);
6. New technology powerplant displays; and
7. Various miscellaneous updates to part 23 powerplant requirements.

To consolidate FAA and industry resources, the FAA withdraws this task and incorporates it in new Task II described in this notice.

Static Directional and Lateral Stability

The FAA tasked the ARAC to review § 23.177 and JAR 23 and make recommendations on harmonized changes to § 23.177 for demonstrating positive dihedral effect in all landing gear and flap positions that would improve the safety of part 23 airplanes. The ARAC's recommendations were to include a draft notice of proposed rulemaking with preamble language, rule language, and any supporting legal analysis.

Miscellaneous Systems Standards

The FAA tasked the ARAC with evaluating the requirements for systems in the following CFR sections and make recommendations to address systems safety that would improve the safety of part 23 airplanes:

1. Revise § 23.735 to clarify the requirement for operation of brakes after a single failure in the braking system in commuter category airplanes.
2. Revise § 23.1301 by deleting paragraph (d); revise § 23.1309 to include warning requirements, probability values, and failure conditions applicable to powerplant systems; make warning requirements compatible with other regulations; delete paragraphs (c) and (d).
3. Add a new § 23.1310, Power Source Capacity and Distribution, from existing paragraphs 23.1309(c) and (d).
4. Revise § 23.1311 to address redundancy requirements for primary flight instruments; define ''indicator,'' the sensory cue requirements in paragraph (a)(6); delete the redundancy requirement in paragraph (b).
5. Review and revise §§ 23.1326(b)(1) and 23.1322 to require the amber light to be illuminated when the pitot tube heater is ''off.''
6. Review and revise § 23.1311 to call out required flight instruments as indicated in §§ 23.1303 and 91.205.

The FAA withdraws these tasks to free-up resources that will allow the FAA and industry to focus on other priorities. Withdrawal of these tasks does not prohibit the FAA from issuing future notices on these subject matters or committing the agency to a future course of action.

Issued in Washington, DC, on September 5, 2003.

Tony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 03–23022 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment or Environmental Impact Statement: Warren County, KY

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FWA is issuing this notice to advise the public that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) will be prepared for the proposed construction of a highway on new alignment from I–65 west to US 31W in northern Warren County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert Farley, Area Engineer, Federal Highway Administration, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, Kentucky 40601. Telephone 502–223–6744, Fax 502–223–6735.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Kentucky Transportation Cabinet (KYTC) will prepare an EA or EIS for the construction of a highway on new alignment from I–65 west to US 31W in the vicinity of the Kentucky TriModal Transpark (KTT). The EA or EIS will complement previous studies conducted by KYTC and the local Intermodal Transpark Authority (ITA) for the KTT development area and will detail environmental, social, and economic impacts associated with the proposed action.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A series of public meetings and a public hearing will be held while preparing this EA or EIS. Public notice will be given of the time and place of the meetings and hearing. The EA or draft EIS will be available for public and agency reviews and comment prior to the public hearing.

The public meetings and hearing will also be a forum for public consultation and involvement on issues associated with the National Historic Preservation Act (Section 106) when appropriate. Interested persons, groups, or parties who wish to be consulting parties under Section 106 for this project should submit a written request to the KYTC Bowling Green District Office, Attn: Kenneth Cox, Project Manager, 900 Morgantown Road, Bowling Green, Kentucky 42102. Telephone 270–746–7898, Fax 270–746–7643.

To ensure the full range of issues related to the proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EA or EIS may also be directed to the KYTC District Office or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 4, 2003.

Evan Wisniewski,

Project Development Team Leader, Federal Highway Administration.

[FR Doc. 03–22993 Filed 9–09–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15681]

Extension of Comment Period on Whether Nonconforming 2003 Ferrari 360 Spider and Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on a petition for NHTSA to decide that 2003 Ferrari 360 Spider and Coupe passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The closing date for comments on the petition is September 16, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION: On August 1, 2003, NHTSA published a notice (at 68 FR 45309) that it had received a petition to decide that nonconforming 2003 Ferrari 360 Spider and Coupe passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is September 2, 2003.

This is to notify the public that NHTSA is extending the comment period on this petition, and allowing it to run until September 16, 2003. This reopening is based on a request dated August 25, 2003, from Ferrari North America, Inc. (''Ferrari''), the U.S. representative of the vehicle's manufacturer. Ferrari stated that the extension was needed because the personnel and information required for its analysis of the petition are located at the company's factory in Italy, and that the necessary personnel were unavailable for much of the month of August due to the traditional August holiday that is taken in that country. Owing to the technical nature of the analysis that Ferrari stated is necessary to assess the petition and conformance issues raised therein, the company asserted that the unavailability of its Italy-based personnel and information made it impossible for it to complete its analysis before the closing date specified in the notice of petition. The company contended that a two-week extension would not prejudice the parties or unduly delay the proceeding.

NHTSA has granted Ferrari's request. All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 4, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–23047 Filed 9–9–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 240X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Gaston County, NC

On August 21, 2003, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 to abandon a 5-mile portion of rail line extending between milepost HG–47.0 at Gastonia and milepost HG–52.0 at Dallas (Gebo), in Gaston County, NC. The line traverses U.S. Postal Service Zip Codes 28052, 28053, 28054 and 28034 and includes stations at Gastonia and Dallas (Gebo).

The line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 9, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 30, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 240X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510. Replies to the NSR petition are due on or before September 30, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact

SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 3, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22907 Filed 9–9–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 10, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1844.

Form Number: IRS Form 13369.

Type of Review: Extension.

Title: Agreement to Mediate.

Description: Fast Track Mediation is a dispute resolution process designed to expedite case resolution. In order to avail themselves of this process, taxpayers and Compliance must complete the Agreement to Mediate once an examination or collection determination is made. Once signed by both parties, the Agreement to Mediate will be forwarded to Appeals to schedule a mediation session.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, State, local or tribal government.

Estimated Number of Respondents: 300.

Estimated Burden Hours Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1545–1845.

Notice Number: Notice 2003–38.

Type of Review: Extension.

Title: Compliance Initiative for Foreign Corporations and Nonresident Aliens, with Related Document on Frequently Asked Questions.

Description: This notice explains a compliance initiative and the procedure by which certain nonresident aliens and foreign corporations may file income tax returns that were not filed in a timely manner in accordance with the regulations under section 874(a) or 882(c)(2).

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–23017 Filed 9–9–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held October 8, 2003.

ADDRESSES: The closed meeting of the Art Advisory Panel will be on October 8, 2003, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1864 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on October 8, 2003, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

Chief, Appeals.

[FR Doc. 03–23085 Filed 9–9–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act), that a meeting of the Advisory Committee on Former Prisoners of War (FPOW) will be held on October 20–22, 2003, at the Department of Veterans Affairs Greater Los Angeles Healthcare System, 11301 Wilshire Blvd., West Los Angeles, CA 90073. The meeting will be held in the Multipurpose Auditorium, Bldg. 500, Room #1281, and is open to the public. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care and rehabilitation.

The agenda on October 20 will begin with an introduction of Committee members, remarks from dignitaries, a

review of Committee reports, an update of activities since the last meeting, and a period for FPOW veterans and/or the public to address the Committee. The Committee will also discuss future plans for the VA FPOW Learning Seminars, and conclude with a report on the development of Special FPOW Care and Benefits Teams. The agenda on October 21 will include a review of VA's Compensation and Pension Service activities, including new outreach initiatives to FPOWs, initiatives to reduce the number of old pending disability claims, as well as a progress report from VA's FPOW Medical Presumptions Workgroup. The Committee will also hear presentations on the activities of the Veterans Health Administration, including a report on priority for FPOWs in Long-Term Health Care programs. The Committee will also hear a presentation from the Robert E. Mitchell Center for Prisoner of War Studies. The day will conclude with new business and general discussion. On October 22, the Committee's Medical and Administrative work groups will break out to discuss their activities and report back to the Committee. Additionally, the Committee will review and analyze the comments discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Ronald J. Henke, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by October 13, 2003.

Dated: September 3, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–22954 Filed 9–9–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Charleston, SC

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate approximately .48 acres of real property at the Department of Veterans Affairs Medical Center, in Charleston, South Carolina, to be leased under an enhanced-use lease. The Department intends to enter into a 35 to 75-year lease of such property with the ''Medical University Hospital Authority,'' a public authority of the State of South Carolina and an affiliate of the ''Medical University of South Carolina,'' who would finance, design, develop, maintain and manage the expansion of its medical center complex.

FOR FURTHER INFORMATION CONTACT: Anthony Sherman, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6863.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161, *et seq.*, specifically provides that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a concept plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provisions of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: September 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–22955 Filed 9–9–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 175

Wednesday, September 10, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB97

Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues

Correction

In rule document 03–20094 beginning on page 47221 in the issue of Friday, August 8, 2003, make the following correction:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Appendix B to Part 4—[Corrected]

On page 47236, in appendix B, in the table, in the last line ''& − 1=10%'' should read ''− 1=10%''.

[FR Doc. C3–20094 Filed 9–9–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Munitions Response Site Prioritization Protocol

Correction

In proposed rule document 03–21013 beginning on page 50900 in the issue of Friday, August 22, 2003, make the following corrections:

1. On page 50900, in the first column, under the heading **ADDRESSES**, in the sixth line from the bottom, ''*http://*'' should read, ''*https://*''.

2. On the same page, in the same column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the second line from the bottom, ''*http://*'' should read, ''*https://*''.

3. On page 50908, in the table heading, ''MODULE TYPE'' should read, ''MODULE MUNITIONS TYPE''.

4. On page 50917, in Table 13, under the heading ''Score'', in the third entry, ''10'' should read, ''5''.

Appendix A to 32 CFR Part 179—[Corrected]

5. On page 50937, in appendix A to 32 CFR part 179, in Table 11, under the heading ''Classification and description'', in the seventh line, ''CWM 20 known'' should read, ''CWM known''.

6. On page 50940, in the same appendix, in Table 19, under the heading ''Score'', in the fourth entry, ''10'' should read, ''0''.

[FR Doc. C3–21013 Filed 9–9–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 10, 2003

Part II

Environmental Protection Agency

40 CFR Part 437

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL–7555–5]

RIN 2040–AD95

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend certain provisions of the wastewater regulations for the Centralized Waste Treatment Point Source Category. This regulation established effluent limitations guidelines, pretreatment standards and new source performance standards under the Clean Water Act (CWA) for the centralized waste treatment industry (CWT). Following promulgation of the regulations, a number of CWT facilities petitioned EPA to reconsider the limitations and standards for certain pollutants. Today's proposal provides a preliminary response to those petitions and the supporting data submitted by the petitioners. The amendments would delete certain selenium limitations and standards from the Metals Treatment and Recovery subcategory, as well as the the Multiple Wastestreams subcategory. This action also proposes to delete the barium, molybdenum, antimony, and titanium limitations and standards from the Oils Treatment and Recovery subcategory, and revise the Multiple Wastestreams subcategory, to reflect these changes. Furthermore, this proposal would increase the maximum monthly average BOD_5 limitation for directly discharging facilities subject to a section of the Multiple Wastestreams subcategory. Finally, several facilities petitioned EPA to remove the molybdenum limitations from the Organics Treatment and Recovery subcategory and revise the Multiple Wastestreams subcategory. Based on EPA's preliminary analysis of the data received to date, EPA has not yet determined whether it is appropriate to remove these limitations. Therefore, this notice requests additional information on the achievability of the molybdenum limitations in the Organics Treatment and Recovery Subcategory and explains what data the Agency needs to demonstrate that molybdenum should not continue to be regulated in this subcategory.

DATES: Comments must be received by October 10, 2003. Persons wishing to request a public hearing regarding the pretreatment standards must do so by September 25, 2003. If commenters request a public hearing, EPA will hold a public hearing on these proposed pretreatment standards on October 10, 2003 from 10 a.m. to 12 noon, *see* Section I.F.

ADDRESSES: You can submit comments electronically, by mail, or through hand delivery/courier. Please mail comments to the Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460 or submit them electronically to *http://www.epa.gov/edocket.* Send either to the Attention of Docket ID No. OW–2003–0075. For more information on submitting comments, *see* Section I.C. If commenters request a public hearing on the pretreatment standards, EPA will hold a public hearing in Room 6231–F in the EPA-West Building, 1301 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, EPA Office of Water by phone at (202)566–1025 or by e-mail at *forsht.elwood@epa.gov.* For information on how to get copies of this document and other related information *see* Section I.B.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially regulated by this action include the following types of facilities that discharge pollutants directly or indirectly to U.S. waters.

Category	Examples of regulated entities	NAICS codes
Industry	Discharges from stand-alone waste treatment and recovery facilities receiving materials from off-site. These facilities may treat hazardous or non-hazardous waste, hazardous or non-hazardous wastewater, and/or used material from off-site, for disposal, recycling, or recovery. Certain discharges from waste treatment systems at facilities primarily engaged in other industrial operations. Industrial facilities that process their own, on-site generated, process wastewater with hazardous or non-hazardous wastes, wastewaters, and/or used material received from off-site, in certain circumstances, may be subject to this rule with respect to a portion of their discharge.	56221, 562219

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and applicability criteria in §§ 437.1, 437.2, 437.10, 437.20, 437.30, and 437.40 of title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

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

electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1.

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

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

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. Please submit with your comments any references cited in your comments. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OW–2003–0075. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW–Docket@epa.gov,* Attention Docket ID No. OW–2003–0075. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By Mail.* Send an original and three (3) copies of your comments and any references cited in your comments to the Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2003–0075.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2003–0075. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information identified as CBI by mail only to the following address: Office of Science and Technology, Mailcode 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Elwood Forsht, Docket ID No. OW–2003–0075.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific

information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide 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 docket 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.

F. Pretreatment Hearing Information

If commenters request a public hearing on the pretreatment standards, a hearing will be held on October 10, 2003. During the pretreatment hearing, the public will have the opportunity to provide oral comment to EPA. EPA will not address any issues raised during the hearing at that time but these comments will be recorded and included in the public record for the rule. Persons wishing to attend or to present formal comments at the public hearing should contact Mr. Elwood Forsht before September 25, 2003 and should have a written copy for submittal at the hearing.

II. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

III. Overview of Effluent Limitations Guidelines and Standards for Centralized Waste Treatment

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (section 101(a), 33 U.S.C. 1251(a)). To achieve this, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. It relies primarily, however, on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the Nation's waters would not achieve the CWA's goals. Consequently, the CWA requires EPA to set nationally-applicable pretreatment standards that restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTWs operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. POTWs must also implement local pretreatment limits applicable to their industrial indirect dischargers to satisfy local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

On December 22, 2000, EPA promulgated regulations establishing effluent limitations guidelines, pretreatment standards for new and existing sources, and new source performance standards for the Centralized Waste Treatment (CWT) Point Source Category (65 FR 81242).

The regulations control the discharges from CWT facilities that receive waste, wastewater, or used material from off-site. EPA established limitations and standards for four CWT subcategories. The first three subcategories cover facilities that treat or recover only one type of waste, either metal-bearing (Subcategory A—Metals Treatment and Recovery), oily (Subcategory B—Oils Treatment and Recovery), or organic (Subcategory C—Organics Treatment and Recovery). The fourth subcategory, Subcategory D—Multiple Wastestreams, covers facilities that treat or recover some combination of metal-bearing, oily, and organic wastes, wastewater, or used material received from off-site. Using Subcategory D limitations and standards simplifies implementation of the rule and compliance monitoring for CWT facilities that treat wastes subject to more than one of the first three subcategories. These facilities may choose to comply with the provisions of the multiple wastestreams subcategory D rather than subcategories A, B, or C. However, they must certify that an equivalent treatment system is installed and properly designed, maintained, and operated.

After the Agency published the December 2000 final rule, facilities in the regulated community conducted compliance monitoring studies and began to develop compliance strategies for the regulated pollutants. Based on these efforts, several members of the regulated community and a trade association submitted new information to the Agency and asked EPA to revise certain aspects of the final rule. After our own analysis and review, we determined that EPA should propose several minor modifications to the current rule.

IV. Amendment To Delete Selenium From the Metals Treatment and Recovery Subcategory

EPA is proposing to amend 40 CFR part 437 by deleting the respective Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) limitations and standards for selenium from §§ 437.11, 437.13, 437.15 and 437.16. Section VI below describes the revision to the related segments of the Multiple Wastestreams Subcategory to reflect deletion of selenium from these sections of the Metals Treatment and Recovery

Subcategory. In the December 2000 final rule, EPA established, for the Metals Treatment and Recovery Subcategory, direct discharge limitations and standards as well as pretreatment standards for selenium and 15 other metal pollutants. The model technology for the BPT, BAT, PSES and PSNS limitations and standards was primary chemical precipitation, liquid-solid separation, secondary chemical precipitation, clarification, and sand filtration. EPA is not proposing to delete the New Source Performance Standards (NSPS) for selenium because the standards are based on a different model treatment system involving the use of selective metals precipitation

While the data demonstrate that the technology EPA evaluated as the basis for the BPT, BAT, PSES, and PSNS limitations and standards removes selenium, they also show that selenium removal was achieved only in the last stage of the model treatment system—the sand filtration polishing step. The sand filtration polishing step was included in the model technology to ensure compliance with total suspended solids limits (TSS) and not designed to achieve specific metal removals. While it is true that the removal of solids associated with sand filtration will include the removal of associated metals, these metals removals are not achieved at a consistent or predictable rate. It was not EPA's intention to regulate a metal for which removals were obtained only during this final, polishing step of an extended treatment train. EPA is not certain that the identified removals were not an artifact of the particular data set or that such removals are consistent and predictable with this technology. While removals were observed, EPA is not certain that facilities would be able to achieve the consistent removals required for compliance with a specific regulatory limit for selenium. Selenium is the only metal pollutant parameter regulated by the CWT regulation that falls into this category. The docket includes documents which describe EPA's review of the selenium data (DCS 47.1 and 47.2).

Although EPA proposes to delete the regulatory limits for selenium in the selected sections, operation of treatment systems required to achieve compliance with the 14 other metals limits will ensure some continued removal of selenium, even if not at a consistent and predictable rate. EPA estimates that assuming no selenium removals would decrease EPA's December 22, 2000, estimated metals subcategory pollutant reductions by 53 lbs/yr or nearly zero percent of the total estimated reduction of 163 million lbs/yr. Expressed as toxic pound-equivalents, the decrease as a result of assuming no selenium removals is 0.014 percent or 59 lb-eq/yr out of the total estimated reduction of 415,383 lb-eq/yr (DCN 47.3).

V. Amendment To Remove Barium, Molybdenum, Antimony, and Titanium From the Oils Treatment and Recovery Subcategory

In the December 2000 final rule, EPA established, for the Oils Treatment and Recovery Subcategory, direct discharge limitations and standards for barium, molybdenum, antimony, and titanium as well as 18 other pollutants; and pretreatment standards for barium, molybdenum, and antimony as well as 11 other pollutants. The model technology that was the basis for the BPT, BAT, NSPS, and PSNS limitations and standards was emulsion breaking/gravity separation, secondary gravity separation and dissolved air flotation (DAF). The PSES model technology basis was emulsion breaking/gravity separation and DAF.

After publication of the final rule, members of the regulated community evaluated different engineering strategies for complying with the promulgated limitations and standards. Several companies and a trade association submitted new information to EPA demonstrating that the model technology did not consistently remove certain pollutants from oils wastestreams in specified circumstances. They concluded and reported to EPA that the limitations and standards were not technically achievable, petitioning EPA to delete these pollutants from the regulated parameters.

Based on the data submitted to the Agency concerning metals removal and the model technology, EPA reexamined the technology to determine whether it would achieve consistent and predictable removals of metal pollutants. As noted above, the model technology consists of emulsion breaking/gravity separation, secondary gravity separation and DAF. During the DAF phase of treatment, surface active agents, coagulating agents, and polyelectrolytes are added to the wastewater and the pH of the system is adjusted. The effect of the addition of coagulating agents and pH adjustment is to promote precipitation of metals and their consequent removal. Different metals are removed more effectively at different concentrations of coagulating agents and at different pH levels. EPA examined its data base to identify which of the metals pollutants were removed consistently and predictably by the treatment system that was the basis for the final limitations. The result of this review demonstrated that removals were not consistent and predictable for the following pollutants: Barium, molybdenum, antimony and titanium. As a result, EPA proposes to remove the limitations and standards for barium, molybdenum, antimony and titanium from Subcategory B and modify the related provisions of Subcategory D to reflect these changes.

Even though this amendment would delete the limitations and standards for these four metal pollutants, the control of other metal pollutants ensures some incidental removals for these parameters. For direct discharge facilities, limitations for nine other metals remain in place. For indirect discharge facilities, pretreatment standards for six other metals remain in place.

A. Barium

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for barium from §§ 437.21, 437.23, 437.24, 437.25 and 437.26. Section VI below describes the methodology used to revise the related segments of the Multiple Wastestreams Subcategory to reflect deletion of barium from the Oils Treatment and Recovery subcategory.

EPA received information and data from several companies and a CWT trade association concerning barium concentrations in different types of waste receipts treated at CWT facilities. EPA evaluated this information and concluded that its model technology would not reliably and consistently remove barium to the limits required in the oils subcategory. The record includes the additional information provided to the Agency with the request for changes to the regulation and EPA's review of that information (DCNs 43.2.49, 43.2.51, 43.2.54, 43.2.60, 44.1.1, 44.2, 44.3, 45.29.1, and 47.7).

The commenters noted that CWT facilities accept a variety of oily waste receipts that contain barium including used lubricating oils and greases and oil and gas extraction drilling fluids and brine. The information and data indicates that barium is usually precipitated as barium sulfate and that sedimentation rather than dissolved air flotation would provide more consistent barium removals.

EPA's single-stage DAF model treatment system was designed primarily to remove suspended solids and dispersed oil and grease from oily wastewater. The use of treatment chemicals provides an effective means

of increasing the efficiencies of DAF treatment systems in removing suspended solids and may also enhance the removal of metals (DCN 41.2, pages 8–13 to 15). The operating conditions of the model treatment technology evaluated for the final regulation included the addition of treatment chemicals (aluminum sulfate, caustic soda, and polymers). Use of aluminum sulfate (alum) precipitates barium sulfate which has a specific gravity 4.5 times heavier than water; the use of polymers flocculate suspended particles.

Because of the density of barium sulfate and the use of polymers, large floc formations would tend to sink and smaller floc formations would tend to float. However, if colloidal suspensions are formed, DAF would tend to be ineffective. Therefore, removing barium sulfate by DAF requires a careful balance between forming a large enough floc to be floated but not too large to sink. In this situation, it appears that the model DAF technology would not reliably and consistently provide the pollutant reductions that form the basis for the promulgated limitations. Thus, EPA proposes to remove the limitations and standards for barium from Subcategory B and the associated provisions of Subcategory D. We did not intend to regulate a pollutant in the oils waste receipts subcategory for which compliance could not be consistently and predictably achieved with the model DAF treatment system.

Although EPA proposes to delete the regulatory limits for barium, operation of treatment systems required to achieve compliance with other metals limits will ensure some continued removal of barium, even if not at a consistent and predictable rate. Even if there were no incidental removals for barium, the estimated pollutant reduction for this regulation remains relatively unchanged, *i.e.*, the December 22, 2000, estimated oils subcategory pollutant reductions would decrease by 2,115 lbs/yr or 0.22 percent of the total estimated reduction of 941,622 lbs/yr. Expressed as toxic pound-equivalents, the decrease as a result of assuming no barium removals is less than 0.008 percent or 4 lb-eq/yr out of the total estimated reduction of 52,447 lb-eq/yr (DCN 47.3).

B. Molybdenum, Antimony, and Titanium

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, and NSPS limitations and standards for molybdenum, antimony, and titanium from §§ 437.21, 437.23, 437.24; and by deleting the respective PSES and PSNS standards for molybdenum and antimony from §§ 437.25 and 437.26. Section VI below describes the methodology used to revise the related segments of the Multiple Wastestreams Subcategory to reflect deletion of molybdenum, antimony, and titanium from the Oils Treatment and Recovery subcategory.

EPA's single-stage DAF model treatment system was designed primarily to remove suspended solids and dispersed oil and grease from oily wastewater. The use of treatment chemicals provides an effective means of increasing the efficiencies of DAF treatment systems in removing suspended solids and may also enhance the removal of metals (DCN 41.2, pages 8–13 to 15). The conditions under which the model treatment technology operated which EPA evaluated for the final limitations and standards included the addition of treatment chemicals (aluminum sulfate, caustic soda, and polymer) with pH adjustments to relatively strong base levels between 9 to 11. These operating conditions optimize the removals of the more traditional heavy metals including chromium, zinc, lead, nickel, copper, and cadmium.

After publication of the December 2000 final rule, the regulated community evaluated several different engineering strategies for complying with the limitations and standards. Several companies and a CWT trade association submitted new information to EPA demonstrating that the model technology would not consistently remove certain pollutants from oils wastestreams in specified circumstances. They concluded and reported to EPA that the antimony, molybdenum, and titanium limitations and standards were not technically achievable, petitioning EPA to delete these pollutants as regulated parameters. The docket includes the additional information provided to the agency and EPA's review of that information (DCNs 45.12.1, 45.12.2, 45.12.3, 45.12.4, 45.25, 45.25.2, 46.5.1, 46.5.2, 46.5.3, 46.10, 46.11, 46.12, 46.15, 46.21, and 47.5).

Based on the materials submitted to the Agency, EPA reexamined its model technology and the associated removal data. The new information and data demonstrate that the oils subcategory model DAF treatment technology is unable to consistently meet the antimony, molybdenum, and titanium oils subcategory limitations and standards. Furthermore, the new data demonstrate that optimum removals of antimony, molybdenum, and titanium require treatment with high concentrations of iron (ranging from 1,000 to 5,000 mg/l) and, for antimony and molybdenum, pH adjustments to relatively strong acid levels between 4 to 5. Therefore, to ensure compliance with the antimony, molybdenum, and titanium limitations and standards, many oily waste facilities would need to add a second-stage chemical precipitation step operated at a relatively low pH (between 4 and 5) and/or the addition of large quantities of iron (1,000 to 5,000 mg/l), and followed by clarification or filtration.

EPA did not intend to regulate a pollutant in the oils waste receipts subcategory for which compliance could only be obtained with the addition of uniquely designed chemical precipitation systems to the model technology. Based on the information and data provided, we conclude that in many situations CWT facilities subject to Subpart B would not be able to comply with the antimony, molybdenum, and titanium limitations and standards through the use of the model DAF technology alone. Many facilities would need to add chemical precipitation unit operations uniquely designed for antimony, molybdenum, and titanium removal. Due to these circumstances, EPA proposes to remove the limitations and standards for these pollutants from Subcategory B and revise the associated provisions of Subcategory D.

Although EPA proposes to delete the regulatory limits for antimony, molybdenum, and titanium, operation of treatment systems required to achieve compliance with other metals limits will ensure some continued removal of antimony, molybdenum, and titanium, even if not at consistent and predictable rates. Even if there were no incidental removals for antimony, molybdenum, and titanium, the estimated oils subcategory pollutant reduction for this regulation remains relatively unchanged, *i.e.*, the December 22, 2000, estimated pollutant reductions would decrease by 7,828 lbs/yr or 0.83 percent of the total estimated reduction of 941,622 lbs/yr. Expressed as pollutant pound-equivalents, the decrease as a result of assuming no antimony, molybdenum, and titanium removals is about 2.89 percent or 1,518 lb-eq/yr out of the total estimated reduction of 52,447 lb-eq/yr (DCN 47.3).

VI. Amendment To Revise the Related Multiple Wastestreams Subcategory Segments

EPA, in the December 2000 final rule, established limitations and standards for facilities that treat a combination of metal-bearing, oily or organic wastes, wastewater or used material. Use of

these Multiple Wastestreams Subcategory limitations and standards simplifies implementation of the rule and compliance monitoring for CWT facilities that treat wastes subject to more than one of the other subcategories. These facilities may elect to comply with the provisions of the Multiple Wastestreams Subcategory rather than the applicable individual provisions of the metals, oils, and organics treatment and recovery subcategories in the circumstances described in 40 CFR 437.40.

EPA developed four sets of limitations for each of the possible combinations of the three subcategories of wastestreams. These are mixtures of (1) metal-bearing, oils, and organics waste receipts; (2) metal-bearing and oils waste receipts; (3) metal-bearing and organics waste receipts; and (4) oils and organics waste receipts. EPA derived these limitations and standards by combining pollutant limitations and standards from each possible combination of subcategories and selecting the most stringent pollutant values where they overlap. (For each pollutant, EPA selected the most stringent maximum monthly average limitations and its corresponding maximum daily limitation.) Today's proposal would modify the Multiple Wastestreams Subcategory limitations and standards to account for the removal of selenium from the Metals Subcategory limitations and standards and the removal of barium, molybdenum, antimony and titanium from the Oils Treatment and Recovery Subcategory.

A. Selenium

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, PSES, and PSNS limitations and standards for selenium from §§ 437.42(b), (c), and (d); 437.44(b), (c), and (d); 437.46(b), (c), and (d); and 437.47(b), (c), and (d). Because selenium was regulated in the Metals Treatment and Recovery Subcategory but not in the Oils or Organics Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting selenium from the BPT, BAT, PSES, and PSNS segments of the metals subcategory (see Section IV above) would be that selenium limitations and standards would remain only in the NSPS segment of the Multiple Wastestreams Subcategory. The selenium NSPS standards are based on a different model treatment system involving the use of selective metals precipitation.

B. Barium

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for barium from §§ 437.42(b), (c), and (e); 437.44(b), (c), and (e); 437.45(b), (c), and (e); 437.46(b), (c), and (e); and 437.47(b), (c), and (e). Because barium was regulated in the Oils Treatment and Recovery Subcategory but not in the Metals or Organics Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting barium from the oils subcategory (see Section V above) is that there would be no barium limitations and standards for any segment of the Multiple Wastestreams Subcategory.

C. Molybdenum

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for molybdenum from §§ 437.42(c), 437.44(c), 437.45(c), 437.46(c), and 437.47(c). EPA had originally promulgated molybdenum limitations for the Oils Treatment and Recovery Subcategory and the Organics Treatment and Recovery Subcategory but not in the Metals Treatment and Recovery Subcategory. If EPA promulgates this amendment as proposed, there would be limitations for this pollutant only in the organics subcategory. Since the organics subcategory molybdenum limitations were more stringent than those in the oils subcategory, the molybdenum limitations in the related segments of the multiple wastestreams subcategory would continue to be based on the organics subcategory limitations.

D. Antimony

EPA proposes to amend 40 CFR part 437 by deleting the respective PSES and PSNS standards for antimony from §§ 437.46(e) and 437.47(e), and by revising the respective BPT, NSPS, PSES, and PSNS limitations and standards for antimony in §§ 437.42(b), (c), and (e), 437.45(e), 437.46(b) and (c), and 437.47(b) and (c).

Because antimony was originally regulated for indirect discharges in the Metals and Oils Treatment and Recovery Subcategories but not in the Organics Treatment and Recovery Subcategory, there would be PSES and PSNS standards for this pollutant only in the Metals subcategory, if EPA promulgates the amendments as proposed. The antimony standards in the related indirect discharge segments of the Multiple Wastestreams subcategory would therefore be based on the Metals subcategory limitations.

In the December 2000 rule, EPA regulated antimony for direct discharges in the Metals, Oils, and Organics Treatment and Recovery Subcategories. If EPA promulgates this amendment as proposed, there would be BPT, BAT, and NSPS limitations and standards for this pollutant only in the Metals and Organics subcategories. Therefore the BPT, BAT, and NSPS antimony limitations and standards in the related direct discharge segments of the Multiple Wastestreams subcategory would be based on the most stringent antimony limitations in the overlapping Metals and Organics subcategories.

E. Titanium

EPA proposes to amend 40 CFR part 437 by deleting the respective BPT, BAT, and NSPS limitations and standards for titanium from §§ 437.42(e), 437.44(e), and 437.45(e), and by revising the respective BPT limitations for titanium in §§ 437.42(b) and (c). Because titanium was regulated for direct discharges in the Metals and Oils Treatment and Recovery Subcategories but not in the Organics Treatment and Recovery Subcategory, there would be BPT, BAT, and NSPS limitations and standards for this pollutant only in the metals subcategory, if EPA promulgates this amendment as proposed. Therefore the BPT, BAT, and NSPS titanium limitations and standards in the related direct discharge segments of the Multiple Wastestreams subcategory would be based on the titanium limitations and standards in the Metals subcategory.

VII. Corrections and Edits to 40 CFR 437

EPA proposes to correct a technical error contained in the December 22, 2000, final rule. The **Federal Register** publication of the final rule (65 FR 81241) contained an error in § 437.42(d) for the maximum monthly average BOD_5 limitation for direct discharge facilities subject to the Multiple Wastestreams Subcategory for combined metals and organics waste receipts. The 3.0 mg/l BOD_5 maximum monthly average limitation is revised to read 53.0 mg/l. This matches the limitation in the final rule signed by the Administrator on August 28, 2000. The correct 53.0 mg/l BOD_5 limitation for this segment is reflected in the August 2000 ''Development Document for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry—Final,'' (EPA 821–R–00–020)

as well as the supporting information and analyses in the record.

The ''Authority'' citation is revised to conform with current guidance from the Federal Register Office.

VIII. Summary of Proposed Actions and Solicitation of Data and Comments

A. Summary of Proposed Actions

The Agency is proposing to delete certain limitations and standards for selenium from the metals subcategory and for antimony, barium, molybdenum, and titanium from the oils subcategory. The proposal also reflects these changes in the multiple wastestreams subcategory. We have concluded that the model technologies that provided the basis for the limitations and standards do not consistently and predictably remove these pollutants to the specified levels for compliance. Nevertheless, operation of treatment systems required to achieve compliance with other metals limits will ensure some continued removal of these five metals, even if not at consistent and predictable rates. Even if there were no incidental removals for these metals, the estimated pollutant reduction for this regulation remains relatively unchanged, *i.e.*, the December 22, 2000, estimated pollutant reductions would decrease by 9,996 lbs/yr or 0.006 percent of the total estimated reduction of 166,125,128 lbs/yr for the CWT regulation. Expressed as toxic pound-equivalents, the decrease as a result of assuming no removals for these metals is 0.32 percent or 1,581 lb-eq/yr out of the total estimated reduction of 487,644 lb-eq/yr for the CWT regulation (DCN 47.8).

Even though EPA does not believe that the potential increases in pollutant discharges related to the proposed amendments result in any significant environmental effects, we will continue to monitor the discharges from this industry as part of the biennial Effluent Guidelines Program Plans required under section 304(m) of the Clean Water Act.

B. Solicitation of Data and Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that commenters address whether the record supports EPA's conclusions that the technology on which it based the final limitations and standards does not provide consistent and predictable removals for the pollutants the Agency has proposed to delete from the regulation. Any suggestions for changes or revisions should be supported by adequate technical data.

EPA is particularly interested in receiving comment on an issue raised by the National Oil Recyclers Association (NORA) in its request for deletion of molybdenum limitations from certain subcategories. NORA submitted information to the Agency with a request that EPA delete the molybdenum limitations and standards from the Organics Treatment and Recovery subcategory and from the related sections of the Multiple Wastestreams subcategory (DCNs 45.32 and 45.33). They state that many CWT organics subcategory facilities have molybdenum influent raw waste concentrations that are too high for effective biological treatment. Based on our preliminary assessment of this new information and data we will probably delete the molybdenum limitations from the organics subcategory. However, we are seeking additional information to augment the record before finalizing such a change. As a consequence, EPA is not today proposing to remove the molybdenum limitations and standards as requested by NORA; however, EPA plans to evaluate closely any additional information it receives on this subject. When EPA promulgates the final rule, we will likely delete these limitations and standards from the organics subcategory and the related sections of the multiple wastestream subcategory if we receive adequate supporting documentation. The discussion below describes the kind of information EPA would need before it could delete the molybdenum limitations and standards from the CWT organics subcategory.

Commenters should submit information showing that well-designed and well-operated treatment systems employing the BAT technology used as the basis for the organics subcategory limitations and standards will not provide consistent and predictable removals for molybdenum.

The information and data should characterize the influent pollutant levels (including molybdenum) as well as the effluent levels being discharged in the treated final effluent resulting from the treatment of organics waste receipts at facilities with BAT technology for the organics subcategory. To the extent possible, we want to characterize organics subcategory treatment prior to commingling with wastewaters from other subcategories, non-contaminated stormwater, or other sources of water.

Comments should include sufficient information and data to determine if the biological treatment system is well-designed and well-operated during the sampling period(s). To the extent possible, the information and data should include (1) block diagrams identifying the influent, intermediate, and final outfall sampling points; holding tanks and equalization units; each component or stage of the biological treatment system; and any post biological unit operations; (2) the hydraulic and pollutant load design bases including hydraulic residence times in each stage of the biological treatment system; (3) the operational information and data that demonstrate good operation for the sampling period(s); (4) relative flows of the influent waste receipts and equalization characteristics; and (5) analytical and flow data for each sampling point including, to the extent available, the design and operation parameters, molybdenum, total suspended solids (TSS), 5-day biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), and other regulated and relevant parameters. Please note what types of samples were collected at each sampling point (grab or composite) as well as the analytical methods used. If grab sample data are provided, please document how the grab samples represent typical wastewater characteristics. The rationale should at least address the flow and concentration variability of the organics subcategory waste receipts and any other commingled wastestreams as well as the residence times and mixing characteristics of any equalization unit operations.

IX. POTW Pretreatment Program Alternatives in Light of the December 22, 2003 Compliance Deadline

EPA is likely to take final action on today's proposal with only a short amount of time remaining before the December 22, 2003, deadline for indirect dischargers to comply with the 2000 pretreatment standards that are the subject of today's proposal. EPA understands that POTWs are already preparing pretreatment control mechanisms to implement those pretreatment standards. In view of the fact that EPA's rulemaking and the issuance of pretreatment control mechanisms are proceeding on parallel tracks, EPA recommends that the POTWs consider one of several approaches to account for the situation. For example, a POTW could decide to include, in the proposed and, if necessary, final amendments to its local pretreatment program, alternative sets of limitations that reflect both the requirements as they exist in unamended form today and the requirements that would apply if EPA promulgates amendments as proposed today. The first set of limitations would establish requirements for each

pollutant and subcategory as published in the 2000 rule. The second set of limitations would state that, if prior to December 22, 2003, EPA has amended part 437 to remove pretreatment standards for selenium, barium, molybdenum, antimony, and titanium for certain specified subcategories, then the limitations specified above for those pollutants and subcategories would not apply.

Alternatively, EPA recommends that the POTWs consider including, in the proposed and, if necessary, final amendments to its pretreatment program a provision stating that the limitations for selenium, barium, molybdenum, antimony, and titanium correspond to those pretreatment standards that are in effect for Clean Water Act purposes on December 22, 2003. By including a provision like this, the POTW can incorporate the most recent EPA decisions regarding pretreatment standards for these pollutants without the need for further administrative proceeding. The POTW would be free, of course, following promulgation of any changes to the pretreatment standards to revise its local pretreatment program specifically to reflect any changes.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

It has been determined that this proposal is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action would not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* It would merely delete the limitations for five pollutants from certain provisions of the current rule and corrects a limitation for another pollutant that was incorrectly transcribed from the version signed by the EPA Administrator. Consequently, today's proposed rule does not establish any new information collection burden on the regulated community.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of today's proposed rule on small entities, a small entity is defined as (1) a small business with gross revenue under $6 million (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposal rule removes or revises the limitations and standards for five pollutants from certain provisions of the current rule and corrects an error in another provision. These changes reduce the economic impacts of the regulation on those entities, including small entities, subject to the limitations and pretreatment standards. The estimated reduction in the analytical laboratory costs of compliance is about $496,000 (DCN 47.6). The change to the BOD5 limitation will result in no change in economic burden because this modification merely corrects the limitation to reflect the BOD5 limitation in the August 28, 2000, version of the regulation signed by the Administrator.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. It deletes or revises the limitations and standards for five pollutants from certain provisions of the CWT guideline and corrects an inadvertent error in another limitation in the codified version of the current rule. The effect of these changes is to reduce the cost of the CWT regulations promulgated earlier. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments. The proposal, if promulgated, would not uniquely affect small governments because small and large governments are affected in the same way. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule would amend effluent limitations and pretreatment standards which impose requirements that apply to facilities when they discharge wastewater or introduce wastewater to a POTW. It deletes or revises the limitations and standards for five pollutants from certain provisions of the CWT guideline and corrects an inadvertent error in another limitation in the codified version of the current rule. EPA has determined that there are no CWT facilities owned and/or operated by State or local governments that would be subject to today's proposed rule. Further, the proposed rule would only incidentally affect State and local governments in their capacity as implementers of CWA NPDES permitting programs and approved pretreatment programs. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes. It deletes or revises the limitations and standards for five pollutants from certain provisions of the current rule and corrects an inadvertent printing error in another section. EPA has not identified any CWT facilities covered by today's proposed rule that are owned and/or operated by Indian tribal governments. No Indian tribes are responsible for implementing the CWA NPDES permitting program. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

This proposal is not subject to E.O. 13045 because it is not economically significant as defined under Executive Order 12866. Further, this proposal does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

List of Subjects in 40 CFR Part 437

Environmental protection, Waste treatment and disposal, Water pollution control.

Dated: September 2, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For reasons set out in the preamble, 40 CFR chapter I is proposed to be amended as follows:

PART 437—THE CENTRALIZED WASTE TREATMENT POINT SOURCE CATEGORY

1. The authority citation for part 437 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

§ 437.11 [Amended]

2. Section 437.11(a) is amended by removing the entry for ''Selenium'' in the BPT Limitations table, under the heading ''Metal Parameters.''

§ 437.13 [Amended]

3. Section 437.13(a) is amended by removing ''selenium,.''

§ 437.15 [Amended]

4. Section 437.15(a) is amended by removing ''selenium,.''

§ 437.16 [Amended]

5. Section 437.16(a) is amended by removing ''selenium,.''

§ 437.21 [Amended]

6. Section 437.21 is amended by removing the following entries in the BPT Limitations table, under the heading ''Metal Parameters'':

a. Antimony.
b. Barium.
c. Molybdenum.
d. Titanium.

§ 437.23 [Amended]

7. Section 437.23 is amended by removing the following entries:

a. ''antimony,.''
b. ''barium,.''
c. ''molybdenum,.''
d. ''titanium,.''

§ 437.24 [Amended]

8. Section 437.24 is amended by removing the following entries:

a. ''antimony,.''
b. ''barium,.''
c. ''molybdenum,.''
d. ''titanium,.''

§ 437.25 [Amended]

9. Section 437.25 is amended by removing the following entries in the Pretreatment Standards (PSES) table, under the heading ''Metal Parameters'':

a. Antimony.
b. Barium.
c. Molybdenum.

§ 437.26 [Amended]

10. Section 437.26 is amended by removing the following entries:

a. ''antimony,.''
b. ''barium,.''
c. ''molybdenum,.''

§ 437.42 [Amended]

11. Section 437.42 is amended as follows:

a. In paragraph (b)(1) by removing the following entries in the BPT Limitations table, under the heading ''Metal Parameters'':

i. Barium.
ii. Selenium.

b. In paragraph (b)(1) by revising the entry for ''Antimony'' in the BPT Limitations table under the heading ''Metal Parameters'' to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * * * *	*	*

[1]mg/L (ppm).

* * * * *

c. In paragraph (b)(1) by revising the entry for ''Titanium'' in the BPT Limitations table under the heading ''Metal Parameters'' to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *

(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
* * * * * * *		
Titanium	0.0947	0.0618
* * * * * * *		

[1]mg/L (ppm).

* * * * *

d. In paragraph (c)(1) by removing the following entries in the BPT Limitations table, under the heading ''Metal Parameters'':

i. Barium.

ii. Molybdenum.

iii. Selenium.

e. In paragraph (c)(1) by revising the entry for ''Antimony'' in the BPT Limitations table under the heading ''Metal Parameters'' to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(c) * * *

(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.249	0.206
* * * * * * *		

[1]mg/L (ppm).

* * * * *

f. In paragraph (c)(1) by revising the entry for ''Titanium'' in the BPT Limitations table under the heading ''Metal Parameters'' to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(c) * * *

(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
* * * * * * *		
Titanium	0.0947	0.0618
* * * * * * *		

[1]mg/L (ppm).

* * * * *

g. Paragraph (d)(1) is amended by:

i. Revising the entry for ''BOD_5'' in the BPT Limitations table under the heading ''Conventional Parameters'' as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(d) * * *

(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Conventional Parameters		
BOD_5	163	53.0
* * * * * * *		

[1]mg/L (ppm).

* * * * *

ii. Removing the entry for ''Selenium'' in the BPT Limitations table under the heading ''Metal Parameters.''

h. Paragraph (e) is amended by removing the following entries in the BPT Limitations table under the heading ''Metal Parameters'':

i. Barium.

ii. Titanium.

i. Paragraph (e) is amended by revising the entry for ''Antimony'' in the BPT Limitations table under the heading ''Metal Parameters'' to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(e) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.928	0.679
* * * * * * *		

[1]mg/L (ppm).

* * * * *

§ 437.44 [Amended]

12. Section 437.44 is amended as follows:

a. In paragraph (b)(1) by removing the following entries in the BAT Limitations table, under the heading ''Metal Parameters'':

i. Barium.

ii. Selenium.

b. In paragraph (c)(1) by removing the following entries in the BAT Limitations table, under the heading ''Metal Parameters'':

i. Barium.

ii. Molybdenum.

iii. Selenium.

c. In paragraph (d)(1) by removing the entry for ''Selenium'' in the BAT Limitations table under the heading ''Metal Parameters.''

d. In paragraph (e) by removing the following entries in the BAT Limitations table under the heading ''Metal Parameters'':

i. Barium.

ii. Titanium.

§ 437.45 [Amended]

13. Section 437.45 is amended as follows:

a. In paragraph (b)(1) by removing the entry for ''Barium'' in the Performance Standards table, under the heading ''Metal Parameters.''

b. In paragraph (c)(1) by removing the following entries in the Performance Standards table, under the heading ''Metal Parameters'':

i. Barium.

ii. Molybdenum.

c. In paragraph (e) by removing the following entries in the Performance Standards table under the heading ''Metal Parameters'':

i. Barium.

ii. Titanium.

d. In paragraph (e) by revising the entry for ''Antimony'' in the Performance Standards table under the heading ''Metal Parameters'' to read as follows:

§ 437.45 New Source Performance Standards.

* * * * *

(e) * * *

PERFORMANCE STANDARDS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
* * * * * * *		
Antimony	0.928	0.679

PERFORMANCE STANDARDS—Continued

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		

[1] mg/L (ppm).

* * * * *

§ 437.46 [Amended]

14. Section 437.46 is amended as follows:

a. In paragraph (b)(1) by removing the following entries in the Pretreatment Standards (PSES) table, under the heading ''Metal Parameters'':

i. Barium.

ii. Selenium.

b. In paragraph (b)(1) by revising the entry for ''Antimony'' in the Pretreatment Standards (PSES) table under the heading ''Metal Parameters'' to read as follows:

§ 437.46 Pretreatment Standards for Existing Sources (PSES).

* * * * *

(b) * * *

(1) * * *

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.249	0.206
* * * * * * *		

[1] mg/L (ppm).

* * * * *

c. In paragraph (c)(1) by removing the following entries in the Pretreatment Standards (PSES) table, under the heading ''Metal Parameters'':

i. Barium.

ii. Molybdenum.

iii. Selenium.

d. In paragraph (c)(1) by revising the entry for ''Antimony'' in the Pretreatment Standards (PSES) table under the heading ''Metal Parameters'' to read as follows:

§ 437.46 Pretreatment Standards for Existing Sources (PSES).

* * * * *

(c) * * *

(1) * * *

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.249	0.206
* * * * * * *		

[1] mg/L (ppm).

* * * * *

e. In paragraph (d)(1) by removing the entry for ''Selenium'' in the Pretreatment Standards (PSES) table under the heading ''Metal Parameters.''

f. In paragraph (e) by removing the following entries in the Pretreatment Standards (PSES) table under the heading ''Metal Parameters'':

i. Antimony.

ii. Barium.

§ 437.47 [Amended]

15. Section 437.47 is amended as follows:

a. In paragraph (b)(1) by removing the following entries in the Pretreatment Standards (PSNS) table, under the heading ''Metal Parameters'':

i. Barium.

ii. Selenium.

b. In paragraph (b)(1) by revising the entry for ''Antimony'' in the Pretreatment Standards (PSNS) table under the heading ''Metal Parameters'' to read as follows:

§ 437.47 Pretreatment Standards for Existing Sources (PSNS).

* * * * *

(b) * * *

(1) * * *

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.249	0.206
* * * * * * *		

[1] mg/L (ppm).

* * * * *

c. In paragraph (c)(1) by removing the following entries in the Pretreatment Standards (PSNS) table, under the heading ''Metal Parameters'':

i. Barium.

ii. Molybdenum.

iii. Selenium.

d. In paragraph (c)(1) by revising the entry for ''Antimony'' in the Pretreatment Standards (PSNS) table under the heading ''Metal Parameters'' to read as follows:

§ 437.47 Pretreatment Standards for Existing Sources (PSNS).

* * * * *

(c) * * *

(1) * * *

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * * * * * *		
Metal Parameters		
Antimony	0.249	0.206
* * * * * * *		

[1] mg/L (ppm).

* * * * *

e. In paragraph (d)(1) by removing the entry for ''Selenium'' in the Pretreatment Standards (PSNS) table under the heading ''Metal Parameters.''

f. In paragraph (e) by removing the following entries in the Pretreatment Standards (PSNS) table under the heading ''Metal Parameters'':

i. Antimony.

ii. Barium.

[FR Doc. 03–22930 Filed 9–9–03; 8:45 am]

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 31

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–146893–02, REG–115037–00]

RIN 1545–BB31, 1545–AY38

Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible that is owned by another controlled party. These proposed regulations potentially affect controlled taxpayers within the meaning of section 482. The proposed regulations provide updated guidance that is necessary to reflect economic and legal developments since the issuance of the current guidance. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received December 9, 2003. Outlines of topics to be discussed at the public hearing scheduled for January 14, 2004, at 10 a.m. must be received by December 23, 2003.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–146893–02 and REG–115037–00), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–146893–02 and REG–115037–02), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, J. Peter Luedtke or Helen Hong-George, (202) 435–5265; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 482 of the Internal Revenue Code generally provides that the Secretary may allocate gross income, deductions and credits between or among two or more taxpayers owned or controlled by the same interests in order to prevent evasion of taxes or to clearly reflect income of a controlled taxpayer. Comprehensive regulations under section 482 published in the **Federal Register** (33 FR 5849) on April 16, 1968, provided guidance with respect to a wide range of controlled transactions, including transfers of tangible and intangible property and the provision of services. Revised and updated transfer pricing regulations were published in the **Federal Register** (59 FR 34971, 60 FR 65553 and 61 FR 21955) on July 8, 1994, December 20, 1995, and May 13, 1996.

A. Services Transactions

While comprehensive in other respects, the regulations issued in the mid-1990s did not modify substantively the 1968 regulations relating to controlled services transactions. The current services regulations at § 1.482–2(b) provide generally that where one member of a controlled group performs services for the benefit of another member without charge, or at a charge that is not equal to an arm's length charge, the Commissioner may make appropriate allocations to reflect an arm's length charge for such services. The determination of the arm's length charge depends on whether the services transaction is an ''integral part'' of the business of the renderer or recipient of the services. The current services regulations provide several overlapping quantitative and qualitative tests to determine whether a services transaction is integral.

Under the current services regulations, the arm's length charge for non-integral services is deemed to be equal to the ''costs or deductions'' incurred with respect to the services, unless the taxpayer establishes that another charge is more appropriate. General guidance is provided regarding the definition of cost and the appropriate allocation of costs to particular services.

The arm's length charge for integral services under the current services regulations is ''the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts.'' No guidance is provided regarding the methods that may be used to determine whether a charge is consistent with an arm's length charge.

B. Income Attributable to Intangibles

The Treasury Department and the IRS issued final regulation § 1.482–4(f)(3) as part of the 1994 regulations. The preamble to those regulations states that the rules of § 1.482–4(f)(3) were necessary in order ''to identify the controlled taxpayer that should recognize the income attributable to intangible property.'' Section 1.482–4(f)(3) identifies that party by providing rules to determine the owner, for section 482 purposes, of the rights to exploit an intangible to which income was attributable. Under those rules, the legal owner of an intangible, the taxpayer with a right to exploit the intangible, and even a taxpayer that contributes to the development or enhancement of the intangible could be deemed ''owners'' of that intangible, entitled to a portion of the income attributable to the intangible.

Explanation of Provisions

A. Overview

These proposed regulations provide updated guidance under section 482 that replaces existing guidance under § 1.482–2(b) relating to controlled services transactions and existing guidance under § 1.482–4(f)(3) relating to the allocation of income attributable to intangible property. These proposed regulations also make conforming and other changes to provisions of the current regulations under sections 482 and 6662 that are related to this guidance.

1. Services Transactions

These proposed regulations provide updated guidance under section 482 relating to controlled services transactions. The Treasury Department and the IRS believe that such guidance is necessary to reflect economic and legal developments since the issuance of the 1968 regulations. In the last 35 years, cross-border services have become an increasingly large and important segment of the U.S. and global economies. In particular, cross-border services transactions make up an increasingly significant segment of cross-border transactions among members of controlled groups.

Legal developments in the transfer pricing area since 1968 include the amendment of section 482 in 1986 to provide for the commensurate with income standard in the context of transfers of intangible property and the issuance in the mid-1990s of updated

transfer pricing regulations addressing transactions other than services transactions. In addition, also in the mid-1990s, the OECD published updated transfer pricing guidelines for use by countries in the resolution of transfer pricing cases in mutual agreement proceedings under tax treaties.

These proposed regulations provide generally that the arm's length amount charged in a controlled services transaction must be determined under one of the transfer pricing methods provided for or referenced in the proposed regulations. The guidance regarding transfer pricing methods provided for in the proposed regulations generally is consistent with the current regulatory guidance regarding the transfer pricing methods applicable to transfers of tangible or intangible property and is consistent with international standards in this area. In addition, the proposed regulations provide a new cost-based method that may be used to price low-margin controlled services transactions that meet certain quantitative and qualitative conditions and requirements. This simplified cost-based method generally requires a less robust analysis of services transactions within its scope than would be required under the other pricing methods. The simplified method is intended to preserve aspects of the current rules that provide appropriately reduced administrative and compliance burdens for low-margin services while bringing the current rules more into line with the arm's length standard and eliminating aspects of the current rules that have proved problematic.

The proposed regulations provide updated guidance consistent with international standards in this area on the threshold issue of whether activities constitute the rendering of services for the benefit of another member of a controlled group.

The proposed regulations provide guidance to better coordinate and harmonize the rules applicable to services transactions with the rules for other types of transactions under section 482, in particular transfers of intangible property. The Treasury Department and the IRS believe that such guidance is necessary to mitigate the extent to which the form or characterization of a transfer of intangibles as the rendering of services can lead to inappropriate results. The Treasury Department and the IRS believe that the transfer pricing rules should reach similar results in the case of economically similar transactions, regardless of the characterization or structuring of such transactions. Thus, several provisions of the proposed regulations are intended to minimize or to eliminate the differences between the transfer pricing analysis of services transactions related to intangibles and the analysis of transfers of intangible property. In particular, the proposed regulations provide that the arm's length result for a services transaction that effects the transfer of intangible property must be determined or corroborated by an analysis under the transfer pricing rules for transfers of intangible property. In addition, the proposed regulations limit the use of the simplified cost-based method in the case of services that involve the use of valuable intangibles. The proposed regulations also provide guidance regarding the use or imputation of contingent-payment arrangements in the context of services transactions, and provide generally applicable guidance on the application of the residual profit split method to make that method more suitable to the analysis of services transactions where appropriate. The cumulative effect of these provisions is to make available in connection with the transfer pricing of controlled services relating to intangibles the analytical tools that are available in connection with the transfer pricing of transfers of intangible property, including the possibility of analyzing transactions as multi-year arrangements in which the consideration for services rendered in one tax accounting period may be due in later periods.

2. Income Attributable to Intangibles

These proposed regulations also update guidance under existing § 1.482–4(f)(3) relating to the allocation of income attributable to intangible property. The Taxpayers and other commentators have criticized the framework of § 1.482–4(f)(3). In particular, commentators have questioned the use of ownership for purposes of section 482, as distinct from legal ownership or ownership for tax purposes more generally, as an analytical tool for determining the appropriate allocation of income attributable to an intangible. The Treasury Department and the IRS believe that existing § 1.482–4(f)(3), when properly applied, generally reaches appropriate results in allocating income attributable to intangible property. However, the Treasury Department and the IRS are concerned that the regulation may be misapplied to reach ''all or nothing'' results based on a determination of ownership in cases where an arm's length analysis in accordance with the section 482 regulations would require that the income attributable to an intangible be divided among the controlled taxpayers that made significant contributions to develop or enhance that intangible, and that hold legal rights with respect to that intangible.

As a result, the Treasury Department and the IRS believe that the analytical framework of § 1.482–4(f)(3) should be modified. The rules for determining the ownership of an intangible generally should be distinct from the rules for determining the allocation of income from an intangible. The income attributable to an intangible should be allocated among controlled taxpayers under the arm's length standard, in accordance with each party's contributions to the development or enhancement of that intangible and its ownership interests (if any). This analysis generally will preclude ''all or nothing'' results. The proposed modifications to § 1.482–4(f)(3) are possible because of proposed changes to the treatment of controlled services transactions, in particular the conditions and requirements on the use of the simplified cost-based method and the provisions intended to better coordinate and harmonize the rules applicable to services transactions with the rules for transfers of intangible property (including guidance on services that effect transfers of intangible property and guidance on the residual profit split method and contingent payment arrangements).

B. Services Transactions—§ 1.482–9

1. General Rule—§ 1.482–9(a)

Consistent with the rules governing transfers of tangible and intangible property under existing §§ 1.482–3 and 1.482–4, respectively, proposed § 1.482–9(a) provides that the arm's length amount charged in a controlled services transaction must be determined under one of the methods described or referenced in the proposed regulations. Also consistent with the rules governing transfers of tangible and intangible property, the proposed regulations provide guidance concerning selection and application of the appropriate method by explicitly incorporating the general rules in § 1.482–1 (including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e)) of the existing regulations.

The proposed regulations specify six methods applicable to controlled services transactions. Proposed § 1.482–9(a) sets out four new methods applicable to services: the comparable uncontrolled services price method, the gross services margin method, the cost of services plus method, and the

simplified cost-based method. The first three methods are direct analogs of methods provided for transfers of tangible property under existing § 1.482–3, tailored to account for particular circumstances in services transactions. The fourth method, the simplified cost-based method, is set forth in proposed § 1.482–9(f). Proposed § 1.482–9(a) also specifies that the comparable profits method under existing § 1.482–5 and the profit split methods under existing § 1.482–6, as modified by proposed § 1.482–9(e) and (g) respectively, are applicable to services. Finally, proposed § 1.482–9(a)(7) indicates that unspecified methods also may be used in appropriate circumstances, as prescribed by proposed § 1.482–9(h).

Proposed § 1.482–9(a)(1) provides that the general rules under § 1.482–1 of the existing regulations, including the best method rule of existing § 1.482–1(c), the comparability standards of existing § 1.482–1(d), and the rules regarding determination of an arm's length range under existing § 1.482–1(e), generally apply to the determination of an appropriate arm's length charge for controlled services transactions. The best method rule under existing § 1.482–1(c) provides that an arm's length result must be determined under the method that, given the facts and circumstances, provides the most reliable measure of an arm's length result. Existing § 1.482–1(c)(2) provides two primary factors to consider in determining which method is the most reliable: the degree of comparability between the controlled transactions and any uncontrolled comparables, and the quality of data and assumptions used in the analysis.

The proposed regulations incorporate the comparability factors in existing § 1.482–1(d) because these factors generally are relevant under all methods. In addition, the description of each of the methods set out in the proposed regulations provides other comparability factors that may be of particular importance in the context of that method as applied to a controlled services transaction.

2. Comparable Uncontrolled Services Price Method—§ 1.482–9(b)

Proposed § 1.482–9(b) sets forth the comparable uncontrolled services price method. This method evaluates whether a controlled services transaction satisfies the arm's length standard by comparing the price of a controlled services transaction with the price charged in a comparable uncontrolled services transaction. This method is analogous to the comparable uncontrolled price method of § 1.482–3(b) in the context of transfers of tangible property. Proposed § 1.482–9(b)(1) provides that this method ordinarily is used where the controlled services are identical to or have a high degree of similarity to the services in the uncontrolled transaction.

The proposed regulations provide that all of the comparability factors described in existing § 1.482–1(d) must be considered, but emphasize that similarity in the nature of the services and valuable intangibles used, if any, in providing the services are the most important factors in determining comparability under this method. Consistent with the best method rule, proposed § 1.482–9(b)(2)(ii) provides that the comparable uncontrolled services price method generally provides the most direct and reliable measure of an arm's length result if an uncontrolled transaction either has no differences from the controlled services transaction or has only minor differences that have a definite and reasonably ascertainable effect on price, and appropriate adjustments may be made for such differences. Proposed § 1.482–9(b)(4) provides several examples that illustrate the application of the comparable uncontrolled services price method to cases in which the comparable uncontrolled transactions are internal or external.

The Treasury Department and the IRS recognize that, under certain circumstances, uncontrolled parties may use proprietary pricing models or other indirect methods to establish the price charged to uncontrolled parties in a services transaction. Proposed § 1.482–9(b)(5) provides that such data may be used as indirect evidence of a comparable uncontrolled services price if certain requirements are met. This provision is analogous to the provision regarding indirect evidence of comparable uncontrolled prices in § 1.482–3(b)(5) in the context of transfers of tangible property.

3. Gross Services Margin Method—§ 1.482–9(c)

Proposed § 1.482–9(c) sets forth the gross services margin method. This method evaluates the arm's length price charged in a controlled services transaction by reference to the gross services profit margin realized in uncontrolled transactions that involve similar services. Similar to the resale price method provided for in § 1.482–3(c) in the context of transfers of tangible property, the charge under this method is calculated based on the price paid in an underlying and related uncontrolled transaction undertaken by the controlled group.

Proposed § 1.482–9(c)(1) provides guidance regarding the circumstances in which this method ordinarily would be used. This method ordinarily is used in cases where a controlled taxpayer performs functions or services in connection with a ''related uncontrolled transaction'' between a member of the controlled group and an uncontrolled taxpayer. For example, this method may be used where a controlled taxpayer renders services (agent services) to another member of the controlled group in connection with a transaction between that other member and an uncontrolled taxpayer. This method also may be used in cases where a controlled taxpayer contracts to provide services to an uncontrolled taxpayer (intermediary function) and another member of the controlled group actually performs the services provided.

Proposed § 1.482–9(c)(2)(i) provides that the gross services margin method evaluates whether the price charged or amount retained by a controlled taxpayer is arm's length by determining the ''appropriate gross services profit'' of the controlled taxpayer. If one controlled taxpayer renders services to another member of a controlled group with respect to a transaction between that other member of the controlled group and an uncontrolled taxpayer, the price charged to the other member under the gross services margin method is the appropriate gross services profit of the controlled taxpayer that performed the agent services. In cases where one controlled taxpayer contracts to provide services to an uncontrolled taxpayer and another member of the controlled group actually performs those services, the price charged to the controlled intermediary under the gross services margin method is determined by subtracting from the ''applicable uncontrolled price'' the appropriate gross services profit of the intermediary controlled taxpayer.

Proposed § 1.482–9(c)(2)(ii) and (iii) define the terms ''related uncontrolled transaction,'' ''applicable uncontrolled price'' and ''appropriate gross services profit,'' which are necessary to determine the arm's length price under proposed § 1.482–9(c)(2)(i). The related uncontrolled transaction is a transaction between a member of the controlled group and an uncontrolled taxpayer as to which a controlled taxpayer performs agent services or an intermediary function. The applicable uncontrolled price is the final sales price paid by the uncontrolled party in the related uncontrolled transaction. Proposed § 1.482–9(c)(2)(iii) provides that the appropriate gross services profit is calculated by multiplying the applicable

uncontrolled price by the gross services profit margin earned in comparable uncontrolled services transactions. The gross services profit margin takes into account all functions performed by other members of the controlled group and any other relevant factors.

The proposed regulations incorporate the general comparability factors of existing § 1.482–1(d) in determining comparability under this method. Proposed § 1.482–9(c)(3)(ii)(A) emphasizes that comparability under the gross services margin method is particularly dependent on similarity of functions performed, risks borne, intangibles used (if any), and contractual terms, as all these factors may materially affect the gross services profit margin.

In determining comparability, the proposed regulations state that where the controlled taxpayer provides services similar to a sales or purchasing agent, this method is less dependent on close similarity in the underlying property transferred or the services provided to the uncontrolled party. However, substantial differences in the nature of the property transferred or the services provided to the uncontrolled party may indicate significant differences in the functions performed by the controlled taxpayer. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions would involve agent or intermediary services involving the transfer of goods within the same product categories, or the provision of services of the same general type.

In addition, the proposed regulations provide that if the functions performed by a controlled taxpayer are similar to those performed by an uncontrolled taxpayer, then the gross profit margin earned by the uncontrolled taxpayer may be used as a comparable gross services profit margin regardless of the structure of the uncontrolled services transaction. For example, proposed § 1.482–9(c)(3)(ii)(D) provides that if a controlled taxpayer that functions as a sales or purchasing agent for transfers of tangible property is comparable to a distributor that takes title to goods and resells them (*i.e.,* a buy-sell distributor), then the gross profit margin earned by the uncontrolled distributor on sales, stated as a percentage of the uncontrolled price paid for the goods, may be used as the comparable gross services profit margin.

Proposed § 1.482–9(c)(4) provides examples that illustrate various aspects of the application of the gross services margin method.

4. Cost of Services Plus Method—§ 1.482–9(d)

Proposed § 1.482–9(d) sets forth the cost of services plus method. This method evaluates whether the amount charged in a controlled services transaction is arm's length by reference to the gross services profit markup in comparable uncontrolled services transactions. The proposed regulations provide that this method is most reliably applied when the renderer in the controlled services transaction provides the same or similar services to both controlled and uncontrolled parties.

The cost of services plus method under proposed § 1.482–9(d) is similar to the cost plus method applicable to transfers of tangible property under existing § 1.482–3(d). The proposed regulations, however, incorporate certain modifications that are necessary because the manner in which the costs of providing services are presented for financial accounting purposes is less uniform than the manner in which costs of goods sold are presented for such purposes. The proposed regulations refer to the costs to be taken into account in evaluating controlled services transactions as ''comparable transactional costs.'' Proposed § 1.482–9(d)(2)(ii) defines comparable transactional costs to include all costs of providing the services that are taken into account as the basis for determining the gross services profit markup in comparable uncontrolled services transactions. The Treasury Department and the IRS intend this definition to be flexible to ensure that reasonably equivalent categories of costs will be used to determine gross services profit in particular cases. Consequently, the proposed regulations provide that in some circumstances comparable transactional costs may constitute a subset of the total services costs (as defined in proposed § 1.482–9(j)). Generally accepted accounting principles or income tax accounting rules (where income tax data for comparable transactions are available) may provide a useful starting point but will not be conclusive.

The proposed regulations incorporate the general comparability factors of existing § 1.482–1(d) and provide several specific rules to ensure appropriate results under this method. For example, proposed § 1.482–9(d)(3)(ii)(A) provides that in determining functional comparability between the tested transaction and uncontrolled transactions, it may be necessary to consider the charge determined under the cost of services plus method expressed in the form of a markup on total services costs of the controlled taxpayer and uncontrolled parties. The Treasury Department and the IRS believe that this confirming analysis will prevent inappropriate results where the uncontrolled transactions incorporate functional differences that are reflected in costs that are not included in comparable transactional costs. In addition, proposed § 1.482–9(d)(3)(ii)(B) states that reliability under this method will be reduced if a significant amount of the controlled taxpayer's comparable transactional costs consists of costs incurred in a tax accounting period other than the period under review. The Treasury Department and the IRS believe that in such cases application of this method may produce unreliable results.

The proposed regulations further provide that if, in applying this method, the controlled taxpayer and the comparable parties do not state their respective costs of providing the services on an equivalent basis, adjustments will be necessary to ensure reliability of the results. Proposed § 1.482–9(d)(3)(iii)(B) notes that where such adjustments are not possible, the reliability of the results determined under this method will be reduced.

Proposed § 1.482–9(d)(4) provides examples that illustrate various aspects of the application of the cost of services plus method.

5. Comparable Profits Method—§ 1.482–9(e)

The proposed regulations specify that the comparable profits method may be applied to controlled services. The comparable profits method evaluates whether the amount charged in a controlled services transaction is arm's length based on analysis of objective measures of profitability (profit level indicators) derived from financial information regarding uncontrolled taxpayers that engage in similar business activities under similar circumstances.

The proposed regulations provide that the guidance in existing § 1.482–5 generally is applicable to controlled services transactions. Proposed § 1.482–9(e) provides specific guidance that tailors the application of § 1.482–5 in cases in which the tested party under existing § 1.482–5(b)(2) is the renderer of the services under review. In all other cases, including cases in which the tested party is the recipient of controlled services, the provisions of existing § 1.482–5 apply without regard to § 1.482–9(e).

Proposed § 1.482–9(e) permits the application of the various profit level indicators provided in existing § 1.482–5(b)(4)(ii) to controlled services transactions. As noted in existing § 1.482–5(b)(4), whether the use of a particular profit level indicator is appropriate depends upon a number of factors, including the extent to which the profit level indicator is likely to produce a reliable measure of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length. In this regard, caution should be exercised in applying these profit level indicators to controlled services transactions. For example, application of the rate of return on capital employed profit level indicator may produce unreliable results because the reliability of this profit level indicator decreases as operating assets play a lesser role in generating operating profits for both the tested party and the uncontrolled comparable. In addition, reliability under this profit level indicator depends on the extent to which the composition of the tested party's assets is similar to that of the uncontrolled comparable.

With respect to financial ratios, the lack of uniformity regarding the presentation for financial accounting purposes of costs of providing services (as noted in the description of cost of services plus method above) and the limited availability of detailed information regarding the cost accounting practices of uncontrolled parties suggest that the reliability of the profit level indicators that depend on segmentation of such costs may be reduced. Existing § 1.482–5(c)(3) states that the reliability of results derived from the comparable profits method is affected by the quality of the data used to apply this method. Due to the lack of uniformity regarding the presentation for financial accounting purposes of costs of providing services, it may be difficult to determine, for example, whether costs included in costs of goods sold or operating expenses reported by uncontrolled taxpayers are in fact comparable to the corresponding costs incurred by the controlled taxpayer in the relevant business activity. Consequently, an arm's length charge determined by use of the ratio of gross profit to operating expenses as a profit level indicator may not be reliable.

Proposed § 1.482–9(e)(2)(ii) describes a new profit level indicator that may be more reliable in the context of controlled services transactions. The proposed regulations define this profit level indicator as the ratio of operating profits to total services costs (defined in proposed § 1.482–9(j)), or the markup on total costs (also referred to as the ''net cost plus''). This new profit level indicator evaluates operating profits based on a markup on all costs related to the provision of services. This new profit level indicator is more likely to result in a cost base used to determine the controlled taxpayer's comparable operating profit that is comparable to the cost base used by uncontrolled parties to calculate their operating profits in similar business activities.

The proposed regulations state that the degree of consistency in accounting practices between the controlled services transaction and the uncontrolled transaction will affect the reliability of the results under this method. If appropriate adjustments to account for such differences are not possible, the reliability of the results determined under this method will be reduced.

Proposed § 1.482–9(e)(3) provides examples that illustrate various aspects of the application of the comparable profits methods to controlled services transactions.

6. Simplified Cost-Based Method—§ 1.482–9(f)

a. Overview. The proposed regulation provides for a new simplified cost-based method for low-margin services, such as routine back-office services. This simplified method is intended by the Treasury Department and the IRS to serve the same purpose as the current regulations relating to the pricing of non-integral services by providing reduced compliance and administrative burdens with respect to the transfer pricing of low-margin services. Such reduced burdens allow both taxpayers and the IRS to direct their resources appropriately to other issues. The Treasury Department and the IRS believe, however, that certain aspects of the rules in the current regulations intended to deal with low-margin services are problematic and therefore should be modified. In particular, the current regulations in some cases have been interpreted or applied to reach inappropriate results from a policy perspective by allowing high-margin controlled services to be priced at cost. Further, the qualitative and subjective tests in the current regulations for determining whether a controlled service may be priced at cost have been difficult to apply and have led to disputes.

Therefore, while the simplified method is intended to maintain reduced compliance and administrative burdens with respect to the pricing of low-margin services, it differs from the current rules regarding the pricing of low-margin services in significant respects. In particular, the simplified method is based on comparability principles, and the administrative benefits of the simplified method decrease as the margins attributable to the service at issue increase. Thus, the simplified method is more consistent with the arm's length standard and will limit significantly the potential for arbitrariness and controversy that makes the current rules problematic.

b. General Description of Method—§ 1.482–9(f)(1). The simplified method allows services that meet certain requirements and conditions to be priced by reference to the markup on total services costs of uncontrolled taxpayers that engage in similar business activities under similar circumstances. The markup on total services costs under the simplified cost-based method corresponds to the profit level indicator of the ratio of operating profit to total services costs, or net cost plus, which is provided for under the comparable profits method for services in proposed § 1.482–9(e). Proposed § 1.482–9(f)(1)(i) provides that if a controlled services transaction that meets the conditions and requirements of proposed § 1.482–9(f) is priced under the simplified method, that method will be considered the best method for purposes of § 1.482–1(c). In effect, the conditions and requirements for the application of the simplified method are a substitute for a traditional best method analysis.

c. Limitation on Allocations by the Commissioner— § 1.482–9(f)(2). The distinguishing feature of the simplified method is a limitation on the ability of the Commissioner to make allocations that he could otherwise make under the general transfer pricing rules. Proposed § 1.482–9(f)(2)(i) provides generally that the Commissioner may make an allocation under the simplified method only if the arm's length markup on total costs, as determined by the Commissioner under the general transfer pricing rules, exceeds the markup charged by the taxpayer by at least a specified number of percentage points. This ''applicable number of percentage points'' is six if the amount charged by the taxpayer is equal to total costs, and it declines ratably to zero by one percentage point for every increase of two percentage points in the markup on total costs charged by the taxpayer. Thus, for example, if a taxpayer prices controlled services at cost under this method, the Commissioner may make an allocation only if the arm's length markup on total costs is at least 6 percent. As the markup charged by the taxpayer on the controlled services

approaches 10 percent, the applicable number of percentage points declines ratably to zero. This ensures that only relatively low-margin services benefit from the simplified method. Proposed § 1.482–9(f)(2)(iii) also provides an upper bound for the application of the simplified method of 10 percent. Thus, in no event would the Commissioner be limited under this method in making an allocation if the arm's length markup on total costs exceeds 10 percent. Proposed § 1.482–9(f)(2)(iv) provides equations and a table with respect to these rules, and proposed § 1.482–9(f)(5) provides several examples that describe and illustrate the application of these rules.

The Treasury Department and the IRS intend these quantitative rules, applied in conjunction with the other requirements for and conditions on the application of the simplified method, to provide objective, administrable guidance for determining whether controlled services may be priced under the simplified method rather than subject to a full transfer pricing analysis, including an analysis under the best method rule. Further, because the benefits of the simplified method decline as the margin attributable to the service increases, the pricing of a relatively high-margin controlled service under the simplified method converges with that under a full transfer pricing analysis. The objective of these quantitative rules is to provide a sufficient range with respect to the pricing of low-margin services to maintain appropriately reduced compliance and administrative burdens with respect to such services, while safeguarding against the inappropriate application of the simplified method to services that should be subject to a more robust arm's length analysis.

The simplified method does not grant authority to the Commissioner to make allocations that could not be made under the general transfer pricing rules. Thus, the qualitative rules of the simplified method apply in conjunction with, and not in lieu of, the interquartile range that may be available under certain other transfer pricing methods. For example, if the markup charged by the taxpayer on a controlled services transaction exceeds the arm's length markup by more than the applicable number of percentage points but is within the interquartile range of results under a best method analysis, the Commissioner may not make an allocation with respect to the underlying service. This interaction between the upper bound and the interquartile range further ensures that the benefits of the simplified method are focused on relatively low-margin services because the arm's length range can be expected to provide a wider tolerance band than the applicable number of percentage points as the markup on total services costs approaches 10 percent.

These limitations on the Commissioner's authority to make an allocation apply only if the markup charged in the controlled transaction is less than the arm's length markup. If instead the markup charged in the controlled transaction exceeds the arm's length markup, proposed § 1.482–9(f)(2)(v) provides that the limitation on the Commissioner under the simplified method does not apply to prevent the Commissioner from making an allocation.

Further, proposed § 1.482–9(f)(2)(v)(A) provides that the limitation on the Commissioner does not apply to prevent an allocation if the amount charged by the taxpayer is less than the ''total services costs'' in the controlled services transaction. The Treasury Department and the IRS believe that it is appropriate to subject controlled services that are priced at less than cost to a full transfer pricing analysis.

Finally, proposed § 1.482–9(f)(2)(v)(B) provides that the Commissioner's authority to determine the cost base is not limited if the taxpayer's method of determining, allocating and apportioning costs is not consistent with the methods used by similar uncontrolled taxpayers in similar circumstances. This authority, which is similar to the Commissioner's authority under existing § 1.482–2(b)(4) to make appropriate allocations of costs, constitutes an important safeguard on the reliability of the results determined under the simplified cost-based method. Consistent with the purpose of the simplified method—to provide certainty concerning the pricing of low-margin controlled services, and to reduce the number of disputes where taxpayers make a good faith effort to price qualifying services under this method—the Treasury Department and the IRS anticipate that the Commissioner will exercise this authority to correct an erroneous allocation only where that allocation has a significant impact on the amount of consideration in the controlled transaction.

In all cases in which the Commissioner's authority to make an allocation is not limited by the simplified method, allocations nevertheless must be consistent with the arm's length standard and otherwise appropriate under the generally applicable transfer pricing rules.

Proposed § 1.482–9(f)(5) provides examples that illustrate the application of the rules in proposed § 1.482–9(f)(2).

d. Conditions on Use of Simplified Method—§ 1.482–9(f)(3). There are two conditions on the application of the simplified method. Proposed § 1.482–9(f)(3) provides that taxpayers must maintain adequate books and records with respect to the determination and allocation of total costs, and subject to a *de minimis* exception must have a written contract in place that provides for current compensation for the services. The written-contract requirement ensures that the controlled taxpayers allocate risks attributable to the services transaction before the relevant services are rendered, and ensure in particular that the service renderer does not bear risks in a manner that would be inconsistent with the charging of a relatively low margin on total costs. The Treasury Department and the IRS believe that many large and mid-size taxpayers already have in place such basic agreements for controlled services transactions, or can execute such contracts without incurring undue expense. Thus, the written-contract requirement is not intended to impose significant compliance burdens on such taxpayers, or to limit their ability to use this method in appropriate cases.

The Treasury Department and the IRS recognize that the written-contract requirement could impose an undue burden on smaller taxpayers or on taxpayers that choose to apply the simplified method to a limited amount of services. Accordingly, the proposed regulations provide that the written-contract requirement does not apply to taxpayers that are members of a U.S. controlled group with an annual gross income of less than $200 million, or to taxpayers that apply the simplified method to services whose aggregate costs are less than $10 million. In order to apply the simplified method in the absence of a written contract, however, the conduct of the parties to the services transaction must be consistent with an agreement that provides for current compensation of the services.

e. Transactions Not Eligible for Simplified Method—§ 1.482–9(f)(4). The Treasury Department and the IRS intend the simplified method to apply only to low-margin controlled services for which total costs constitute an appropriate reference point for determining profitability. The arm's length charge for other controlled transactions is more appropriately determined under another transfer pricing method, subject to the best method rule. The proposed regulations identify categories of transactions that

are not eligible to be priced under this method. The Treasury Department and the IRS believe that the simplified method should not be available for such transactions because they tend to be high-margin transactions, transactions for which total costs constitute an inappropriate reference point for determining profitability, or other types of transactions that should be subject to the more robust arm's length analysis, including an analysis under the best method rule. The Treasury Department and the IRS anticipate that, in general, controlled services that are priced at cost under an application of the existing regulations that is consistent with the intent of those regulations should qualify to be analyzed under the simplified method.

Proposed § 1.482–9(f)(4)(i) provides that controlled services that are similar to those provided to uncontrolled parties by either the renderer or the recipient are not eligible for the simplified cost-based method. This rule is similar to the rule of existing § 1.482–2(b)(7)(i), which has not led to compliance or administrative difficulties because taxpayers generally will have access to internal information concerning the comparable uncontrolled price of such services.

Proposed § 1.482–9(f)(4)(ii) provides that controlled services provided to a recipient that receives controlled services in significant amounts are not eligible to be evaluated under the simplified method. This rule is similar to the rule in existing § 1.482–2(b)(7)(iv) but has been simplified and narrowed in scope, and therefore should apply in fewer cases. The Treasury Department and the IRS believe that services routed through conduits or intermediaries should be subject to a full transfer pricing analysis.

Proposed § 1.482–9(f)(4)(iii) provides that controlled services that involve the use of valuable or unique intangibles are ineligible for the simplified method if such intangibles contribute significantly to the value of the services and the costs associated with such intangibles are not reflected in the costs relating to the rendering of the services. The Treasury Department and the IRS believe that such services are likely to have values substantially in excess of their cost and therefore categorically should be subject to a full transfer pricing analysis. The Treasury Department and the IRS anticipate that there will be significant overlap between this rule and the 10 percent rule in proposed § 1.482–9(f)(2)(iii); that is, the arm's length markup on total costs with respect to such services is likely to exceed 10 percent.

Proposed § 1.482–9(f)(4)(iv) provides that controlled services that are combined with other types of controlled transactions, such as a transfer of tangible or intangible property, are not eligible for the simplified method to the extent of those other transactions. The Treasury Department and the IRS intend the application of the simplified method to be limited to low-margin services transactions.

Proposed § 1.482–9(f)(4)(v) identifies several specific types of transactions that are not eligible for the simplified method. The first four types—manufacturing, production, extraction, and construction services—are identical to types of transactions excluded from eligibility for pricing at cost under existing § 1.482–2(b)(7)(ii)(A). Such services generally constitute core profit-making functions of an enterprise. The Treasury Department and the IRS therefore believe that such services should continue to be subject to a full transfer pricing analysis.

Also not eligible for the simplified method are reselling, distribution, or similar activities conducted under a commission or other arrangement, as well as financial transactions, including guarantees, and insurance or reinsurance. The Treasury Department and the IRS believe that it is not appropriate to apply the simplified method to such transactions because total costs generally constitute an inappropriate reference point for determining profitability with respect to such transactions.

Finally, research and development, experimentation, engineering or scientific services are excluded from the simplified method. The Treasury Department and the IRS believe that such services may in a significant number of cases involve valuable intangibles and therefore should be subject to a full transfer pricing analysis.

No inference is intended regarding either the arm's length markup on total services costs with respect to any of the excluded categories or types of transactions or the appropriate transfer pricing method for analyzing any particular transaction. In particular, no inference is intended that the arm's length markup for such transactions in a particular case will exceed 10 percent of total costs. Rather, these transactions are ineligible for the simplified cost-based method because the Treasury Department and the IRS have concluded that a full transfer pricing analysis is appropriate.

f. Coordination With Documentation and Penalty Rules—§ 1.6662–6(d)(2)(ii)(B) and (iii)(B). Section 6662 imposes certain accuracy-related penalties on substantial valuation misstatements as described in section 6662(e)(1)(B) and gross valuation misstatements as described in section 6662(h)(2)(A). These accuracy-related penalties include two categories of transfer pricing penalties, referred to as the transactional and net section 482 transfer price adjustment penalties. These penalties are not applicable if the taxpayer prepares contemporaneous documentation indicating that the taxpayer reasonably selected and applied a transfer pricing method, and provides that documentation to the Commissioner upon request.

Existing § 1.6662–6(d)(2) provides that an amount is excluded from the calculation of a net section 482 transfer price adjustment for purposes of applying the section 6662 penalty if the taxpayer establishes that both the specified method and documentation requirements are met with respect to that amount. Existing § 1.6662–6(d)(2)(ii) provides that the specified method requirement is met if the taxpayer selects and applies a specified method in a reasonable manner. A taxpayer meets this burden only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule. Existing § 1.6662–6(d)(2)(iii) provides rules with respect to the documentation requirement, and in particular contains a descriptive list of categories of documents that must be maintained and provided in order to meet the requirement. A taxpayer is not subject to the section 482 transactional penalty if it meets the requirements of § 1.6662–6(d).

A significant purpose of the simplified cost-based method is to maintain appropriately reduced compliance and administrative burdens with respect to low-margin services. Consistent with that purpose, proposed § 1.6662–6(d)(2)(ii)(B) provides that, for purposes of the specified method documentation requirement, a taxpayer's selection and application of the simplified method will be considered reasonable if the taxpayer reasonably concluded that the relevant transaction meets the conditions and requirements for application of that method, including the rule in proposed § 1.482–9(f)(2)(iii) that provides that the simplified method shall not apply if the arm's length markup exceeds 10 percent of total costs. In addition, the proposed regulations clarify the description of the documents that must be maintained and

provided in order to satisfy the documentation requirement. While these clarifications apply generally, they are particularly relevant where the simplified method is applied.

7. Profit Split Method—§§ 1.482–9(g) and 1.482–6(c)(3)(i)(B)

The proposed regulations provide guidance regarding the application of the comparable profit split and the residual profit split methods to controlled services transactions. Generally, both profit split methods evaluate whether the allocation of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's ''contributions'' to the combined operating profit or loss.

The proposed regulations provide that the guidance regarding the profit split methods in existing § 1.482–6, as amended by proposed § 1.482–6(c)(3)(i)(B) and other conforming changes, generally is applicable to controlled services transactions. Proposed § 1.482–9(g) also provides specific guidance on the application of § 1.482–6 in the context of controlled services transactions. In particular, proposed § 1.482–9(g)(1) provides that a profit split method may be appropriate when the controlled services transaction involves either high-value services or transactions that are highly integrated and cannot be reliably evaluated on a separate basis.

Proposed § 1.482–6(c)(3)(i)(B) amends the residual profit split method in existing § 1.482–6(c)(3). In general, existing § 1.482–6(c)(3) provides that the residual profit split method allocates the combined operating profit or loss from the relevant business activity between controlled taxpayers according to a two-step process. Operating income first is allocated to each controlled taxpayer to provide a market return for its routine contributions to the relevant business activity. The residual profit then is divided among the controlled taxpayers based upon the relative value of each taxpayer's contributions of intangible property. The proposed regulations amend existing § 1.482–6(c)(3)(i)(B) by providing that residual profits will be divided based on the relative value of each taxpayer's ''nonroutine contributions,'' which may include contributions of intangible property. Proposed § 1.482–6(c)(3)(i)(B) defines nonroutine contributions as contributions by controlled taxpayers that cannot be accounted for by reference to market returns, or that are so interrelated with other transactions that the contributions cannot be reliably evaluated on a separate basis. The proposed regulations thus make the residual profit split method more suitable in the context of services transactions and highly integrated transactions where data relating to comparable transactions are unavailable, whether or not these transactions involve the technical transfer or use of intangible property.

Proposed § 1.482–9(g)(2) provides examples that illustrate the application of the residual profit split method to controlled services transactions.

8. Unspecified Methods—§ 1.482–9(h)

Proposed § 1.482–9(h) provides that in addition to the specified methods in § 1.482–9(a), an unspecified method may be used to determine an arm's length charge if such a method will provide the most reliable measure of an arm's length result under the best method rule. Proposed § 1.482–9(h) emphasizes that an unspecified method should take into account that under the arm's length standard uncontrolled taxpayers must compare the terms of a transaction to the realistic alternatives to entering into that transaction. Therefore, an unspecified method should provide information on the prices or profits that the controlled taxpayer might have realized by choosing a realistic alternative to the controlled transaction.

9. Contingent-Payment Contractual Terms—§ 1.482–9(i)

Proposed § 1.482–9(i) provides guidance on the treatment of contingent-payment arrangements. The Treasury Department and the IRS recognize that controlled taxpayers may allocate the risks associated with rendering services in a variety of ways, including by specifying that compensation for the services will be paid only in the event that the services yield certain results. For example, taxpayers may enter into a contingent-payment arrangement that provides that the renderer of research and development services will receive compensation only if the research and development results in sales of a commercially viable product. Proposed § 1.482–9(i) provides specific guidance concerning the evaluation of such contractual arrangements in the context of controlled services.

Proposed § 1.482–9(i)(1) provides that the arm's length charge in a controlled services transaction is determined taking into account any contingent-payment terms. Proposed § 1.482–9(i)(2) provides that a contingent-payment arrangement is recognized if the arrangement is set forth in a written contract entered into prior to the start of the activity; the contract explicitly states that payment is contingent upon the happening of a future benefit for the recipient directly related to the outcome of the controlled services transaction; and the contract provides for payment on a basis that reflects the recipient's benefit from the services rendered and the risks borne by the renderer. If these three conditions are satisfied, the arm's length result for the controlled services transaction ordinarily would not require a payment to the renderer if the contingency does not occur. If, on the other hand, the contingency occurs, an arm's length result would require payment reflecting the recipient's benefit and the risks borne by the service renderer.

The proposed regulations incorporate the principles of existing § 1.482–1(d)(3) and provide that a contingent-payment arrangement must be reasonable and consistent with the economic substance of the parties' conduct, based on all facts and circumstances. Existing § 1.482–1(d)(3)(ii)(B) provides that in evaluating reasonableness and economic substance, all facts and circumstances are relevant, but the actual conduct and the respective legal rights of the parties will be given greatest weight in the analysis. Proposed § 1.482–9(i)(3) confirms explicitly that the Commissioner's authority under existing § 1.482–1(d)(3)(ii)(B) to impute contractual terms in appropriate cases extends to imputation of contingent-payment terms where such terms are consistent with the economic substance of the controlled services transaction.

Proposed § 1.482–9(i)(4) provides that the arm's length charge in a contingent-payment arrangement is evaluated in accordance with section 1.482–9 and other applicable rules under section 482. In the case of an arrangement for the manufacture, construction, or development of tangible or intangible property owned by the recipient, the arm's length charge determined under the rules of §§ 1.482–3 and 1.482–4 for the transfer of similar property may be considered.

Examples are provided in proposed § 1.482–9(i)(5) and under existing § 1.482–1(d)(3) to illustrate the application of these rules.

10. Total Services Costs—§ 1.482–9(j)

Proposed § 1.482–9(j) defines the term ''total services costs,'' which is used to determine the arm's length charge under the simplified cost-based method, the comparable profits method in cases where the ratio of operating profits to total services costs is used as the profit level indicator, and in the cost of services plus method in cases where an analysis of the result expressed as ratio

of operating profits to total services costs is necessary. Total services costs include all costs that can be directly identified with the act of providing the services, as well as all other costs reasonably allocable to the services as determined under proposed § 1.482–9(k). The Treasury Department and the IRS intend the costs included to be comprehensive and to comprise full consideration for all resources expended, used, or made available to render the service. Generally accepted accounting principles or income tax accounting rules may provide a useful starting point for determination of total services costs, but neither will have conclusive effect. Consistent with the current regulations under the comparable profits method, proposed § 1.482–9(j) excludes certain costs from total services costs, such as interest expense and other expenses not related to the controlled services transactions.

11. Allocation of Costs—§ 1.482–9(k)

Existing § 1.482–2(b)(3) through (6) provide that costs may be allocated and apportioned to a services transaction under ''a method of allocation and apportionment which is reasonable and in keeping with sound accounting practices.'' Proposed § 1.482–9(k) retains the flexible approach of the current rule by allowing any reasonable method of allocation and apportionment of costs where such allocation and apportionment is relevant to determining an arm's length charge for services. In establishing the appropriate method, the proposed regulations state that consideration should be given to all bases and factors, including the general practices used by taxpayers to apportion costs for other purposes. The proposed regulations provide, however, that such general practices need not be accorded conclusive weight by the Commissioner.

Proposed § 1.482–9(k)(3) provides examples that illustrate the rules regarding the allocation and apportionment of costs.

12. Controlled Services Transactions—§ 1.482–9(l)

Proposed § 1.482–9(l) provides guidance regarding the threshold question of whether an activity by one member of a controlled group constitutes a controlled services transaction, the arm's length charge for which must be determined under proposed § 1.482–9(l). This guidance updates and substantially modifies the guidance in existing § 1.482–2(b)(3), and brings such guidance more into line with international standards in this area.

a. General Rule—§ 1.482–9(l)(1). Proposed § 1.482–9(l)(1) provides generally that a controlled services transaction includes any activity by one controlled taxpayer that results in a benefit to one or more other controlled taxpayers. The terms ''activity'' and ''benefit'' are further defined and described in proposed § 1.482–9(l)(2) and (3).

b. Activity—§ 1.482–9(l)(2). Proposed § 1.482–9(l)(2) defines an activity to include the use by the renderer, or the making available to the recipient, of any property or other resources of the renderer. The Treasury Department and the IRS intend the broad scope of the term activity to allow transactions that are not subject to the existing section 482 regulations applicable to other types of transactions (*e.g.*, transfers of tangible or intangible property, rentals, or loans) to be analyzed under proposed § 1.482–9.

c. Benefit—§ 1.482–9(l)(3)—i. General Rule—§ 1.482–9(l)(3)(i). Proposed § 1.482–9(l)(3) specifies rules for determining whether an activity results in a benefit to one or more other members of the controlled group. Proposed § 1.482–9(l)(3)(i) provides that, in general, an activity is considered to provide a benefit to the recipient if the activity directly results in a reasonably identifiable increment of economic or commercial value that enhances the recipient's commercial position, or that may be reasonably anticipated to do so. In cases where an activity may be reasonably anticipated to have a particular result or outcome, but that result or outcome in fact does not occur, the determination of whether a benefit is present is evaluated by reference to what it was reasonable to expect at the time the activity was performed.

Proposed § 1.482–9(l)(3)(i) further provides that an activity is generally considered to confer a benefit if an uncontrolled taxpayer in circumstances comparable to those of the recipient would be willing to pay an uncontrolled party to perform the same or similar activity, or if such uncontrolled taxpayer would be willing to perform for itself the same or similar activity. This proposed rule would replace the rule of existing § 1.482–2(b)(2)(i), which provides that the relevant determination is whether an uncontrolled taxpayer in circumstances similar to the renderer would charge for the service. The Treasury Department and the IRS believe that the approach of the proposed regulations is more consistent with the arm's length standard and is more in line with international standards in this area. In addition, this approach should be substantially easier to administer than the standard under existing § 1.482–2(b)(2)(i), which in some cases has been interpreted as requiring a difficult analysis of the subjective intent of the renderer. While the focus of this aspect of the proposed regulations is on the recipient, the determination of the arm's length charge may require a focus on the recipient, the renderer, or both, depending on the applicable method.

The proposed regulations and the examples set forth under § 1.482–9(l)(4) do not adopt a so-called ''general benefit'' approach, under which certain activities in a corporate group were presumed to generate a benefit to the controlled group as a whole. This general benefit approach in some cases has been used to justify a charge to a group member for centralized activities performed by a corporate parent or service center, whether or not that particular member actually receives a benefit from those activities. The Treasury Department and the IRS believe that the general benefit concept is inconsistent with the arm's length standard. In the controlled group context, the benefit analysis appropriately focuses on whether one or more controlled parties receive an identifiable benefit from an activity performed by another member of the group. Although the proposed regulations do not adopt the general benefit approach, in certain cases the allocation or sharing among group members of expenses or charges relating to corporate headquarters-level activities or other centralized service activities may be consistent with the rules of the proposed regulations.

Proposed § 1.482–9(l)(3)(i) clarifies that a benefit is received by the owner of an intangible when another controlled taxpayer performs an activity that contributes to the development or enhancement of the value of that intangible. This provision is consistent with proposed § 1.482–4(f)(3) and (4).

ii. Indirect or Remote Benefits and Duplicative Activities—§ 1.482–9(l)(3)(ii) and (iii). Proposed § 1.482–9(l)(3)(ii) and (iii) retain, with modifications, two concepts that also appear in the existing regulations. First, an activity does not result in a benefit to the extent that the activity produces only indirect or remote benefits. Second, an activity does not produce a benefit where the underlying activity is duplicative of an activity performed by the putative recipient.

Under proposed § 1.482–9(l)(3)(ii), an activity produces an indirect or remote benefit only if that activity is one for which an uncontrolled taxpayer

operating under similar conditions would not be willing to pay, or would not itself undertake. Consistent with the general approach in proposed § 1.482–9(l)(3)(i), the determination of whether a benefit is indirect or remote focuses on the recipient.

Under proposed § 1.482–9(l)(3)(iii), an activity that is duplicative of an activity performed by another controlled taxpayer generally will not be considered to provide a benefit unless it yields an identifiable, additional benefit to one or more members of the controlled group.

iii. Shareholder Activities—§ 1.482–9(l)(3)(iv). Substantial controversy has arisen under the existing regulations concerning whether activities performed by an owner-member in a controlled group may be classified as shareholder or stewardship activities that benefit the owner-member that renders such services and not other controlled parties. Stewardship or shareholder activities are activities performed by reason of or on account of the renderer's status as a shareholder or as an investor of capital. The existing regulations do not provide specific guidance with respect to these issues.

Proposed § 1.482–9(l)(3)(iv) provides that an activity whose primary benefit is to protect the renderer's capital investment in one or more members of the controlled group, or an activity relating primarily to compliance by the renderer with reporting, legal, or regulatory requirements applicable specifically to the renderer, will not be considered to provide a benefit to another member of the controlled group. The proposed regulations further provide that activities in the nature of day-to-day management generally do not relate to the protection of the renderer's capital investment, and that activities performed in connection with a corporate reorganization (including payments to unrelated service providers) may be considered to provide a benefit to one or more controlled taxpayers.

In the view of the Treasury Department and the IRS, the relatively narrow definition of shareholder activities in the proposed regulations reflects the arm's length standard and is consistent with particular international standards in this area. The Treasury Department and the IRS recognize that there are a wide range of activities and factual scenarios within a multinational group to which this guidance will apply. For example, if an activity is performed in order to comply with legal requirements applicable to shareholders, or in order to preserve or safeguard the controlled taxpayer's equity investment in a subsidiary, such an activity should be properly viewed as a shareholder activity. It may be appropriate to conclude that other activities also provide no benefit to other members of the controlled group, but such conclusion would be based on a detailed analysis of the facts and circumstances.

iv. Passive Association—§ 1.482–9(l)(3)(v). Proposed § 1.482–9(l)(3)(v) provides that a member of a controlled group that obtains a benefit solely on account of its status as a member of the group (for example, by obtaining favorable commercial terms from an uncontrolled party by reason of its membership in the controlled group) is generally not considered to receive a benefit. A controlled taxpayer's status as a member of a controlled group may, however, be considered in evaluating comparability between controlled and uncontrolled transactions.

d. Examples—§ 1.482–9(l)(4). Proposed § 1.482–9(l)(4) provides a significant number of examples to illustrate the rules of § 1.482–9(l). Like all examples in the proposed regulations, these examples are limited to an application of the substantive rules of the proposed regulations to the specific facts contained therein.

13. Coordination With Other Transfer Pricing Rules—§ 1.482–9(m)

Proposed § 1.482–9(m) provides rules to coordinate the rules applicable to services with rules applicable to other categories of transactions under section 482. Generally, the section 482 regulations set forth specific transfer pricing methods for evaluating the results of controlled transactions under the arm's length standard. Certain methods apply only to specific types of transactions, while other methods apply more generally. Selection of a method for a particular type of transaction is subject to the best method rule of existing § 1.482–1(c)(1), which states that the method selected should provide the most reliable measure of an arm's length result. The proposed regulations include coordination provisions that provide guidance on selection of an appropriate transfer pricing method when a controlled services transaction is combined with or has elements of another type of transaction. The proposed regulations provide examples that illustrate the application of these rules.

a. Services Transactions That Include Other Types of Transactions—§ 1.482–9(m)(1). A transaction structured as a services transaction may also include elements comprising a different type of transaction. In the case of such an integrated transaction, proposed § 1.482–9(m)(1) provides that whether the integrated transaction may be evaluated by use of the transfer pricing methods in proposed § 1.482–9 or whether one or more elements of the transaction should be evaluated separately under the methods in other section 482 regulations depends on which approach will provide the most reliable measure of an arm's length result. In cases where the non-services element of an integrated transaction may be adequately accounted for in evaluating the comparability of the controlled transaction to the uncontrolled comparables, the integrated transaction may be adequately evaluated under a single method provided under § 1.482–9.

b. Services Transactions That Effect a Transfer of Intangible Property—§ 1.482–9(m)(2). A transaction structured as a services transaction may result in a transfer of intangible property, may have an effect similar to the transfer of intangible property, or may include an element that constitutes the transfer of intangible property. In such cases, proposed § 1.482–9(m)(2) provides that if the element that relates to the transfer of intangible property is material to the evaluation of the transaction, the arm's length result with respect to such element must be either determined under or corroborated by reference to a method under existing § 1.482–4. The Treasury Department and the IRS believe that it is critical that economically similar transactions, in particular transactions that effect the transfer of intangible property, be evaluated consistently under the transfer pricing regulations.

c. Services Subject to a Qualified Cost Sharing Arrangement—§ 1.482–9(m)(3). Proposed § 1.482–9(m)(3) provides that services provided by a controlled participant under a qualified cost sharing arrangement are subject to existing § 1.482–7. The Treasury Department and the IRS are reviewing the current regulatory guidance related to qualified cost sharing arrangements, and intend to issue proposed regulations in the near term.

d. Other Types of Transaction That Include a Services Transaction—§ 1.482–9(m)(4). A transaction structured as a transaction other than a services transaction may also include elements comprising a services transaction. In the case of such an integrated transaction, proposed § 1.482–9(m)(4) provides rules to determine the manner in which such integrated transactions should be evaluated that are similar to the rules in proposed § 1.482–9(m)(1) provided for

integrated transactions structured as services transactions.

e. Global Dealing Operations—§ 1.482–9(m)(5). Under proposed § 1.482–9(m)(5), guidance concerning the treatment of global dealing operations is reserved, pending the issuance of transfer pricing guidance specifically applicable to global dealing operations.

C. Income Attributable to Intangibles—§ 1.482–4(f)(3) and (4)

The proposed regulations would replace the provisions of § 1.482–4(f)(3), relating to the allocation of income from intangibles, with proposed § 1.482–4(f)(3) and (4).

1. Ownership of Intangible Property—§ 1.482–4(f)(3)

Proposed § 1.482–4(f)(3)(i)(A) provides guidance for determining the owner of an intangible. In general, the owner is the taxpayer identified as the owner of an intangible under the intellectual property laws of the relevant jurisdiction, or the taxpayer that holds rights constituting an intangible in accordance with contractual terms or other legal provision. For example, in the case of a typical license of an intangible between controlled parties, the proposed regulations treat the licensee as the owner of contractual rights pursuant to the license, and the licensor as the owner of the intangible subject to the license. The identification of a single owner for each discrete intangible replaces the provision in the existing regulations that under certain circumstances could be read to provide for multiple owners of an intangible. *See* existing § 1.482–4(f)(3)(i) and § 1.482–4(f)(3)(iv), *Example 4.* The ownership of an intangible must in all cases accord with the economic substance of the underlying transaction. *See* § 1.482–1(d)(3). In the case of intangible property for which no owner can be identified under intellectual property law, contractual terms, or other legal provision, the owner will be the controlled taxpayer that has control of the intangible, based on all the facts and circumstances.

Proposed § 1.482–4(f)(3)(i)(B) generally excludes from the rules of proposed § 1.482–4(f)(3)(i)(A) intangibles subject to the cost sharing provisions of § 1.482–7. The Treasury Department and the IRS are reviewing the current regulatory guidance related to qualified cost sharing arrangements, and intend to issue proposed regulations in the near term.

Proposed § 1.482–4(f)(3) does not include the rules in the existing regulations for allocations with respect to assistance provided to the owner of intangible property. These rules, in modified form, are provided in proposed § 1.482–4(f)(4).

2. Contributions To Develop or Enhance an Intangible—§ 1.482–4(f)(4)

Proposed § 1.482–4(f)(4)(i) provides that the arm's length consideration for a contribution by one controlled taxpayer to develop or enhance an intangible owned by another controlled taxpayer must be determined under the applicable rules of section 482.

The section 482 regulations generally give effect to the contractual terms specified for controlled transactions. Consistent with this principle, proposed § 1.482–4(f)(4)(i) also provides rules for situations where controlled taxpayers ''embed'' compensation for a contribution in the contractual terms of a transaction involving an intangible. For instance, under a typical intangible license between controlled parties the licensee may render marketing services that are anticipated to enhance the intangible owned by the licensor. The licensor may compensate such services through a separately stated fee, or such compensation may be embedded within the royalty paid by the licensee (*i.e.*, through reduction of the royalty). In addition, the licensee may undertake marketing activities that are anticipated to enhance the value of its rights to exploit its license. Such activities do not require compensation by the licensor.

Proposed § 1.482–4(f)(4)(i) provides that ordinarily no separate allocation is appropriate where compensation for a contribution is embedded within the terms of a related controlled transaction. The contribution, however, must be taken into account in evaluating the comparability of the controlled transaction to any uncontrolled comparables and in determining the arm's length consideration for the controlled transaction that includes the embedded contribution. This rule is intended to reach a result that is implicit under the existing regulations.

In some cases, this rule may operate in conjunction with § 1.482–3(f), which deals with transfers of tangible property that contains an embedded intangible. For example, in a typical distribution arrangement for the resale of trademarked goods, the distributor may perform marketing services that are not separately compensated. In such a case, ordinarily no separate allocation would be appropriate with respect to either the embedded trademark or the embedded marketing services. These embedded elements, however, must be taken into account in evaluating the comparability of the controlled transfer to any uncontrolled comparables and in determining the arm's length consideration for the intercompany sale of the trademarked goods. *See* proposed § 1.482–4(f)(4)(ii), *Example 2.*

The Treasury Department and the IRS intend that this rule pertaining to contributions to develop or enhance an intangible will provide a clearer framework for analysis than existing § 1.482–4(f)(3), particularly where controlled taxpayers document the relevant transactions in advance and act in accordance with the documentation. In this regard, the proposed regulations are intended to encourage controlled taxpayers to document such transactions contemporaneously and consistently over time.

Examples in proposed § 1.482–4(f)(4)(ii) illustrate the application of proposed § 1.482–4(f)(4) to a range of transactions involving contributions to develop or enhance an intangible.

D. Contractual Terms Imputed From Economic Substance—§ 1.482–1(d)(3)(ii)(C), Examples 3, 4, and 5

The proposed regulations recognize that controlled taxpayers have considerable flexibility to specify the contractual terms regarding contributions to develop or enhance an intangible. The Commissioner generally will give effect to these contractual terms for Federal income tax purposes, provided that they are consistent with the economic substance of the parties' conduct. On the other hand, if the controlled taxpayer fails to specify contractual terms for a transaction, or if the stated terms do not accord with the economic substance of the underlying activities, the Commissioner may impute contractual terms that are consistent with the economic substance of the underlying transactions. *See* § 1.482–1(d)(3).

Proposed *Example 3, Example 4,* and *Example 5* in § 1.482–1(d)(3)(ii)(C) illustrate scenarios in which the Commissioner may impute contractual terms based on the principles in proposed § 1.482–4(f)(3) and (f)(4) and proposed § 1.482–9. These new examples illustrate the imputation of contractual terms in cases where controlled taxpayers fail to specify contractual terms or where the contractual terms specified do not accord with economic substance.

E. Conforming Changes to Other Provisions

In view of the proposed changes described above, conforming changes to §§ 1.482–0 through –2, 1.6038A–3, 1.6662–6(g), and 31.3121(s)–1 are

necessary. Proposed amendments to these provisions are set forth in this document. In addition, the Treasury Department and the IRS are considering the extent to which changes to § 1.861–8(e)(4), which provides guidance regarding expenses attributable to dividends received and which refers to the existing services regulations, may be appropriate to improve the coordination of that regulation with the transfer pricing regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 14, 2004, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by December 23, 2003. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are J. Peter Luedtke and Helen Hong-George of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *
Section 1.482–9 also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482–0 is amended by:

1. Revising the section heading.
2. Removing the entries for § 1.482–2(b) and adding a new entry in its place.
3. Revising the entries for § 1.482–4(f)(3), (f)(4) and (f)(5) and adding new entries for § 1.482–4(f)(6).
4. Adding new entries for §§ 1.482–6(c)(3)(i)(B)(*1*) and (*2*) and 1.482–9.

The additions and revisions read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–2 Determination of taxable income in specific situations.

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(b) Rendering of services.

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§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(f) * * *
(3) Ownership of intangible property.
(i) Identification of owner.
(A) In general.
(B) Cost sharing arrangements.
(ii) Examples.
(4) Contribution to the value of an intangible owned by another.
(i) In general.
(ii) Examples.
(5) Consideration not artificially limited.
(6) Lump-sum payments.
(i) In general.
(ii) Exceptions.
(iii) Example.

§ 1.482–6 Profit split method.

* * * * *

(c) * * *
(3) * * *
(i) In general. * * *
(B) Allocate residual profit.
(*1*) Nonroutine contributions generally.
(*2*) Nonroutine contributions of intangible property.

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

(a) In general.
(b) Comparable uncontrolled services price method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) In general.
(B) Adjustments for differences between controlled and uncontrolled transactions.
(iii) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(5) Indirect evidence of the price of a comparable uncontrolled services transaction.
(i) In general.
(ii) Example.
(c) Gross services margin method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Related uncontrolled transaction.
(iii) Applicable uncontrolled price.
(iv) Appropriate gross services profit.
(v) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Buy-sell distributor.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(d) Cost of services plus method.
(1) In general.
(2) Determination of arm's length price.

(i) In general.
(ii) Appropriate gross services profit.
(iii) Comparable transactional costs.
(iv) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between the controlled and uncontrolled transactions.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(e) Comparable profits method.
(1) In general.
(2) Determination of arm's length result.
(i) Tested party.
(ii) Profit level indicators.
(iii) Comparability and reliability considerations—Data and assumptions—Consistency in accounting.
(3) Examples.
(f) Simplified cost-based method for certain services.
(1) Evaluation of arm's length charge.
(i) In general.
(ii) Coordination with best method rule.
(2) Limitation on allocations by Commissioner.
(i) In general.
(ii) Applicable number of percentage points.
(iii) Method inapplicable to high-margin transactions.
(iv) Measurement of limitations on allocations.
(v) Scope of limitation on allocations by the Commissioner.
(A) Loss transactions and transactions priced in excess of arm's length.
(B) Allocation and apportionment of costs.
(3) Conditions on application of simplified cost-based method.
(i) Adequate books and records.
(ii) Written contract.
(A) In general.
(B) De minimis exception.
(4) Transactions not eligible for simplified cost-based method.
(i) Services similar to services provided by renderer or recipient to uncontrolled parties.
(ii) Services rendered to a recipient that receives services from controlled taxpayers in significant amounts.
(iii) Services involving the use of intangible property.
(iv) Non-services transactions included in integrated transactions.
(v) Certain transactions.
(5) Examples.
(g) Profit split method.
(1) In general.
(2) Examples.
(h) Unspecified methods.
(i) Contingent-payment contractual terms for services.
(1) Economic substance of contingent payment contractual terms recognized.
(2) Contingent-payment arrangement.
(i) Written contract.
(ii) Specified contingency.
(iii) Basis for payment.
(3) Commissioner's authority to impute contingent-payment terms.
(4) Evaluation of arm's length charge.
(5) Examples.
(j) Total services costs.
(k) Allocation of costs.
(1) In general.
(2) Appropriate method of allocation and apportionment.
(i) Reasonable method standard.
(ii) Use of general practices.
(3) Examples.
(l) Controlled services transaction.
(1) In general.
(2) Activity.
(3) Benefit.
(i) In general.
(ii) Indirect or remote benefit.
(iii) Duplicative activities.
(iv) Shareholder activities.
(v) Passive association.
(4) Examples.
(m) Coordination with transfer pricing rules for other transactions.
(1) Services transactions that include other types of transactions.
(2) Services transactions that effect a transfer of intangible property.
(3) Services subject to a qualified cost sharing arrangement.
(4) Other types of transactions that include controlled services transactions.
(5) Global dealing operations.
(6) Examples.
(n) Effective date.

Par. 3. Section 1.482–1 is amended by:

1. Revising paragraphs (a)(1), (b)(2)(i), (d)(3)(ii)(C) *Example 3,* (f)(2)(iii)(B), (g)(4)(i), the first two sentences in paragraph (g)(4)(iii) *Example 1,* and paragraph (i) introductory text.

2. Adding paragraph (d)(3)(ii)(C), *Example 4* and *Example 5.*

3. Adding a sentence at the end of paragraph (d)(3)(v).

The additions and revisions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer. This section sets forth general principles and guidelines to be followed under section 482. Section 1.482–2 provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances or the use of tangible property. Sections 1.482–3 through 1.482–6 provide rules for the determination of the true taxable income of controlled taxpayers in cases involving the transfer of property. Section 1.482–7T sets forth the cost sharing provisions applicable to taxable years beginning on or after October 6, 1994, and before January 1, 1996. Section 1.482–7 sets forth the cost sharing provisions applicable to taxable years beginning on or after January 1, 1996. Section 1.482–8 provides examples illustrating the application of the best method rule. Finally, § 1.482–9 provides rules for the determination of the true taxable income of controlled taxpayers in cases involving the performance of services.

* * * * *

(b) * * *

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482–2 through 1.482–6 and § 1.482–9 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard and if they do not to determine the arm's length result. Section 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(C) * * *

Example 3. Contractual terms imputed from economic substance. (i) FP, a foreign producer of wristwatches, is the registered holder of the YY trademark in the United States and in other countries worldwide. In Year 1, FP enters the U.S. market by selling YY wristwatches to its newly organized U.S. subsidiary, USSub, for distribution in the U.S. market. USSub pays FP a fixed price per wristwatch, and USSub and FP undertake without separate compensation marketing activities to establish the YY trademark in the U.S. market. Unrelated foreign producers of trademarked wristwatches and U.S. distributors respectively undertake similar marketing activities in independent arrangements involving distribution of trademarked wristwatches in the U.S. market. In Years 1 through 6, USSub markets and sells YY wristwatches in the United States. Further, in Years 1 through 6, USSub undertakes incremental marketing activities in addition to the activities similar to those observed in the independent distribution transactions in the U.S. market. FP does not directly or indirectly compensate USSub for performing these incremental activities during Years 1 through 6. Assume that, aside from these incremental activities, and after any adjustments are made to improve the reliability of the comparison, the price paid per wristwatch by the independent distributors for wristwatches would provide the most reliable measure of the arm's length price paid per YY wristwatch by USSub.

(ii) By Year 7, the wristwatches with the YY trademark generate a premium return in the U.S. market, as compared to wristwatches marketed by the independent distributors. In

Year 7, substantially all the premium return from the YY trademark in the U.S. market is attributed to FP, for example through an increase in the price paid per watch by USSub, or by some other means.

(iii) In determining whether an allocation of income is appropriate in Year 7, the Commissioner may consider the economic substance of the arrangements between USSub and FP, and the parties' course of conduct throughout their relationship. Based on this analysis, the Commissioner determines that it is unlikely that, *ex ante,* an uncontrolled taxpayer operating at arm's length would engage in marketing activities to develop or enhance an intangible owned by another party unless it received contemporaneous compensation or otherwise had a reasonable anticipation of receiving a future benefit from those activities. In this case, USSub's undertaking the incremental marketing activities in Years 1 through 6 is a course of conduct that is inconsistent with the parties' attribution to FP in Year 7 of substantially all the premium return from the enhanced YY trademark in the United States market. Therefore, the Commissioner may impute one or more agreements between USSub and FP, consistent with the economic substance of their course of conduct, which would afford USSub an appropriate portion of the premium return from the YY trademark wristwatches. For example, the Commissioner may impute a separate services agreement that affords USSub contingent-payment compensation for its incremental marketing activities in Years 1 through 6, which benefited FP by contributing to the value of the trademark owned by FP. In the alternative, the Commissioner may impute a long-term exclusive U.S. distribution agreement to exploit the YY trademark that allows USSub to benefit from the incremental marketing activities it performed. As another alternative, the Commissioner may require FP to compensate USSub for terminating USSub's imputed long-term distribution agreement, an agreement that USSub made more valuable at its own expense and risk. The taxpayer may present additional facts that could indicate which of these or other alternative agreements best reflects the economic substance of the underlying transactions, consistent with the parties' course of conduct in the particular case.

Example 4. Contractual terms imputed from economic substance. (i) FP, a foreign producer of athletic gear, is the registered holder of the AA trademark in the United States and in other countries worldwide. In Year 1, FP licenses to its newly organized U.S. subsidiary, USSub, exclusive rights to certain manufacturing and marketing intangibles (including the AA trademark) for purposes of manufacturing and marketing athletic gear in the United States under the AA trademark. The contractual terms obligate USSub to pay FP a royalty based on sales, and obligate both FP and USSub to undertake without separate compensation specified types and levels of marketing activities. Unrelated foreign businesses license independent U.S. businesses to manufacture and market athletic gear in the United States, using trademarks owned by the unrelated foreign businesses. The contractual terms of these uncontrolled transactions require the licensees to pay royalties based on sales of the merchandise, and obligate the licensors and licensees to undertake without separate compensation specified types and levels of marketing activities. In Years 1 through 6, USSub manufactures and sells athletic gear under the AA trademark in the United States. Assume that, after adjustments are made to improve the reliability of the comparison for any material differences relating to marketing activities, manufacturing or marketing intangibles, and other comparability factors, the royalties paid by independent licensees would provide the most reliable measure of the arm's length royalty owed by USSub to FP, apart from the additional facts.

(ii) In Years 1 through 6, USSub performs incremental marketing activities with respect to the AA trademark athletic gear, in addition to the activities required under the terms of the license agreement. FP does not directly or indirectly compensate USSub for performing these incremental activities during Years 1 through 6. By Year 7, AA trademark athletic gear generates a premium return in the United States, as compared to similar athletic gear marketed by independent licensees. In Year 7, USSub and FP enter into a separate services agreement under which FP agrees to compensate USSub on a cost basis for the incremental marketing activities that USSub performed during Years 1 through 6, and to compensate USSub on a cost basis for any incremental marketing activities it may perform in Year 7 and thereafter. In addition, the parties revise the license agreement executed in Year 1, and increase the royalty to a level that attributes to FP substantially all the premium return from sales of the AA trademark athletic gear in the United States.

(iii) In determining whether an allocation of income is appropriate in Year 7, the Commissioner may consider the economic substance of the arrangements between USSub and FP and the parties' course of conduct throughout their relationship. Based on this analysis, the Commissioner determines that it is unlikely that, *ex ante,* an uncontrolled taxpayer operating at arm's length would engage in incremental marketing activities to develop or enhance an intangible owned by another party unless it received contemporaneous compensation or otherwise had a reasonable anticipation of a future benefit. In this case, USSub's undertaking the incremental marketing activities in Years 1 through 6 is a course of conduct that is inconsistent with the parties' adoption in Year 7 of contractual terms whereby FP compensates USSub on a cost basis for the incremental marketing activities that it performed. Therefore, the Commissioner may impute one or more agreements between USSub and FP, consistent with the economic substance of their course of conduct, which would afford USSub an appropriate portion of the premium return from the AA trademark athletic gear. For example, the Commissioner may impute a separate services agreement that affords USSub contingent-payment compensation for the incremental activities it performed during Years 1 through 6, which benefited FP by contributing to the value of the trademark owned by FP. In the alternative, the Commissioner may impute a long-term exclusive U.S. license agreement that allows USSub to benefit from the incremental activities. As another alternative, the Commissioner may require FP to compensate USSub for terminating USSub's imputed long-term U.S. license agreement, a license that USSub made more valuable at its own expense and risk. The taxpayer may present additional facts that could indicate which of these or other alternative agreements best reflects the economic substance of the underlying transactions, consistent with the parties' course of conduct in this particular case.

Example 5. Contractual terms imputed from economic substance. (i) Company X is a member of a controlled group that has been in operation in the pharmaceutical sector for many years. In Years 1 through 4, Company X undertakes research and development activities. As a result of those activities, a compound is developed that may be more effective than existing medications in the treatment of certain conditions.

(ii) Company Y is acquired in Year 4 by the controlled group that includes Company X. Once Company Y is acquired, patent rights with respect to the compound in several jurisdictions are registered by Company Y, making Company Y the legal owner of such patents.

(iii) In determining whether an allocation is appropriate in Year 4, the Commissioner may consider the economic substance of the arrangements between Company X and Company Y, and the parties' course of conduct throughout their relationship. Based on this analysis, the Commissioner determines that it is unlikely that, *ex ante,* an uncontrolled taxpayer operating at arm's length would engage in research and development activities to develop a patentable compound to be registered by another party unless it received contemporaneous compensation or otherwise had a reasonable anticipation of receiving a future benefit from those activities. In this case, Company X's undertaking the research and development activities is inconsistent with the registration of the patent by Company Y. Therefore, the Commissioner may impute one or more agreements between Company X and Company Y consistent with the economic substance of their course of conduct, which would afford Company X an appropriate portion of the premium return from the patent rights. For example, the Commissioner may impute a separate services agreement that affords Company X contingent-payment compensation for its research and development activities in Years 1 through 4, which benefited Company Y by creating and further contributing to the value of the patent rights ultimately registered by Company Y. In the alternative, the Commissioner may impute a transfer of patentable intangible rights from Company X to Company Y immediately preceding the registration of patent rights by Company Y. The taxpayer may present additional facts that could indicate which of these or other alternative agreements best reflects the economic substance of the underlying

transactions, consistent with the parties' course of conduct in the particular case.

* * * * *

(v) * * * See § 1.482–9(m).

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) *Circumstances warranting consideration of multiple year data.* The extent to which it is appropriate to consider multiple year data depends on the method being applied and the issue being addressed. Circumstances that may warrant consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Data from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of paragraph (d)(3)(iii) of this section (Risk), paragraph (d)(4)(i) of this section (Market share strategy), § 1.482–4(f)(2) (Periodic adjustments), § 1.482–5 (Comparable profits method), § 1.482–9(e) (Comparable profits method for services), § 1.482–9(f) (Simplified cost-based method for services), and § 1.482–9(i) (Contingent-payment contractual terms for services). On the other hand, multiple year data ordinarily will not be considered for purposes of applying the comparable uncontrolled price method of § 1.482–3(b) or the comparable uncontrolled services price method of § 1.482–9(b) (except to the extent that risk or market share strategy issues are present).

* * * * *

(g) * * *

(4) *Setoffs*—(i) *In general.* If an allocation is made under section 482 with respect to a transaction between controlled taxpayers, the Commissioner will take into account the effect of any other non-arm's length transaction between the same controlled taxpayers in the same taxable year which will result in a setoff against the original section 482 allocation. Such setoff, however, will be taken into account only if the requirements of paragraph (g)(4)(ii) of this section are satisfied. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to affect the U.S. tax liability of any member, adjustments will be made to reflect the correct amount of each category of income or deductions. For purposes of this setoff provision, the term arm's length refers to the amount defined in paragraph (b) of this section (Arm's length standard), without regard to the rules in § 1.482–2(a) that treat certain interest rates as arm's length rates of interest.

* * * * *

(iii) *Examples.* * * *

Example 1. P, a U.S. corporation, renders construction services to S, its foreign subsidiary in Country Y, in connection with the construction of S's factory. An arm's length charge for such services determined under § 1.482–9 would be $100,000. * * *

* * * * *

(i) *Definitions.* The definitions set forth in paragraphs (i)(1) through (i)(10) of this section apply to this §§ 1.482–1 through 1.482–9.

* * * * *

Par. 4. Section 1.482–2(b) is revised to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

* * * * *

(b) *Rendering of services.* For rules governing allocations under section 482 to reflect an arm's length charge for controlled transactions involving the rendering of services, see § 1.482–9.

* * * * *

Par. 5. Section 1.482–4 is amended by:

1. Redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively.

2. Revising paragraph (f)(3) and adding new paragraph (f)(4). The revisions and additions read as follows.

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

* * * * *

(f) * * *

(3) *Ownership of intangible property*—(i) *Identification of owner*—(A) *In general.* The legal owner of an intangible pursuant to the intellectual property law of the relevant jurisdiction, or the holder of rights constituting an intangible pursuant to contractual terms (such as the terms of a license) or other legal provision, will be considered the sole owner of the respective intangible for purposes of this section unless such ownership is inconsistent with the economic substance of the underlying transactions. *See* § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). If no owner of the respective intangible is identified under the intellectual property law of the relevant jurisdiction, or pursuant to contractual terms (including terms imputed pursuant to § 1.482–1(d)(3)(ii)(B)) or other legal provision, then the controlled taxpayer who has control of the intangible, based on all the facts and circumstances, will be considered the sole owner of the intangible for purposes of this section.

(B) *Cost sharing arrangements.* The rule in paragraph (f)(3)(i)(A) of this section shall apply to interests in covered intangibles, as defined in § 1.482–7(b)(4)(iv), only as provided in § 1.482–7 (Sharing of costs).

(ii) *Examples.* The principles of this paragraph (f)(3) are illustrated by the following examples:

Example 1. FP, a foreign corporation, is the registered holder of the AA trademark in the United States. FP licenses to a U.S. subsidiary, USSub, the exclusive rights to manufacture and market products in the United States under the AA trademark. FP is the owner of the trademark pursuant to intellectual property law. USSub is the owner of the license pursuant to the contractual terms of the license, but is not the owner of the trademark. *See* paragraphs (b)(3) and (4) of this section (defining an intangible as, among other things, a trademark or a license).

Example 2. The facts are the same as in *Example 1.* As a result of its sales and marketing activities, USSub develops a list of several hundred creditworthy customers that regularly purchase AA trademarked products. Neither the terms of the contract between FP and USSub nor the relevant intellectual property law specify which party owns the customer list. Because USSub has knowledge of the contents of the list, and has practical control over its use and dissemination, USSub is considered the sole owner of the customer list for purposes of this paragraph (f)(3).

(4) *Contribution to the value of an intangible owned by another*—(i) *In general.* The arm's length consideration for a contribution by one controlled taxpayer that develops or enhances the value, or may be reasonably anticipated to develop or enhance the value, of an intangible owned by another controlled taxpayer shall be determined in accordance with the applicable rules under section 482. If the consideration for such a contribution is embedded within the contractual terms for a controlled transaction that involves such intangible, then ordinarily no separate allocation will be made with respect to such contribution. In such cases, pursuant to § 1.482–1(d)(3), the contribution must be accounted for in evaluating the comparability of the controlled transaction to uncontrolled comparables, and accordingly in determining the arm's length consideration in the controlled transaction.

(ii) *Examples.* The principles of this paragraph (f)(4) are illustrated by the following examples:

Example 1. A, a member of a controlled group, allows B, another member of the

controlled group, to use tangible property, such as laboratory equipment, in connection with B's development of an intangible that B owns. By furnishing tangible property, A makes a contribution to the development of an intangible owned by another controlled taxpayer, B. Pursuant to paragraph (f)(4)(i) of this section, the arm's length charge for A's furnishing of tangible property will be determined under the rules for use of tangible property in § 1.482–2(c).

Example 2. (i) *Facts.* FP, a foreign producer of wristwatches, is the registered holder of the YY trademark in the United States and in other countries worldwide. FP enters into a five-year, renewable distribution agreement with its newly organized U.S. subsidiary, USSub. The contractual terms of the agreement grant USSub the right to sell trademark YY wristwatches in the United States, obligate USSub to pay a fixed price per wristwatch throughout the entire term of the contract, and obligate both FP and USSub to undertake without separate compensation specified types and levels of marketing activities.

(ii) The consideration for FP's and USSub's marketing activities, as well as the consideration for the license to sell YY trademarked merchandise, are embedded in the transfer price paid for the wristwatches. Accordingly, pursuant to paragraph (f)(4)(i) of this section, ordinarily no separate allocation would be appropriate with respect to these embedded contributions.

(iii) Whether an allocation is warranted with respect to the transfer price for the wristwatches is determined under § 1.482–1 and §§ 1.482–3 through 1.482–6. The comparability analysis would include consideration of all relevant factors, including the nature of the intangible embedded in the wristwatches and the nature of the marketing activities required under the contract. This analysis would also take into account that the compensation for the activities performed by USSub and FP, as well as the consideration for USSub's use of the YY trademark, is embedded in the transfer price for the wristwatches, rather than provided for in separate agreements. *See* § 1.482–3(f) and 1.482–9(m)(4). If it is not possible to identify uncontrolled transactions that incorporate a similar range of interrelated elements and there are nonroutine contributions by each of FP and USSub, then the most reliable measure of the arm's length price for the wristwatches may be the residual profit split method. The analysis would take into account routine and nonroutine contributions by USSub and FP in order to determine an appropriate allocation of the combined operating profits from the sale of the wristwatches and related activities.

Example 3. (i) *Facts.* FP, a foreign producer of athletic gear, is the registered holder of the AA trademark in the United States and in other countries. In Year 1, FP licenses to a newly organized U.S. subsidiary, USSub, the exclusive rights to use certain manufacturing and marketing intangibles to manufacture and market athletic gear in the United States under the AA trademark. The license agreement obligates USSub to pay a royalty based on sales of trademarked merchandise. The license agreement also obligates FP and USSub to perform without separate compensation specified types and levels of marketing activities. In Year 1, USSub manufactures and sells athletic gear under the AA trademark in the United States.

(ii) The consideration for FP's and USSub's respective marketing activities is embedded in the contractual terms of the license for the AA trademark. Accordingly, pursuant to paragraph (f)(4)(i) of this section, ordinarily no separate allocation would be appropriate with respect to the embedded contributions in Year 1. See § 1.482–9(m)(4).

(iii) Whether an allocation is warranted with respect to the royalty under the license agreement would be analyzed under § 1.482–1 and this section through § 1.482–6. The comparability analysis would include consideration of all relevant factors, such as the term and geographical exclusivity of the license, the nature of the intangibles subject to the license, and the nature of the marketing activities required to be undertaken pursuant to the license. Pursuant to paragraph (f)(4)(i) of this section, the analysis would also take into account the fact that the compensation for the marketing services is embedded in the royalty for the AA trademark, rather than provided for in a separate services agreement. If it is not possible to identify uncontrolled transactions that incorporate a similar range of interrelated elements and there are nonroutine contributions by each of FP and USSub, then the most reliable measure of the arm's length royalty for the AA trademark may be the residual profit split method. The analysis would take into account routine and nonroutine contributions by USSub and FP in order to determine an appropriate allocation of the combined operating profits from the sale of the AA trademarked merchandise and related activities.

Example 4. (i) *Facts.* The Year 1 facts are the same as in *Example 3,* with the following exceptions. In Year 2, USSub undertakes certain incremental marketing activities, in addition to those required by the contractual terms of the license for the AA trademark. The parties do not execute a separate agreement with respect to the incremental marketing activities performed by USSub. The license agreement executed in Year 1 is of sufficient duration that it is reasonable to anticipate that USSub will obtain the benefit of its incremental activities, in the form of increased sales or revenues of trademarked products in the U.S. market.

(ii) To the extent that it was reasonable to anticipate that USSub's incremental marketing activities would increase the value only of USSub's intangible (that is, USSub's license to use the AA trademark for a specified term), and not the value of the AA trademark owned by FP, USSub's incremental activities do not constitute a contribution for which an allocation is warranted under paragraph (f)(4)(i) of this section.

Example 5. (i) *Facts.* The Year 1 facts are the same as in *Example 3.* In Year 2, FP and USSub enter into a separate services agreement that obligates USSub to perform certain incremental marketing activities to promote AA trademark athletic gear in the United States, beyond the activities specified in license agreement. In Year 2, USSub begins to perform these incremental activities, pursuant to the separate services agreement with FP.

(ii) Whether an allocation is warranted with respect to USSub's incremental marketing activities covered by the separate services agreement would be evaluated under §§ 1.482–1 and 1.482–9, including a comparison of the compensation provided for the services with the results obtained under a method pursuant to § 1.482–9, selected and applied in accordance with the best method rule of § 1.482–1(c).

(iii) Whether an allocation is warranted with respect to the royalty under the license agreement is determined under § 1.482–1 and this section through § 1.482–6. The comparability analysis would include consideration of all relevant factors, such as the term and geographical exclusivity of the license, the nature of the intangibles subject to the license, and the nature of the marketing activities required to be undertaken pursuant to the license. The comparability analysis would take into account that the compensation for the incremental activities by USSub is provided for in the separate services agreement, rather than embedded in the royalty for the AA trademark. If it is not possible to identify uncontrolled transactions that incorporate a similar range of interrelated elements and there are nonroutine contributions by each of FP and USSub, then the most reliable measure of the arm's length royalty for the AA trademark may be the residual profit split method. The analysis would take into account routine and nonroutine contributions by USSub and FP in order to determine an appropriate allocation of the combined operating profits from the sale of the AA trademarked merchandise and related activities.

Example 6. (i) *Facts.* The Year 1 facts are the same as in *Example 3.* In Year 2, FP and USSub enter into a separate services agreement that obligates FP to perform incremental marketing activities by advertising AA trademarked athletic gear in selected international sporting events, such as the Olympics and the soccer World Cup. FP's corporate advertising department develops and coordinates these special promotions. The separate services agreement obligates USSub to pay an amount to FP for the benefit to USSub that may reasonably be anticipated as the result of FP's incremental activities. The separate services agreement is not a qualified cost sharing arrangement under § 1.482–7. FP begins to perform the incremental activities in Year 2 pursuant to the separate services agreement.

(ii) Whether an allocation is warranted with respect to the incremental marketing activities performed by FP under the separate services agreement would be evaluated under § 1.482–9. Under the circumstances, it is reasonable to anticipate that FP's activities would increase the value of USSub's license as well as the value of FP's trademark. Accordingly, the incremental activities by FP may constitute in part a controlled services transaction for which USSub must compensate FP. The analysis of whether an

allocation is warranted would include a comparison of the compensation provided for the services with the results obtained under a method pursuant to § 1.482–9, selected and applied in accordance with the best method rule of § 1.482–1(c).

(iii) Whether an allocation is appropriate with respect to the royalty under the license agreement would be evaluated under § 1.482–1 and this section through § 1.482–6. The comparability analysis would include consideration of all relevant factors, such as the term and geographical exclusivity of USSub's license, the nature of the intangibles subject to the license, and the marketing activities required to be undertaken by both FP and USSub pursuant to the license. This comparability analysis would take into account that the compensation for the incremental activities performed by FP was provided for in the separate services agreement, rather than embedded in the royalty for the AA trademark. If it is not possible to identify uncontrolled transactions that incorporate a similar range of interrelated elements and there are nonroutine contributions by each of FP and USSub, then the most reliable measure of the arm's length royalty for the AA trademark may be the residual profit split method. The analysis would take into account routine and nonroutine contributions by USSub and FP in order to determine an appropriate allocation of the combined operating profits from the sale of the AA trademarked merchandise and related activities.

* * * * *

Par. 6. Section 1.482–6 is amended by:

1. Revising the third sentence in paragraph (c)(2)(ii)(B)(*1*), the first sentence in paragraph (c)(2)(ii)(D), the last sentence in paragraph (c)(3)(i)(A) and the first sentence in paragraph (c)(3)(ii)(D).

2. Revising paragraph (c)(3)(i)(B).

The revisions read as follows:

§ 1.482–6 Profit split method.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * * (*1*) * * * Although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on the considerations described under the comparable profits method in § 1.482–5(c)(2) or § 1.482–9(e)(2)(iii), because this method is based on a comparison of the operating profit of the controlled and uncontrolled taxpayers. * * *

* * * * *

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, 1.482–5 and 1.482–9, the comparable profit split relies exclusively on external market benchmarks. * * *

* * * * *

(3) * * * (i) * * *

(A) * * * Market returns for the routine contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482–3, 1.482–4, 1.482–5 and 1.482–9.

(B) *Allocate residual profit*—(*1*) *Nonroutine contributions generally.* The allocation of income to the controlled taxpayer's routine contributions will not reflect profits attributable to each controlled taxpayer's contributions to the relevant business activity that are not routine (nonroutine contributions). A nonroutine contribution is a contribution that cannot be fully accounted for by reference to market returns, or that is so interrelated with other transactions that it cannot be reliably evaluated on a separate basis. Thus, in cases where such nonroutine contributions are present there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(3)(i)(A) of this section. Under this second step, the residual profit generally should be divided among the controlled taxpayers based upon the relative value of their nonroutine contributions to the relevant business activity. The relative value of the nonroutine contributions of each taxpayer should be measured in a manner that most reliably reflects each nonroutine contribution made to the controlled transaction and each controlled taxpayer's role in the nonroutine contributions. If the nonroutine contribution by one of the controlled taxpayers is also used in other business activities (such as transactions with other controlled taxpayers), an appropriate allocation of the value of the nonroutine contribution must be made among all the business activities in which it is used.

(*2*) *Nonroutine contributions of intangible property.* In many cases, nonroutine contributions of a taxpayer to the relevant business activity may be contributions of intangible property. For purposes of paragraph (c)(3)(i)(B)(*1*) of this section, the relative value of nonroutine intangible property contributed by taxpayers may be measured by external market benchmarks that reflect the fair market value of such intangible property. Alternatively, the relative value of nonroutine intangible property contributions may be estimated by the capitalized cost of developing the intangible property and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. Finally, if the intangible development expenditures of the parties are relatively constant over time and the useful life of the intangible property contributed by all parties is approximately the same, the amount of actual expenditures in recent years may be used to estimate the relative value of nonroutine intangible property contributions.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, 1.482–5 and 1.482–9, the first step of the residual profit split relies exclusively on external market benchmarks. * * *

* * * * *

Par. 7. A new § 1.482–9 is added to read as follows:

§ 1.482–9 Methods to determine taxable income in connection with a controlled services transaction.

(a) *In general.* The arm's length amount charged in a controlled services transaction must be determined under one of the methods provided for in this section. Each method must be applied in accordance with the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e), except as those provisions are modified in this section. The methods are—

(1) The comparable uncontrolled services price method, described in paragraph (b) of this section;

(2) The gross services margin method, described in paragraph (c) of this section;

(3) The cost of services plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in § 1.482–5 and in paragraph (e) of this section;

(5) The simplified cost-based method for certain services, described in paragraph (f) of this section;

(6) The profit split method, described in § 1.482–6 and in paragraph (g) of this section; and

(7) Unspecified methods, described in paragraph (h) of this section.

(b) *Comparable uncontrolled services price method*—(1) *In general.* The comparable uncontrolled services price method evaluates whether the amount charged in a controlled services transaction is arm's length by reference to the amount charged in a comparable uncontrolled services transaction. The comparable uncontrolled services price method is ordinarily used where the controlled services either are identical to or have a high degree of similarity to the services in the uncontrolled transaction.

(2) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the comparable uncontrolled services price method is discussed in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Comparability*—(A) *In general.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the provisions of § 1.482–1(d). Although all of the factors described in § 1.482–1(d)(3) must be considered, similarity of the services rendered, and of the intangibles (if any) used in performing the services, generally will have the greatest effects on comparability under this method. In addition, because even minor differences in contractual terms or economic conditions could materially affect the amount charged in an uncontrolled transaction, comparability under this method depends on close similarity with respect to these factors, or adjustments to account for any differences. The results derived from applying the comparable uncontrolled services price method generally will be the most direct and reliable measure of an arm's length price for the controlled transaction if an uncontrolled transaction has no differences from the controlled transaction that would affect the price, or if there are only minor differences that have a definite and reasonably ascertainable effect on price and for which appropriate adjustments are made. If such adjustments cannot be made, or if there are more than minor differences between the controlled and uncontrolled transactions, the comparable uncontrolled services price method may be used, but the reliability of the results as a measure of the arm's length price will be reduced. Further, if there are material differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable measure of an arm's length result.

(B) *Adjustments for differences between controlled and uncontrolled transactions.* If there are differences between the controlled and uncontrolled transactions that would affect price, adjustments should be made to the price of the uncontrolled transaction according to the comparability provisions of § 1.482–1(d)(2). Specific examples of factors that may be particularly relevant to application of this method include—

(*1*) Quality of the services rendered;

(*2*) Contractual terms (*e.g.*, scope and terms of warranties or guarantees regarding the services, volume, credit and payment terms, allocation of risks, including any contingent-payment terms and whether costs were incurred without a provision for current reimbursement);

(*3*) Intangibles (if any) used in rendering the services;

(*4*) Geographic market in which the services are rendered or received;

(*5*) Risks borne (*e.g.*, costs incurred to render the services, without provision for current reimbursement);

(*6*) Duration or quantitative measure of services rendered;

(*7*) Collateral transactions or ongoing business relationships between the renderer and the recipient, including arrangement for the provision of tangible property in connection with the services; and

(*8*) Alternatives realistically available to the renderer and the recipient.

(iii) *Data and assumptions.* The reliability of the results derived from the comparable uncontrolled services price method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply the method. See § 1.482–1(c) (Best method rule).

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of an arm's length range.

(4) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example 1. Internal comparable uncontrolled services price. Company A, a United States corporation, performs shipping, stevedoring, and related services for controlled and uncontrolled parties on a short-term or as-needed basis. Company A charges uncontrolled parties in Country X a uniform fee of $60 per container to place loaded cargo containers in Country X on oceangoing vessels for marine transportation. Company A also performs identical services in Country X for its wholly owned subsidiary, Company B, and there are no substantial differences between the controlled and uncontrolled transactions. In evaluating the appropriate measure of the arm's length price for the container-loading services performed for Company B, because Company A renders substantially identical services in Country X to both controlled and uncontrolled parties, it is determined that the comparable uncontrolled services price constitutes the best method for determining the arm's length price for the controlled services transaction. Based on the reliable data provided by Company A concerning the price charged for services in comparable uncontrolled transactions, a loading charge of $60 per cargo container will be considered the most reliable measure of the arm's length price for the services rendered to Company B. See paragraph (b)(2)(ii)(A) of this section.

Example 2. External comparable uncontrolled services price. (i) The facts are the same as in *Example 1,* except that Company A performs services for Company B, but not for uncontrolled parties. Based on information obtained from unrelated parties (which is determined to be reliable under the comparability standards set forth in paragraph (b)(2) of this section), it is determined that uncontrolled parties in Country X perform services comparable to those rendered by Company A to Company B, and that such parties charge $60 per cargo container.

(ii) In evaluating the appropriate measure of an arm's length price for the loading services that Company A renders to Company B, the $60 per cargo container charge is considered evidence of a comparable uncontrolled services price. See paragraph (b)(2)(ii)(A) of this section.

Example 3. External comparable uncontrolled services price. The facts are the same as in *Example 2,* except that uncontrolled parties in Country X render similar loading and stevedoring services, but only under contracts that have a minimum term of one year. If the difference in the duration of the services has a material effect on prices, adjustments to account for these differences must be made to the results of the uncontrolled transactions according to the provisions of § 1.482–1(d)(2), and such adjusted results may be used as a measure of the arm's length result.

Example 4. Use of valuable intangibles. (i) Company A, a United States corporation in the biotechnology sector, renders research and development services exclusively to its affiliates. Company B is Company A's wholly owned subsidiary in Country X. Company A renders research and development services to Company B.

(ii) In performing its research and development services function, Company A uses proprietary software that it developed internally. Company A uses the software to evaluate certain genetically engineered compounds developed by Company B. Company A owns the copyright on this software and does not license it to uncontrolled parties.

(iii) No uncontrolled parties can be identified that perform services identical or with a high degree of similarity to those performed by Company A. Because there are material differences for which reliable adjustments cannot be made, the comparable uncontrolled services price method is unlikely to provide a reliable measure of the arm's length price. See paragraph (b)(2)(ii)(A) of this section.

Example 5. Internal comparable. (i) Company A, a United States corporation, and its subsidiaries render computer consulting services relating to systems integration and networking to business clients in various countries. Company A and its subsidiaries render only consulting services, and do not manufacture computer hardware or software nor distribute such products. The controlled group is organized according to industry specialization, with key industry specialists working for Company A. These personnel typically form the core consulting group that teams with consultants from the local-

country subsidiaries to serve clients in the subsidiaries' respective countries.

(ii) Company A and its subsidiaries sometimes undertake engagements directly for clients, and sometimes work as subcontractors to unrelated parties on more extensive supply-chain consulting engagements for clients. In undertaking the latter engagements with third party consultants, Company A typically prices its services based on consulting hours worked multiplied by a rate determined for each category of employee. The company also charges, at no markup, for out-of-pocket expenses such as travel, lodging, and data acquisition charges. The Company has established the following schedule of hourly rates:

Category/Rate

Project managers—$400 per hour
Technical staff—$300 per hour

(iii) Thus, for example, a project involving 100 hours of the time of project managers and 400 hours of technical staff time would result in the following project fees (without regard to any out-of-pocket expenses): ([100 hrs. × $400/hr.] + [400 hrs. × $300/hr.]) = $40,000 + $120,000 = $160,000.

(iv) Company B, a Country X subsidiary of Company A, contracts to perform consulting services for a Country X client in the banking industry. In undertaking this engagement, Company B uses its own consultants and also uses Company A project managers and technical staff that specialize in the banking industry for 75 hours and 380 hours, respectively. In determining an arm's length charge, the price that Company A charges for consulting services as a subcontractor in comparable uncontrolled transactions will be considered evidence of a comparable uncontrolled services price. Thus, in this case, a payment of $144,000, (or [75 hrs. × $400/hr.] + [380 hrs. × $300/hr.] = $30,000 + $114,000) may be used as a measure of the arm's length price for the work performed by Company A project mangers and technical staff. In addition, if the comparable uncontrolled services price method is used, then, consistent with the practices employed by the comparables with respect to similar types of expenses, Company B must reimburse Company A for appropriate out-of-pocket expenses. See paragraph (b)(2)(ii)(A) of this section.

Example 6. Adjustments for differences. (i) The facts are the same as in *Example 5,* except that the engagement is undertaken with the client on a fixed fee basis. That is, prior to undertaking the engagement Company B and Company A estimate the resources required to undertake the engagement, and, based on hourly fee rates, charge the client a single fee for completion of the project. Company A's portion of the engagement results in fees of $144,000.

(ii) The engagement, once undertaken, requires 20% more hours by each of Companies A and B than originally estimated. Nevertheless, the unrelated client pays the fixed fee that was agreed upon at the start of the engagement. Company B pays Company A $144,000, in accordance with the fixed fee arrangement.

(iii) Company A often enters into similar fixed fee engagements with clients. In addition, Company A's records for similar engagements show that when it experiences cost overruns, it does not collect additional fees from the client for the difference between projected and actual hours. Accordingly, in evaluating whether the fees paid by Company B to Company A are arm's length, it is determined that no adjustments to the intercompany service charge are warranted. See § 1.482–1(d)(3)(ii) and paragraph (b)(2)(ii)(A) of this section.

Example 7. Adjustments for differences. The facts are the same as in *Example 6,* except that Company A does not typically enter into fixed fee engagements with clients, and in addition Company A typically receives payments equal to its full fee (*i.e.*, the appropriate hourly fee rate multiplied by the number of hours to complete the engagement) for all consulting work that it performs, regardless of whether actual hours exceed pre-engagement estimates. When Company A's realistic alternatives to entering into the engagement with Company B are taken into account, it is determined that the intercompany charge paid by Company B to Company A should be adjusted to the amount of its full fee. See § 1.482–1(d)(3)(ii) and paragraph (b)(2)(ii)(B)(*8*) of this section.

(5) *Indirect evidence of the price of a comparable uncontrolled services transaction*—(i) *In general.* The price of a comparable uncontrolled services transaction may be derived based on indirect measures of the price charged in comparable uncontrolled services transactions, but only if the following requirements are met—

(A) The data are widely and routinely used in the ordinary course of business in the particular industry or market segment for purposes of determining prices actually charged in comparable uncontrolled services transactions;

(B) The data are used to set prices in the controlled services transaction in the same way they are used to set prices in uncontrolled services transactions of the controlled taxpayer, or in the same way they are used by uncontrolled taxpayers to set prices in uncontrolled services transactions; and

(C) The amount charged in the controlled services transaction may be reliably adjusted to reflect differences in quality of the services, contractual terms, market conditions, risks borne (including contingent-payment terms), duration or quantitative measure of services rendered, and other factors that may affect the price to which uncontrolled taxpayers would agree.

(ii) *Example.* The following example illustrates this paragraph (b)(5):

Example. Indirect evidence of comparable uncontrolled services price. (i) Company A is a United States insurance company. Company A's wholly owned Country X subsidiary, Company B, performs specialized risk analysis for Company A as well as for uncontrolled parties. In determining the price actually charged to uncontrolled entities for performing such risk analysis, Company B uses a proprietary, multi-factor computer program, which relies on the gross value of the policies in the customer's portfolio, the relative composition of those policies, their location, and the estimated number of personnel hours necessary to complete the project. Uncontrolled companies that perform comparable risk analysis in the same industry or market-segment use similar proprietary computer programs to price transactions with uncontrolled customers (the competitors' programs may incorporate different inputs, or may assign different weights or values to individual inputs, in arriving at the price).

(ii) During the taxable year subject to audit, Company B performed risk analysis for uncontrolled parties as well as for Company A. Because prices charged to uncontrolled customers reflected the composition of each customer's portfolio together with other factors, the prices charged in Company B's uncontrolled transactions do not provide a reliable basis for determining the comparable uncontrolled services price for the similar services rendered to Company A. However, in evaluating an arm's length price for the studies performed by Company B for Company A, Company B's proprietary computer program may be considered as indirect evidence of the comparable uncontrolled services price that would be charged to perform the services for Company A. The reliability of the results obtained by application of this internal computer program as a measure of an arm's length price for the services will be increased to the extent that Company A used the internal computer program to generate actual transaction prices for risk-analysis studies performed for uncontrolled parties during the same taxable year under audit; Company A used data that are widely and routinely used in the ordinary course of business in the insurance industry to determine the price charged; and Company A reliably adjusted the price charged in the controlled services transaction to reflect differences that may affect the price to which uncontrolled taxpayers would agree.

(c) *Gross services margin method*—(1) *In general.* The gross services margin method evaluates whether the amount charged in a controlled services transaction is arm's length by reference to the gross profit margin realized in comparable uncontrolled transactions. This method ordinarily is used in cases where a controlled taxpayer performs services or functions in connection with a related uncontrolled transaction between a member of the controlled group and an uncontrolled taxpayer. This method may be used where a controlled taxpayer renders services (agent services) to another member of the controlled group in connection with a transaction between that other member and an uncontrolled taxpayer. This method also may be used in cases where a controlled taxpayer contracts to

provide services to an uncontrolled taxpayer (intermediary function) and another member of the controlled group actually performs a portion of the services provided.

(2) *Determination of arm's length price*—(i) *In general.* The gross services margin method evaluates whether the price charged or amount retained by a controlled taxpayer in the controlled services transaction in connection with the related uncontrolled transaction is arm's length by determining the appropriate gross profit of the controlled taxpayer.

(ii) *Related uncontrolled transaction.* The related uncontrolled transaction is a transaction between a member of the controlled group and an uncontrolled taxpayer as to which the controlled taxpayer performs agent services or an intermediary function.

(iii) *Applicable uncontrolled price.* The applicable uncontrolled price is the price paid or received by the uncontrolled taxpayer in the related uncontrolled transaction.

(iv) *Appropriate gross services profit.* The appropriate gross services profit is computed by multiplying the applicable uncontrolled price by the gross services profit margin in comparable uncontrolled transactions. The determination of the appropriate gross services profit will take into account any functions performed by other members of the controlled group, as well as any other relevant factors described in § 1.482–1(d)(3). The comparable gross services profit margin may be determined by reference to the commission in an uncontrolled transaction, where that commission is stated as a percentage of the price charged in the uncontrolled transaction.

(v) *Arm's length range.* See § 1.482–1(e)(2) for determination of the arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the gross services margin method is discussed in paragraphs (c)(3)(ii) and (iii) of this section.

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between an uncontrolled transaction and a controlled transaction is determined by applying the comparability provisions of § 1.482–1(d). A gross services profit provides compensation for services or functions that bear a relationship to the related uncontrolled transaction, including an operating profit in return for the investment of capital and the assumption of risks by the controlled taxpayer performing the services or functions under review. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of services or functions performed, risks borne, intangibles (if any) used in providing the services or functions, and contractual terms, or adjustments to account for the effects of any such differences. If possible, the appropriate gross services profit margin should be derived from comparable uncontrolled transactions by the controlled taxpayer under review, because similar characteristics are more likely found among different transactions by the same controlled taxpayer than among transactions by other parties. In the absence of comparable uncontrolled transactions involving the same controlled taxpayer, an appropriate gross services profit margin may be derived from transactions of uncontrolled taxpayers involving comparable services or functions with respect to similarly related transactions.

(B) *Other comparability factors.* Comparability under this method is not dependent on close similarity of the related uncontrolled transaction to the related transactions involved in the uncontrolled comparables. However, substantial differences in the nature of the related uncontrolled transaction and the related transactions involved in the uncontrolled comparables, such as differences in the type of property transferred or service provided in the related uncontrolled transaction, may indicate significant differences in the services or functions performed by the controlled and uncontrolled taxpayers with respect to their respective related transactions. Thus, it ordinarily would be expected that the services or functions performed in the controlled and uncontrolled transactions would be with respect to related transactions involving the transfer of property within the same product categories or the provision of services of the same general type (*e.g.*, information-technology systems design). Furthermore, significant differences in the intangibles (if any) used by the controlled taxpayer in the controlled services transaction as distinct from the uncontrolled comparables may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross services profit may be adversely affected by factors that have less effect on prices. For example, gross services profit may be affected by a variety of other factors, including cost structures or efficiency (for example, differences in the level of experience of the employees performing the service in the controlled and uncontrolled transactions). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross services profit margin, adjustments should be made to the gross services profit margin, according to the comparability provisions of § 1.482–1(d)(2). For this purpose, consideration of the total services costs associated with functions performed and risks assumed may be necessary, because differences in functions performed are often reflected in these costs. If there are differences in functions performed, however, the effect on gross services profit of such differences is not necessarily equal to the differences in the amount of related costs. Specific examples of factors that may be particularly relevant to this method include—

(*1*) Contractual terms (*e.g.,* scope and terms of warranties or guarantees regarding the services or function, volume, credit and payment terms, and allocation of risks, including any contingent-payment terms);

(*2*) Intangibles (if any) used in performing the services or function;

(*3*) Geographic market in which the services or function are performed or in which the related uncontrolled transaction takes place; and

(*4*) Risks borne, including, if applicable, inventory-type risk.

(D) *Buy-sell distributor.* If a controlled taxpayer that performs an agent service or intermediary function is comparable to a distributor that takes title to goods and resells them, the gross profit margin earned by such distributor on uncontrolled sales, stated as a percentage of the price for the goods, may be used as the comparable gross services profit margin.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the gross services margin method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled

transaction and the uncontrolled comparables that materially affect the gross services profit margin affects the reliability of the results under this method.

(4) *Examples.* The principles of this paragraph (c) are illustrated by the following examples:

Example 1. Agent services. Company A and Company B are members of a controlled group. Company A is a foreign manufacturer of industrial equipment. Company B is a U.S. company that acts as a commission agent for Company A by arranging for Company A to make direct sales of the equipment it manufactures to unrelated purchasers in the U.S. market. Company B does not take title to the equipment, but instead receives from Company A commissions that are determined as a specified percentage of the sales price for the equipment that is charged by Company A to the unrelated purchaser. Company B also arranges for direct sales of similar equipment by unrelated foreign manufacturers to unrelated purchasers in the U.S. market. Company B charges these unrelated foreign manufacturers a commission fee of 5% of the sales price charged by the unrelated foreign manufacturers to the unrelated U.S. purchasers for the equipment. Information regarding the comparable agent services provided by Company B to unrelated foreign manufacturers is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjustments for such differences have been made. If the comparable gross services profit margin is 5% of the price charged in the related transactions involved in the uncontrolled comparables, then the appropriate gross services profit that Company B may earn and the arm's length price that it may charge Company A for its agent services is equal to 5% of the applicable uncontrolled price charged by Company A in sales of equipment in the related uncontrolled transactions.

Example 2. Agent services. The facts are the same as in *Example 1*, except that Company B does not act as a commission agent for unrelated parties and it is not possible to obtain reliable information concerning commission rates charged by uncontrolled commission agents that engage in comparable transactions with respect to related sales of property. It is possible, however, to obtain reliable information regarding the gross profit margins earned by unrelated parties that briefly take title to and then resell similar property in uncontrolled transactions, in which they purchase the property from foreign manufacturers and resell the property to purchasers in the U.S. market. Analysis of the facts and circumstances indicates that, aside from certain minor differences for which adjustments can be made, the uncontrolled parties that resell property perform similar functions and assume similar risks as Company B performs and assumes when it acts as a commission agent for Company A's sales of property. Under these circumstances, the gross profit margin earned by the unrelated distributors on the purchase and resale of property may be used, subject to any adjustments for any material differences between the controlled and uncontrolled transactions, as a comparable gross services profit margin. The appropriate gross services profit that Company B may earn and the arm's length price that it may charge Company A for its agent services is therefore equal to this comparable gross services margin, multiplied by the applicable uncontrolled price charged by Company A in its sales of equipment in the related uncontrolled transactions.

Example 3. Agent services. (i) Company A and Company B are members of a controlled group. Company A is a U.S. corporation that renders computer consulting services, including systems integration and networking, to business clients.

(ii) In undertaking engagements with clients, Company A in some cases pays a commission of 3% of its total fees to unrelated parties that assist Company A in obtaining consulting engagements. Typically, such fees are paid to non-computer consulting firms that provide strategic management services for their clients. When Company A obtains a consulting engagement with a client of a non-computer consulting firm, Company A does not subcontract with the other consulting firm, nor does the other consulting firm play any role in Company A's consulting engagement.

(iii) Company B, a Country X subsidiary of Company A, assists Company A in obtaining an engagement to perform computer consulting services for a Company B banking industry client in Country X. Although Company B has an established relationship with its Country X client and was instrumental in arranging for Company A's engagement with the client, Company A's particular expertise was the primary consideration in the motivating the client to engage Company A. Based on the relative contributions of Companies A and B in obtaining and undertaking the engagement, Company B's role was primarily to facilitate the consulting engagement between Company A and the Country X client. Information regarding the commissions paid by Company A to unrelated parties for providing similar services to facilitate Company A's consulting engagements is sufficiently complete to conclude that it is likely that all material differences between these uncontrolled transactions and the controlled transaction between Company B and Company A have been identified and that appropriate adjustments have been made for any such differences. If the comparable gross services margin earned by unrelated parties in providing such agent services is 3% of total fees charged in the similarly related transactions involved in the uncontrolled comparables, then the appropriate gross services profit that Company B may earn and the arm's length price that it may charge Company A for its agent services is equal to this comparable gross services margin (3%), multiplied by the applicable uncontrolled price charged by Company A in its related uncontrolled consulting engagement with Company B's client.

Example 4. Intermediary function. (i) The facts are the same as in *Example 3*, except that Company B contracts directly with its Country X client to provide computer consulting services and Company A performs the consulting services on behalf of Company B. Company A does not enter into a consulting engagement with Company B's Country X client. Instead, Company B charges its Country X client an uncontrolled price for the consulting services, and Company B pays a portion of the uncontrolled price to Company A for performing the consulting services on behalf of Company B.

(ii) Analysis of the relative contributions of Companies A and B in obtaining and undertaking the consulting contract indicates that Company B functioned primarily as an intermediary-contracting party, and the gross services margin method is the most reliable method for determining the amount that Company B may retain as compensation for its intermediary function with respect to Company A's consulting services. In this case, therefore, because Company B entered into the related uncontrolled transaction to provide services, Company B receives the applicable uncontrolled price that is paid by the Country X client for the consulting services. Company A technically performs services for Company B when it performs, on behalf of Company B, the consulting services Company B contracted to provide to the Country X client. The arm's length amount that Company A may charge Company B for performing the consulting services on Company B's behalf is equal to the applicable uncontrolled price received by Company B in the related uncontrolled transaction, less Company B's appropriate gross services profit, which is the amount that Company B may retain as compensation for performing the intermediary function.

(iii) Reliable data concerning the commissions that Company A paid to uncontrolled parties for assisting it in obtaining engagements to provide consulting services similar to those it has provided on behalf of Company B provide useful information in applying the gross services margin method. However, consideration should be given to whether the third party commission data may need to be adjusted to account for any additional risk that Company B may have assumed as a result of its function as an intermediary-contracting party, compared with the risk it would have assumed if it had provided agent services to assist Company A in entering into an engagement to provide its consulting service directly. In this case, the information regarding the commissions paid by Company A to unrelated parties for providing agent services to facilitate its performance of consulting services for unrelated parties is sufficiently complete to conclude that all material differences between these uncontrolled transactions and the controlled performance of an intermediary function, including possible differences in the amount of risk assumed in connection with performing that function, have been identified and that appropriate adjustments have been made. If the comparable gross services margin earned by unrelated parties

in providing such agent services is 3% of total fees charged in Company B's related uncontrolled transactions, then the appropriate gross services profit that Company B may retain as compensation for performing an intermediary function (and the amount, therefore, that is deducted from the applicable uncontrolled price to arrive at the arm's length price that Company A may charge Company B for performing consulting services on Company B's behalf) is equal to this comparable gross services margin (3%), multiplied by the applicable uncontrolled price charged by Company B in its contract to provide services to the uncontrolled party.

Example 5. External comparable. (i) The facts are the same as in *Example 4*, except that neither Company A nor Company B engage in transactions with third parties that facilitate similar consulting engagements.

(ii) Analysis of the relative contributions of Companies A and B in obtaining and undertaking the contract indicates that Company B's role was primarily to facilitate the consulting arrangement between Company A and the Country X client. Although no reliable internal data are available regarding comparable transactions with uncontrolled entities, reliable data exist regarding commission rates for similar facilitating services between uncontrolled parties. These data indicate that a 3% commission (3% of total engagement fee) is charged in such transactions. Information regarding the uncontrolled comparables is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjusted for. If the appropriate gross services profit margin is 3% of total fees, then an arm's length result of the controlled services transaction is for Company B to retain an amount equal to 3% of total fees paid to it.

(d) *Cost of services plus method*—(1) *In general.* The cost of services plus method evaluates whether the amount charged in a controlled services transaction is arm's length by reference to the gross services profit markup realized in comparable uncontrolled transactions. The cost of services plus method is ordinarily used in cases where the controlled service renderer provides the same or similar services to both controlled and uncontrolled parties. This method is ordinarily not used in cases where the controlled services transaction involves a contingent-payment arrangement, as described in paragraph (i)(2) of this section.

(2) *Determination of arm's length price*—(i) *In general.* The cost of services plus method measures an arm's length price by adding the appropriate gross services profit to the controlled taxpayer's comparable transactional costs.

(ii) *Appropriate gross services profit.* The appropriate gross services profit is computed by multiplying the controlled taxpayer's comparable transactional costs by the gross services profit markup, expressed as a percentage of the comparable transactional costs earned in comparable uncontrolled transactions.

(iii) *Comparable transactional costs.* Comparable transactional costs consist of the costs of providing the services under review that are taken into account as the basis for determining the gross services profit markup in comparable uncontrolled transactions. Depending on the facts and circumstances, such costs typically include all compensation attributable to employees directly involved in the performance of such services, materials and supplies consumed or made available in rendering such services, and other costs of rendering the services. Comparable transactional costs must be determined on a basis that will facilitate comparison with the comparable uncontrolled transactions. For that reason, comparable transactional costs may not necessarily equal total services costs, as defined in paragraph (j) of this section, and in appropriate cases may be a subset of total services costs. Generally accepted accounting principles or Federal income tax accounting rules (where Federal income tax data for comparable transactions or business activities is available) may provide useful guidance, but will not conclusively establish the appropriate comparable transactional costs for purposes of this method.

(iv) *Arm's length range.* See § 1.482–1(e)(2) for determination of an arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from the application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c).

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the comparability provisions of § 1.482–1(d). A service renderer's gross services profit provides compensation for performing services related to the controlled services transaction under review, including an operating profit for the service renderer's investment of capital and assumptions of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of services or functions performed, risks borne, intangibles (if any) used in providing the services or functions, and contractual terms, or adjustments to account for the effects of any such differences. For purposes of evaluating functional comparability, it may be necessary to consider the results under this method expressed as a markup on total services costs of the controlled taxpayer and comparable uncontrolled parties, because differences in functions performed may be reflected in differences in service costs other than those included in comparable transactional costs. If possible, the appropriate gross services profit markup should be derived from comparable uncontrolled transactions of the same taxpayer participating in the controlled services transaction, because similar characteristics are more likely to be found among services provided by the same service provider than among services provided by other service providers. In the absence of such services transactions, an appropriate gross services profit markup may be derived from comparable uncontrolled services transactions of other service providers.

(B) *Other comparability factors.* Comparability under this method is less dependent on close similarity between the services provided than under the comparable uncontrolled services price method. Substantial differences in the services may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions would involve services of the same general type (*e.g.,* information-technology systems design). Furthermore, if a significant amount of the controlled taxpayer's comparable transactional costs consists of service costs incurred in a tax accounting period other than the tax accounting period under review, the reliability of the analysis would be reduced. In addition, significant differences in the value of the services rendered, due for example to the use of valuable intangibles, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross services profit may be adversely affected by factors that have less effect on prices. For example, gross services profit may be affected by a variety of other factors, including cost structures or efficiency-related factors (for example, differences in the level of experience of the employees performing the service in the controlled and uncontrolled transactions). Accordingly, if material differences in these factors are identified based on objective

evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between the controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross services profit markup, adjustments should be made to the gross services profit markup earned in the comparable uncontrolled transaction according to the provisions of § 1.482–1(d)(2). For this purpose, consideration of the comparable transactional costs associated with the functions performed and risks assumed may be necessary, because differences in the functions performed are often reflected in these costs. If there are differences in functions performed, however, the effect on gross services profit of such differences is not necessarily equal to the differences in the amount of related comparable transactional costs. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) The complexity of the services;

(*2*) The duration or quantitative measure of services;

(*3*) Contractual terms (*e.g.,* scope and terms of warranties or guarantees provided, volume, credit and payment terms, allocation of risks, including any contingent-payment terms);

(*4*) Economic circumstances; and

(*5*) Risks borne.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the cost of services plus method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross services profit markup affects the reliability of the results under this method. Thus, for example, if differences in cost accounting practices would materially affect the gross services profit markup, the ability to make reliable adjustments for such differences would affect the reliability of the results obtained under this method. Further, reliability under this method depends on the extent to which the controlled and uncontrolled transactions reflect consistent reporting of comparable transactional costs. For purposes of this paragraph (d)(3)(iii)(B), the term comparable transactional costs includes the cost of acquiring tangible property that is transferred (or used) with the services, to the extent that the arm's length price of the tangible property is not separately evaluated as a controlled transaction under another provision.

(4) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example 1. Internal comparable. (i) Company A designs and assembles information-technology networks and systems. When Company A renders services for uncontrolled parties, it receives compensation based on time and materials spent on the project. This fee includes the cost of hardware and software purchased from uncontrolled vendors and incorporated in the final network or system. Reliable accounting records maintained by Company A indicate that Company A earned a gross services profit markup of 10% on its time and materials in providing design services during the year under examination on information technology projects for uncontrolled entities.

(ii) Company A designed an information-technology network for its Country X subsidiary, Company B. The services rendered to Company B are similar in scope and complexity to services that Company A rendered to uncontrolled parties during the year under examination. Using Company A's accounting records (which are determined to be reliable under paragraph (d)(3) of this section), it is possible to identify the comparable transactional costs involved in the controlled services transaction with reference to the costs incurred by Company A in rendering similar design services to uncontrolled parties. Company A's records indicate that it does not incur any additional types of costs in rendering similar services to uncontrolled customers. The data available are sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjusted for. Based on the gross services profit markup data derived from Company A's uncontrolled transactions involving similar design services, an arm's length result for the controlled services transaction is equal to the price that will allow Company A to earn a 10% gross services profit markup on its comparable transactional costs.

Example 2. Inability to adjust for differences in comparable transactional costs. The facts are the same as in *Example 1,* except that Company A's staff that rendered the services to Company B consisted primarily of engineers in training status or on temporary rotation from other Company A subsidiaries. In addition, the Company B network incorporated innovative features, including specially designed software suited to Company B's requirements. The use of less-experienced personnel and staff on temporary rotation, and the special features of the Company B network significantly increased the time and costs associated with the project, as compared to time and costs associated with similar projects completed for uncontrolled customers. These factors constitute material differences between the controlled and the uncontrolled transactions that affect the determination of Company A's comparable transactional costs associated with the controlled services transaction, as well as the gross services profit markup. Moreover, it is not possible to perform reliable adjustments for these differences, on the basis of the available accounting data. Under these circumstances, the reliability of the cost of services plus method as a measure of an arm's length price is substantially reduced.

Example 3. Operating loss by reference to total services costs. The facts and analysis are the same as in *Example 1,* except that available information indicates that there may be material differences between the controlled and uncontrolled services transactions, and that these differences may not be reflected in the comparable transactional costs. Accordingly, the taxpayer performs additional analysis pursuant to paragraph (d)(3)(ii) of this section, and restates the results in *Example 1* (in which the arm's length charge was determined by reference to 10% gross services profit markup on comparable transactional costs) in the form of a markup on total services costs. This analysis by reference to total services costs shows that Company A generated an operating loss on the controlled services transaction, which indicates that material differences likely exist between the total services costs in the controlled and uncontrolled transactions, other than the costs that are identified as comparable transactional costs. Upon further scrutiny, the presence of such material differences between the controlled and uncontrolled transactions may indicate that the cost of services plus method does not provide the most reliable measure of an arm's length result under the facts and circumstances.

Example 4. Internal comparable. (i) Company A, a U.S. corporation, and its subsidiaries perform computer consulting services relating to systems integration and networking for business clients in various countries. Company A and its subsidiaries render only consulting services and do not manufacture or distribute computer hardware or software to clients. The controlled group is organized according to industry specialization, with key industry specialists working for Company A. These personnel typically form the core consulting group that teams with consultants from the local-country subsidiaries to serve clients in the subsidiaries' respective countries.

(ii) On some occasions, Company A and its subsidiaries undertake engagements directly for clients. On other occasions, they work as subcontractors for uncontrolled parties on more extensive supply-chain consulting engagements for clients. In undertaking the latter engagements with third-party consultants, Company A typically prices its services at four times the compensation costs of its consultants, defined as the consultants' base salary plus estimated fringe benefits, as defined in the table below:

Category/Rates

Project managers—$100 per hour
Technical staff—$75 per hour

(iii) In uncontrolled transactions, Company A also charges the customer, at no markup, for out-of-pocket expenses such as travel,

lodging, and data acquisition charges. Thus, for example, a project involving 100 hours of time from project managers, and 400 hours of technical staff time would result in total compensation costs to Company A of (100 hrs. × $100/hr.) + (400 hrs. × $75/hr.) = $10,000 + $30,000 = $40,000. Applying the markup of 300%, the total fee charged would thus be (4 × $40,000), or $160,000, plus out-of-pocket expenses.

(iv) Company B, a Country X subsidiary of Company A, contracts to render consulting services to a Country X client in the banking industry. In undertaking this engagement, Company B uses its own consultants and also uses the services of Company A project managers and technical staff that specialize in the banking industry for 75 hours and 380 hours, respectively. The data available are sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjusted for. Based on reliable data concerning the compensation costs to Company A, an arm's length result for the controlled services transaction is equal to $144,000. This is calculated as follows: [4 × (75 hrs. × $100/hr.)] + [4 × (380 hrs. × $75/hr.)] = $30,000 + $114,000 = $144,000, reflecting a 4x markup on the total compensation costs for Company A project managers and technical staff. In addition, consistent with Company A's pricing of uncontrolled transactions, Company B must reimburse Company A for appropriate out-of-pocket expenses incurred in performing the services.

(e) *Comparable profits method*—(1) *In general.* The comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length, based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances. The rules in § 1.482–5 for application of the comparable profits method apply to controlled services transactions, except as modified in this paragraph (e).

(2) *Determination of arm's length result*—(i) *Tested party.* This paragraph (e) applies where the relevant business activity of the tested party as determined under § 1.482–5(b)(2) is the rendering of services in a controlled services transaction. Where the tested party determined under § 1.482–5(b)(2) is instead the recipient of the controlled services, the rules under this paragraph (e) are not applicable to determine the arm's length result.

(ii) *Profit level indicators.* In addition to the profit level indicators provided in § 1.482–5(b)(4), a profit level indicator that may provide a reliable basis for comparing operating profits of the tested party involved in a controlled services transaction and uncontrolled comparables is the ratio of operating profit to total services costs (as defined in paragraph (j) of this section).

(iii) *Comparability and reliability considerations—Data and assumptions—Consistency in accounting.* Consistency in accounting practices between the relevant business activity of the tested party and the uncontrolled service providers is particularly important in determining the reliability of the results under this method, but less than in applying the cost of services plus method. Adjustments may be appropriate if materially different treatment is applied to particular cost items related to the relevant business activity of the tested party and the uncontrolled service providers. For example, adjustments may be appropriate where the tested party and the uncontrolled comparables use inconsistent approaches to classify similar expenses as ''cost of goods sold'' and ''selling, general, and administrative expenses.'' Although distinguishing between these two categories may be difficult, the distinction is less important to the extent that the ratio of operating profit to total services costs is used as the appropriate profit level indicator. Determining whether adjustments are necessary under these or similar circumstances requires thorough analysis of the functions performed and consideration of the cost accounting practices of the tested party and the uncontrolled comparables. Other adjustments as provided in § 1.482–5(c)(2)(iv) may also be necessary to increase the reliability of the results under this method.

(3) *Examples.* The principles of this paragraph (e) are illustrated by the following examples:

Example 1. Ratio of operating profit to total services costs as the appropriate profit level indicator. (i) A Country T parent firm, Company A, and its Country Y subsidiary, Company B, both engage in manufacturing as their principal business activity. Company A also performs certain advertising services for itself and its affiliates. In year 1, Company A renders advertising services to Company B.

(ii) Based on the facts and circumstances, it is determined that the comparable profits method will provide the most reliable measure of an arm's length result. Company A is selected as the tested party. No data are available for comparable independent manufacturing firms that render advertising services to third parties. Financial data are available, however, for ten independent firms that render similar advertising services as their principal business activity in Country X. The ten firms are determined to be comparable under § 1.482–5(c). Neither Company A nor the comparable companies use valuable intangibles in rendering the services.

(iii) Based on the available financial data of the comparable companies, it cannot be determined whether these comparable companies report costs for financial accounting purposes in the same manner as the tested party. The publicly available financial data of the comparable companies segregate total services costs into cost of goods sold and sales, general and administrative costs, with no further segmentation of costs provided. Due to the limited information available regarding the cost accounting practices used by the comparable companies, the ratio of operating profits to total services costs is determined to be the most appropriate profit level indicator. This ratio includes total services costs to minimize the effect of any inconsistency in accounting practices between Company A and the comparable companies.

Example 2. Application of the operating profit to total services costs profit level indicator. (i) Company A is a foreign subsidiary of Company B, a U.S. corporation. Company B is under examination for its 2005 taxable year. Company B renders management consulting services to Company A. Company B's consulting function includes analyzing Company A's operations, benchmarking Company A's financial performance against companies in the same industry, and to the extent necessary, developing a strategy to improve Company A's operational performance. The accounting records of Company B allow reliable identification of the total services costs of the consulting staff associated with the management consulting services rendered to Company A. Company A reimburses Company B for its costs associated with rendering the consulting services, with no markup.

(ii) Based on all the facts and circumstances, it is determined that the comparable profits method will provide the most reliable measure of an arm's length result. Company B is selected as the tested party, and its rendering of management consulting services is identified as the relevant business activity. Data are available from ten domestic companies that operate in the industry segment involving management consulting and that perform activities comparable to the relevant business activity of Company B. These comparables include entities that primarily perform management consulting services for uncontrolled parties. The comparables incur similar risks as Company A incurs in performing the consulting services, and do not make use of valuable intangibles or special processes.

(iii) Based on the available financial data of the comparables, it cannot be determined whether the comparables report their costs for financial accounting purposes in the same manner as Company B reports its costs in the relevant business activity. The available financial data for the comparables only report an aggregate figure for costs of goods sold and operating expenses, and do not segment the underlying services costs. Due to this limitation, the ratio of operating profits to total services costs is determined to be the most appropriate profit level indicator.

(iv) For the taxable years 2003 through 2005, Company B shows the following results for the services performed for Company A:

	2003	2004	2005	Average
Revenues	1,200,000	1,100,000	1,300,000	1,200,000
Cost of Goods Sold	100,000	100,000	N/A	66,667
Operating Expenses	1,100,000	1,000,000	1,300,000	1,133,333
Operating Profit	0	0	0	0

(v) After adjustments have been made to account for identified material differences between the relevant business activity of Company B and the comparables, the average ratio for the taxable years 2003 through 2005 of operating profit to total services costs is calculated for each of the uncontrolled service providers. Applying each ratio to Company B's average total services costs from the relevant business activity for the taxable years 2003 through 2005 would lead to the following comparable operating profit (COP) for the services rendered by Company B:

Uncontrolled service provider	OP/total service costs (In percent)	Company B COP
Company 1	15.75	$189,000
Company 2	15.00	180,000
Company 3	14.00	168,000
Company 4	13.30	159,600
Company 5	12.00	144,000
Company 6	11.30	135,600
Company 7	11.25	135,000
Company 8	11.18	134,160
Company 9	11.11	133,320
Company 10	10.75	129,000

(vi) The available data are not sufficiently complete to conclude that it is likely that all material differences between the relevant business activity of Company B and the comparables have been identified. Therefore, an arm's length range can be established only pursuant to § 1.482–1(e)(2)(iii)(B). The arm's length range is established by reference to the interquartile range of the results as calculated under § 1.482–1(e)(2)(iii)(C), which consists of the results ranging from $168,000 to $134,160. Company B's reported average operating profit of zero ($0) falls outside this range. Therefore, an allocation may be appropriate.

(vii) Because Company B reported income of zero, to determine the amount, if any, of the allocation, Company B's reported operating profit for 2005 is compared to the comparable operating profits derived from the comparables' results for 2005. The ratio of operating profit to total services costs in 2005 is calculated for each of the comparables and applied to Company B's 2005 total services costs to derive the following results:

Uncontrolled service provider	OP/total service costs (For 2005) (In percent)	Company B COP
Company 1	15.00	$195,000
Company 2	14.75	191,750
Company 3	14.00	182,000
Company 4	13.50	175,500
Company 5	12.30	159,900
Company 6	11.05	143,650
Company 7	11.03	143,390
Company 8	11.00	143,000
Company 9	10.50	136,500
Company 10	10.25	133,250

(viii) Based on these results, the median of the comparable operating profits for 2005 is $151,775. Therefore, Company B's income for 2005 is increased by $151,775, the difference between Company B's reported operating profit for 2005 of zero and the median of the comparable operating profits for 2005.

(f) *Simplified cost-based method for certain services*—(1) *Evaluation of arm's length charge*—(i) *In general.* The simplified cost-based method evaluates whether the amount charged in a controlled services transaction that meets the conditions of paragraph (f)(3) of this section and is not described in paragraph (f)(2)(iii) or (f)(4) of this section is arm's length by reference to the markup on total services costs by uncontrolled taxpayers that engage in similar business activities under similar circumstances. This measure of an arm's length price corresponds to the profit level indicator consisting of the ratio of operating profit to total services costs, described in paragraph (e)(2)(ii) of this section.

(ii) *Coordination with best method rule.* If a controlled services transaction that meets the conditions of paragraph (f)(3) of this section and is not described in paragraphs (f)(2)(iii) or (f)(4) of this section is priced under or consistent with the simplified cost-based method, then the simplified cost-based method will be considered the best method for purposes of § 1.482–1(c).

(2) *Limitation on allocations by the Commissioner*—(i) *In general.* Except as provided in paragraphs (f)(2)(iv) and (v) of this section, the Commissioner may make an allocation with respect to a controlled services transaction that meets the conditions of paragraph (f)(3) of this section, that is not described in paragraphs (f)(2)(iii) or (f)(4) of this section, and that is priced under or consistent with the simplified cost-based method, only if the arm's length

markup on total services costs exceeds the markup charged by the taxpayer on total services costs in the controlled transaction by at least the applicable number of percentage points described in paragraph (f)(2)(ii) of this section. For purposes of this paragraph (f), the arm's length markup on total services costs means the excess of the arm's length price of the controlled services transaction determined in accordance with the applicable rules under the section 482 regulations, without regard to this paragraph (f), over total services costs (as defined in paragraph (j) of this section), expressed as a percentage of total services costs.

(ii) *Applicable number of percentage points.* The applicable number of percentage points is six if the amount charged by the taxpayer is equal to total services costs, and the applicable number of percentage points declines ratably to zero by one percentage point for every increase of two percentage points in the markup on total services costs charged in the controlled transaction.

(iii) *Method inapplicable to high-margin transactions.* The simplified cost-based method may not be used if the arm's length markup on total services costs exceeds 10%.

(iv) *Measurement of limitation on allocations.* The rules of paragraphs (f)(2)(i) and (ii) of this section are expressed in this paragraph in equations and a table. The minimum arm's length markup necessary for an allocation by the Commissioner (''Z'') is the sum of the markup charged by the taxpayer (''X'') and the applicable number of percentage points determined under paragraph (f)(2)(ii) of this section (''Y''). This minimum arm's length markup necessary for allocation by the Commissioner (''Z'') also equals the lesser of—

(A) The sum of six percentage points and half of the markup charged by the taxpayer (''X''); and

(B) Ten percentage points, where the markup charged by the taxpayer is not less than zero. Thus:

$$Z = X + Y = \min((6\% + 0.5 \times X), 10\%) \text{ where } X \geq 0.$$

(C) The following table illustrates the results of these calculations in representative cases:

Markup charged by taxpayer (X)	0%	1%	2%	3%	4%	5%	6%	7%	8%	9%
Applicable number of percentage points (Y)	6	5.5	5	4.5	4	3.5	3	2.5	2	n/a
Arm's length markup necessary for allocation by the Commissioner (Z).	6%	6.5%	7%	7.5%	8%	8.5%	9%	9.5%	10%	10%

(v) *Scope of limitation on allocations by the Commissioner—(A) Loss transactions and transactions priced in excess of arm's length.* Nothing in this paragraph (f) shall limit the authority of the Commissioner to make an allocation where—

(1) The amount charged by the taxpayer is less than the total services costs with respect to the services; or

(2) The markup on total services costs charged by the taxpayer in the controlled transaction exceeds the arm's length markup on total services costs.

(B) *Allocation and apportionment of costs.* Nothing in this paragraph (f) limits the authority of the Commissioner to determine the total services costs in the controlled services transaction where the taxpayer's method of allocating and apportioning total services costs to the controlled service is not consistent with the method used to allocate and apportion total services costs in determining the arm's length markup, or otherwise does not constitute a reasonable method of allocation and apportionment, based on all the facts and circumstances.

(3) *Conditions on application of simplified cost-based method.* The arm's length amount charged in a controlled services transaction may be evaluated under the simplified cost-based method only if the following conditions are met.

(i) *Adequate books and records.* Permanent books of account and records must be maintained throughout the time when costs with respect to the controlled services are incurred by the renderer. Such books and records must be adequate to permit verification by the Commissioner of the total services costs incurred by the renderer, including verification of the methods used to allocate and apportion such costs to the services in question.

(ii) *Written contract*—(A) *In general.* A written contract must be in place throughout the time when costs with respect to the controlled services are incurred by the renderer and must provide the following—

(*1*) That the controlled recipient of such services becomes unconditionally obligated at the time the renderer incurs costs to pay the renderer an amount equal to total costs plus, to the extent provided in such contract, any markup on total services costs; and

(*2*) A general description of the classes of controlled services transactions subject to the contract.

(B) *De minimis exception.* A written contract need not be in place if the conduct of the controlled taxpayers is consistent with the terms described in paragraph (f)(3)(ii)(A) of this section and, for the taxable year at issue, the controlled taxpayer rendering the services establishes to the satisfaction of the Commissioner that—

(*1*) The aggregate gross income of the members controlled group consisting of taxpayers that are United States persons (as defined in § 7701(a)(30)) is less than $200 million; or

(*2*) The aggregate costs of such controlled group members evaluated under the simplified cost-based method are less than $10 million.

(4) *Transactions not eligible for simplified cost-based method*—(i) *Services similar to services provided by renderer or recipient to uncontrolled parties.* The arm's length charge in a controlled services transaction may not be determined under the simplified cost-based method where the renderer, the recipient, or another controlled taxpayer in the same controlled group renders, or has rendered, similar services to one or more uncontrolled taxpayers (unless such services are rendered on a *de minimis* basis).

(ii) *Services rendered to a recipient that receives services from controlled taxpayers in significant amounts.* The arm's length charge in a controlled services transaction may not be determined under the simplified cost-based method where the services are rendered to a recipient that receives services from controlled taxpayers in significant amounts. A recipient may be presumed to receive services in significant amounts unless the controlled taxpayer rendering the services establishes, to the satisfaction of the Commissioner, that the aggregate amount paid or accrued by the recipient of the controlled services to the renderer or renderers with respect to such services during a taxable year of the recipient is less than an amount equal to 50% of the total costs of the recipient in that taxable year. For purposes of this paragraph (f)(4)(ii), the total costs of the recipient exclude any amounts paid or accrued for materials that are properly reflected in the recipient's cost of goods sold.

(iii) *Services involving the use of intangible property.* The arm's length charge in a controlled services

transaction may not be determined under the simplified cost-based method where the renderer's valuable or unique intangible property, or the renderer's particular resources or capabilities (such as the knowledge of and ability to take advantage of particularly advantageous situations or circumstances), contribute significantly to the value of the services and the renderer's costs associated with the services do not include costs with respect to such use of its intangible property or resources that are significant.

(iv) *Non-services transactions included in integrated transactions.* The arm's length charge in a controlled services transaction may not be determined under the simplified cost-based method to the extent a transaction other than a services transaction (such as a transfer of tangible property) accounts for a more than *de minimis* amount of value in a transaction structured as a controlled services transaction. In such cases, the arm's length charge for only the services element of the integrated transaction may be determined under the simplified cost-based method.

(v) *Certain transactions.* The arm's length charge may not be determined under the simplified cost-based method in any of the following categories of transactions:

(A) Manufacturing;

(B) Production;

(C) Extraction;

(D) Construction;

(E) Reselling, distribution, acting as a sales or purchasing agent, or acting under a commission or other similar arrangement;

(F) Research, development, or experimentation;

(G) Engineering or scientific;

(H) Financial transactions, including guarantees; and

(I) Insurance or reinsurance.

(5) *Examples.* The following examples illustrate the operation of this paragraph (f), including the limitations of paragraph (f)(2) of this section on allocations by the Commissioner. For purposes of illustrating the operation and scope of such limitations, the examples assume a determination of an arm's length markup on total services costs and, where appropriate, the interquartile range and median with respect to the arm's length markup on total costs. In each example, assume that S is a wholly owned subsidiary of P; that the conditions described in paragraph (f)(3) of this section are satisfied; and that the relevant controlled services are not described in paragraph (f)(4) of this section.

Example 1. Company P renders accounting services to Company S. Company P uses the simplified cost-based method for the accounting services, and determines the amount charged as Company P's total cost of rendering the services, with no markup. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 6%, and the median is 4%. Because the arm's length markup on total services costs (4%) exceeds the markup on total services costs applied by the taxpayer (0%) by fewer than the applicable number of percentage points (6), the Commissioner may not make an allocation.

Example 2. Company P performs logistics-coordination services for its subsidiaries, including Company S. Company P uses the simplified cost-based method for the logistics services, and determines the amount charged as Company P's total cost of rendering the services, plus a markup of 5%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 6% and 13%, and the median is 9%. Because the arm's length markup on total services costs (9%) exceeds the markup on total services costs applied by the taxpayer (5%) by more than the applicable number of percentage points (3.5), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply. With respect to the determination and application of the arm's length range, see § 1.482–1(e).

Example 3. Company P renders administrative services to its subsidiaries, including Company S. Company P uses the simplified cost-based method for the administrative services, as it has for the preceding two years, and determines for all three years the amount charged as Company P's total cost of rendering the services, plus a markup of 5%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner identifies uncontrolled comparables in the same industry segment that perform similar functions and bear similar risks as Company P. These transactions meet the comparability criteria under the comparable profits method of paragraph (e) of this section and § 1.482–5. An analysis of the information available on the comparable parties shows that the ratio of operating profit to total services costs is the most appropriate profit level indicator, and that this ratio is relatively stable where at least three years are included in the average. The information available is not sufficiently complete to conclude that it is likely that all material differences between Company P and the uncontrolled comparables have been identified. Consequently, the Commissioner determines an arm's length range based on the results of all the uncontrolled comparables that achieve a similar level of comparability and reliability, and the Commissioner adjusts that range by applying a valid statistical method to the results of all the uncontrolled comparables. The Commissioner determines an interquartile range of arm's length markups on total services costs, which is between 6% and 13%, with a median of 9%. Because the arm's length markup on total services costs (9%) exceeds the average three-year markup on total services costs applied by the taxpayer (5%) by more than the applicable number of percentage points (3.5), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply. With respect to the determination and application of the arm's length range, see § 1.482–1(e).

Example 4. Company P renders administrative services to Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of rendering the services, plus a markup of 6%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 5%, and the median is 4.5%. Because the arm's length markup on total services costs (4.5%) is less than the markup applied by the taxpayer (6%), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

Example 5. Company P provides administrative services to Company S. P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services, minus a ''markdown'' of 1%. Because the markup on total services costs applied by the taxpayer in the controlled transaction (−1%) is less than zero, the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

Example 6. Company P performs custodial and maintenance services for certain office properties owned by Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services plus a markup of 8%. The Commissioner identifies uncontrolled comparables that perform a similar range of custodial and maintenance services for uncontrolled parties and charge those parties an annual fee based on the total square footage of the property. These transactions meet the comparability criteria under the comparable uncontrolled services price method of paragraph (b) of this section. Based on reliable accounting information, the Commissioner determines that it is possible to restate the price for the maintenance and custodial services charged to uncontrolled parties as representing a markup on total services costs of 4%. Because the markup on total services costs charged by the taxpayer on the controlled transactions exceeds the markup on total services costs determined by an application of the section 482 regulations without regard to this paragraph (f), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply.

Example 7. Company P performs logistics-coordination services for its subsidiaries, including Company S. Company P uses the

simplified cost-based method for the logistics services, and determines the amount charged as P's total cost of providing the services, plus a markup of 4%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 11%, and the median is 8.5%. Given that the arm's length markup on total services costs (8.5%) exceeds the markup applied by the taxpayer (4%) by more than the applicable number of percentage points (4), the limitations imposed by this rule on the Commissioner's authority to make an allocation do not apply. With respect to the application of the arm's length range, see § 1.482–1(e).

Example 8. Company P provides administrative services to Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services, plus a markup of 4%. The taxpayer allocates and apportions to the administrative services total services costs of 300x, and reports a total price of 312x. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 6%, and the median is 4%. Because the arm's length markup on total services costs (4%) is equivalent to the markup on total services costs applied by the taxpayer (4%), the simplified cost-based method would generally prevent an allocation by the Commissioner based on the amount of markup charged. On examination, the Commissioner determines that the taxpayer should have allocated and apportioned total services costs of 325x to the administrative services, rather than 300x. Because the taxpayer's method of allocation and apportionment was not reasonable under the facts and circumstances, the Commissioner may make an allocation to reflect application of the markup on total services costs claimed by the taxpayer to the correct base of costs.

Example 9. Company P provides administrative services to Company S. Company P uses the simplified cost-based method for the administrative services, and determines the amount charged as Company P's total cost of providing the services, with a 4% markup. The taxpayer allocates and apportions to the administrative services total services costs of 300x. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups on total services costs is between 3% and 6%, and the median is 4%. Because the arm's length markup on total services costs (4%) is equivalent to the markup on total services costs applied by the taxpayer (4%), the simplified cost-based method would generally prevent an allocation by the Commissioner based on the amount of markup charged. On examination, the Commissioner determines that the taxpayer should have allocated and apportioned total services costs of 280x to the administrative services, rather than 300x. Because the taxpayer's method of allocation and apportionment was not reasonable under the facts and circumstances, the Commissioner may make an allocation to reflect application of the markup on total services costs claimed by the taxpayer to the correct base of costs.

Example 10. Company P performs supply-chain management services for its subsidiaries, including Company S. Company P uses the simplified cost-based method for these supply-chain services, and determines the amount charged as the total costs of providing the services plus a markup of 8%. Based on an application of the section 482 regulations without regard to this paragraph (f), the Commissioner determines that the interquartile range of arm's length markups is between 7% and 25%, and the median is 18%. Because the arm's length markup on total services costs is more than 10%, the simplified cost-based method is not applicable.

(g) *Profit split method*—(1) *In general.* The profit split method evaluates whether the allocation of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The relative value of each controlled taxpayer's contribution is determined in a manner that reflects the functions performed, risks assumed and resources employed by such controlled taxpayer in the relevant business activity. The profit split method is ordinarily used in controlled services transactions involving high-value services or transactions that are highly integrated and that cannot be reliably evaluated on a separate basis. For application of the profit split method (both the comparable profit split and the residual profit split), see § 1.482–6.

(2) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Residual profit split. (i) Company A, a corporation resident in Country X, auctions spare parts by means of an interactive database. Company A maintains a database that lists all spare parts available for auction. Company A developed the software used to run the database. Company A's database is managed by Company A employees in a data center located in Country X, where storage and manipulation of data also takes place. Company A has a wholly owned subsidiary, Company B, located in Country Y. Company B performs marketing and advertising activities to promote Company A's interactive database. Company B solicits unrelated companies to auction spare parts on Company A's database, and solicits customers interested in purchasing spare parts online. Company B owns and maintains a computer server in Country Y, where it receives information on spare parts available for auction. Company B has also designed a specialized communications network that connects its data center to Company A's data center in Country X. The communications network allows Company B to enter data from uncontrolled companies on Company A's database located in Country X. Company B's communications network also allows uncontrolled companies to access Company A's interactive database and purchase spare parts. Company B bore the risks and cost of developing this specialized communications network. Company B enters into contracts with uncontrolled companies and provides the companies access to Company A's database through the Company B network.

(ii) Analysis of the facts and circumstances indicates that both Company A and Company B possess valuable intangibles that they use to conduct the spare parts auction business. Company A bore the economic risks of developing and maintaining software and the interactive database. Company B bore the economic risks of developing the necessary technology to transmit information from its server to Company A's data-center, and to allow uncontrolled companies to access Company A's database. Company B helped to enhance the value of Company A's trademark and to establish a network of customers in Country Y. In addition, because the transactions between Company A and Company B are highly integrated, it is difficult to reliably evaluate them separately. Given the facts and circumstances, the Commissioner determines that a residual profit split method will provide the most reliable measure of an arm's length result.

(iii) Under the residual profit split method, profits are first allocated based on the routine contributions of each taxpayer. Routine contributions include general sales, marketing or administrative functions performed by Company B for Company A for which it is possible to identify market returns. Any residual profits will be allocated based on the nonroutine contributions of each taxpayer. Since both Company A and Company B provided nonroutine contributions, the residual profits are allocated based on these contributions.

Example 2. Residual profit split. (i) Company A, a U.S. corporation, is a large multinational corporation engaged in oil and mineral exploration, development and extraction/mining. In performing these functions, Company A uses teams of specialists who are drawn from its employees and employees of two of its wholly owned subsidiaries, Company B and Company C. Company B is a U.S. corporation engaged in the business of providing general construction contracting services. Company C is a mining/extraction subsidiary of Company A and is located in Country C.

(ii) Through its long-term relationship with the Country C government, Company C obtains drilling rights on a tract of land for which it already owns mining rights. Because Company C lacks the expertise and personnel to perform oil exploration, Company C enters into an agreement with Companies A and B to provide certain services to facilitate exploration for oil on the tract. Specifically, Company A provides management services and Company B provides all necessary labor

and equipment for the exploration. All three controlled companies provide their own administrative support for their respective functions.

(iii) Analysis of the facts and circumstances indicates that Companies A, B, and C all make nonroutine contributions. In addition, because the transactions between Companies A, B and C are highly integrated, it is difficult to reliably evaluate them on a separate basis. Given the facts and circumstances, the Commissioner determines that a residual profit split method will provide the most reliable measure of the arm's length results of the services performed by all three related taxpayers.

(iv) Under the residual profit split method, profits are first allocated based on the routine contributions of the three controlled taxpayers. Routine contributions include any general, sales, marketing or administrative functions performed by either Companies A, B or C for which it is possible to identify market returns. Any residual profits will be allocated based on the nonroutine contributions made by each taxpayer. Since Company C provided nonroutine contributions in the form of drilling rights, residual profits are allocated to Company C based on this contribution.

(h) *Unspecified methods.* Methods not specified in paragraphs (b) through (g) of this section may be used to evaluate whether the amount charged in a controlled services transaction is arm's length. Any method used under this paragraph (h) must be applied in accordance with the provisions of § 1.482–1. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. For example, the comparable uncontrolled services price method compares a controlled services transaction to similar uncontrolled transactions to provide a direct estimate of the price to which the parties would have agreed had they resorted directly to a market alternative to the controlled services transaction. Therefore, in establishing whether a controlled services transaction achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled services transaction (*e.g.*, outsourcing a particular service function, rather than performing the function itself). As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). Therefore, in accordance with § 1.482–1(d) (Comparability), to the extent that an unspecified method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(i) *Contingent-payment contractual terms for services*—(1) *Economic substance of contingent payment contractual terms recognized.* In the case of a contingent-payment arrangement, the arm's length result for the controlled services transaction ordinarily would not require payment by the recipient to the renderer in the tax accounting period in which the service is rendered if the specified contingency does not occur in that period, provided that it is reasonable to conclude that no such payment would be made by uncontrolled taxpayers engaged in similar transactions under similar circumstances. If the specified contingency occurs in a tax accounting period subsequent to the period in which the service is rendered, the arm's length result for the controlled services transaction ordinarily would require payment by the recipient to the renderer on a basis that reflects the recipient's benefit from the services rendered and the risks borne by the renderer in performing the activities in the absence of a provision that unconditionally obligates the recipient to pay for the activities performed in the tax accounting period in which the service is rendered, provided that it is reasonable to conclude that such payment would be made by uncontrolled taxpayers that engaged in similar transactions under similar circumstances.

(2) *Contingent-payment arrangement.* For purposes of this paragraph (i), an arrangement shall be treated as a contingent-payment arrangement if—

(i) *Written contract.* The arrangement is set forth in a written contract entered into prior to the start of the activity or group of activities constituting the controlled services transaction;

(ii) *Specified contingency.* The contract states that payment is contingent (in whole or in part) upon the happening of a future benefit (within the meaning of paragraph (l)(3) of this section) for the recipient directly related to the controlled services transaction; and

(iii) *Basis for payment.* The contract provides for payment on a basis that reflects the recipient's benefit from the services rendered and the risks borne by the renderer. Whether the specified contingency bears a direct relationship to the controlled services transaction, and whether the basis for payment reflects the recipient's benefit and the renderer's risk, are evaluated based on all the facts and circumstances. Pursuant to § 1.482–1(d)(3)(ii)(B), one factor that is especially important is whether the contingency and the basis for payment are consistent with the economic substance of the controlled transaction and the conduct of the controlled parties.

(3) *Commissioner's authority to impute contingent-payment terms.* Consistent with the authority in § 1.482–1(d)(3)(ii)(B), the Commissioner may impute contingent-payment contractual terms in a controlled services transaction if the economic substance of the transaction is consistent with the existence of such terms.

(4) *Evaluation of arm's length charge.* Whether the amount charged in a contingent-payment arrangement is arm's length will be evaluated in accordance with this section and other applicable rules under section 482. Payment under a contingent-payment contract must be reasonable and consistent with the economic substance of the controlled services transaction, based on all facts and circumstances, and must reflect the recipient's benefit from the services rendered and the risks borne by the renderer. In evaluating whether the amount charged in a contingent-payment arrangement for the manufacture, construction, or development of tangible or intangible property owned by the recipient is arm's length, the charge determined under the rules of §§ 1.482–3 and 1.482–4 for the transfer of similar property may be considered. See § 1.482–1(f)(2)(ii).

(5) *Examples.* The principles of this paragraph (i) are illustrated by the following examples:

Example 1. (i) Company X is a member of a controlled group that has operated in the pharmaceutical sector for many years. In Year 1, Company X enters into a written services agreement with Company Y, another member of the controlled group, whereby Company X will perform certain research and development activities for Company Y. The parties enter into the agreement before Company X undertakes any of the research and development activities covered by the agreement. At the time the agreement is entered into, the possibility that any new products will be developed is highly uncertain and the possible market or markets for any products that may be developed are not known and cannot be estimated with any reliability. Under the agreement, Company Y will own any patent or other rights that result from the activities of Company X under the agreement and Company Y will make

payments to Company X only if such activities result in commercial sales of one or more derivative products. In that event, Company Y will pay Company X, for a specified period, x% of Company Y's gross sales of each of such products. Payments are required with respect to each jurisdiction in which Company Y has sales of such a derivative product, beginning with the first year in which the sale of a product occurs in the jurisdiction and continuing for six additional years with respect to sales of that product in that jurisdiction.

(ii) As a result of research and development activities performed by Company X for Company Y in Years 1 through 4, a compound is developed that may be more effective than existing medications in the treatment of certain conditions. Company Y registers the patent rights with respect to the compound in several jurisdictions in Year 4. In Year 6, Company Y begins commercial sales of the product in Jurisdiction A and, in that year, Company Y makes the payment to Company X that is required under the agreement. Sales of the product continue in Jurisdiction A in Years 7 through 9 and Company Y makes the payments to Company X in Years 7 through 9 that are required under the agreement.

(iii) The years under examination are Years 6 though 9. In evaluating whether the contingent payment terms will be recognized, the Commissioner considers whether the conditions of § 1.482–9(i)(2) are met and whether the specified contingency and basis of payment are consistent with the economic substance of the controlled services transaction and with the conduct of the controlled parties. The Commissioner determines that the contingent-payment arrangement is reflected in the written agreement between Company X and Company Y; that commercial sales of products developed under the arrangement represent future benefits for Company Y directly related to the controlled services transaction; and that the basis for the payment provided for in the event such sales occur reflects the recipient's benefit and the renderer's risk. Consistent with § 1.482–1(d)(3)(ii)(B) and (iii)(B), the Commissioner determines that the parties' conduct over the term of the agreement has been consistent with their contractual allocation of risk; that Company X has the financial capacity to bear the risk that its research and development services may be unsuccessful and that it may not receive compensation for such services; and that Company X exercises managerial and operational control over the research and development, such that it is reasonable for Company X to assume the risk of those activities. The Commissioner also determines that the arrangement is consistent with terms that uncontrolled parties operating under similar conditions could reasonably be expected to adopt with respect to comparable research and development activities. Based on all these facts, the Commissioner determines that the terms of the contingent-payment arrangement are consistent with economic substance.

(iv) In determining whether the amount charged under the contingent-payment arrangement in each of Years 6 through 9 is arm's length, the Commissioner evaluates under § 1.482–9 and other applicable rules under § 482 the compensation paid in each year for the research and development services. This analysis takes into account that under the contingent-payment terms Company X bears the risk that it might not receive payment for its services in the event that those services do not result in marketable products and the risk that the magnitude of its payment depends on the magnitude of product sales, if any. The Commissioner also considers the alternatives reasonably available to the parties in connection with the controlled services transaction. One such alternative, in view of Company X's willingness and ability to bear the risk and expenses of research and development activities, would be for Company X to undertake such activities on its own behalf and to license the rights to products successfully developed as a result of such activities. Accordingly, in evaluating the reasonableness of the compensation of x% of gross sales that is paid to Company X during the first four years of commercial sales of derivative products, the Commissioner may consider the royalties (or other consideration) charged for intangibles that are comparable to those incorporated in the derivative products and that resulted from Company X's research and development activities under the contingent-payment arrangement.

Example 2. (i) The facts are the same as in paragraphs (i) and (ii) of *Example 1,* except that, in the event that Company X's activities result in commercial sales of one or more derivative products by Company Y, Company Y will pay Company X a fee equal to the research and development costs borne by Company X plus an amount equal to x% of such costs, with the payment to be made in the first year in which any such sales occur. The x% markup on costs is within the range, ascertainable in Year 1, of markups on costs of independent contract researchers that are compensated under terms that unconditionally obligate the recipient to pay for the activities performed in the tax accounting period in which the service is rendered. In Year 6, Company Y makes the single payment to Company X that is required under the arrangement.

(ii) The years under examination are Years 6 though 9. In evaluating whether the contingent payment terms will be recognized, the Commissioner considers whether the requirements of § 1.482–9(i)(2) were met at the time the written agreement was entered into and whether the specified contingency and basis for payment are consistent with the economic substance of the controlled services transaction and with the conduct of the controlled parties. The Commissioner determines that the contingent-payment terms are reflected in the written agreement between Company X and Company Y and that commercial sales of products developed under the arrangement represent future benefits for Company Y directly related to the controlled services transaction. However, in this case, the Commissioner determines that the basis for payment provided for in the event such sales occur (costs of the services plus x%, representing the markup for contract research in the absence of any nonpayment risk) does not reflect the recipient's benefit and the renderer's risks in the controlled services transaction. The Commissioner also determines that the arrangement is not consistent with terms that uncontrolled parties operating under similar conditions could reasonably be expected to adopt with respect to comparable research and development activities. Based on all these facts, the Commissioner determines that the terms of the contingent-payment arrangement are not consistent with economic substance.

(iii) Accordingly, the Commissioner determines to exercise its authority to impute contingent-payment contractual terms that accord with economic substance, pursuant to paragraph (i)(3) of this section and § 1.482–1(d)(3)(ii)(B). In this regard, the Commissioner takes into account that at the time the arrangement was entered into, the possibility that any new products would be developed was highly uncertain and the possible market or markets for any products that may be developed were not known and could not be estimated with any reliability. In such circumstances, it is reasonable to conclude that one possible basis of payment that uncontrolled parties could adopt in similar transactions under similar circumstances, in order to reflect the recipient's benefit and the renderer's risks, would be a charge equal to a percentage of commercial sales of one or more derivative products that result from the research and development activities. The Commissioner in this case may impute terms that require Company Y to pay Company X a percentage of sales of the products developed under the agreement in each of Years 6 through 9.

(iv) In determining an appropriate arm's length charge under such imputed contractual terms, the Commissioner conducts an analysis under § 1.482–9 and other applicable rules under section 482, and considers the alternatives reasonably available to the parties in connection with the controlled services transaction. One such alternative, in view of Company X's willingness and ability to bear the risks and expenses of research and development activities, would be for Company X to undertake such activities on its own behalf and to license the rights to products successfully developed as a result of such activities. Accordingly, for purposes of its determination, the Commissioner may consider the royalties (or other consideration) charged for intangibles that are comparable to those incorporated in the derivative products that resulted from Company X's research and development activities under the contingent-payment arrangement.

(j) *Total services costs.* For purposes of this section, total services costs means all costs of rendering those services for which total services costs are being determined. Total services costs include all costs, based on analysis of the facts and circumstances, that can be directly identified with the act of rendering the services, and all other costs reasonably allocable to the services, under the principles of

paragraph (k)(2) of this section. In general, costs for this purpose should comprise full consideration for all resources expended, used, or made available to achieve the specific objective for which the service is rendered. Reference to generally accepted accounting principles or Federal income tax accounting rules (where Federal income tax data for comparable transactions or business activities are available) may provide a useful starting point but will not be conclusive. Total services costs do not include interest expense, foreign income taxes (as defined in § 1.901–2(a)), or domestic income taxes.

(k) *Allocation of costs*—(1) *In general.* In any case where the renderer's activity that results in a benefit (within the meaning of paragraph (l)(3) of this section) for one recipient in a controlled services transaction also generates a benefit for one or more other members of a controlled group (including the benefit, if any, to the renderer), and the amount charged under this section in the controlled services transaction is determined under a method that makes reference to costs, costs must be allocated among the portions of the activity for the benefit of the first mentioned recipient and such other members of the controlled group under this paragraph (k). The principles of this paragraph (k) must also be used whenever it is appropriate to allocate and apportion any class of costs (*e.g.,* overhead costs) in order to determine the total services costs of rendering the services. In no event will an allocation of costs based on a generalized or non-specific benefit be appropriate.

(2) *Appropriate method of allocation and apportionment*—(i) *Reasonable method standard.* Any reasonable method may be used to allocate and apportion costs under this section. In establishing the appropriate method of allocation and apportionment, consideration should be given to all bases and factors, including, for example, total services costs, total costs for a relevant activity, assets, sales, compensation, space utilized, and time spent. The costs incurred by supporting departments may be apportioned to other departments on the basis of reasonable overall estimates, or such costs may be reflected in the other departments' costs by applying reasonable departmental overhead rates. Allocations and apportionments of costs must be made on the basis of the full cost, as opposed to the incremental cost.

(ii) *Use of general practices.* The practices used by the taxpayer to apportion costs in connection with preparation of statements and analyses for the use of management, creditors, minority shareholders, joint venturers, clients, customers, potential investors, or other parties or agencies in interest will be considered as potential indicators of reliable allocation methods, but need not be accorded conclusive weight by the Commissioner. In determining the extent to which allocations are to be made to or from foreign members of a controlled group, practices employed by the domestic members in apportioning costs among themselves will also be considered if the relationships with the foreign members are comparable to the relationships among the domestic members of the controlled group. For example, if for purposes of reporting to public stockholders or to a governmental agency, a corporation apportions the costs attributable to its executive officers among the domestic members of a controlled group on a reasonable and consistent basis, and such officers exercise comparable control over foreign members of the controlled group, such domestic apportionment practice will be considered in determining the allocations to be made to the foreign members.

(3) *Examples.* The principles of this paragraph (k) are illustrated by the following examples:

Example 1. Company A pays an annual license fee of 500x to an uncontrolled taxpayer for unlimited use of a database within the corporate group. Under the terms of the license with the uncontrolled taxpayer, Company A is permitted to use the database for its own use and in rendering research services to its subsidiary, Company B. Company B obtains benefits from the database that are similar to those that it would obtain if it had independently licensed the database from the uncontrolled taxpayer. Evaluation of the arm's length charge (under a method in which costs are relevant) to Company B for the controlled services that incorporate use of the database must take into account the full amount of the license fee of 500x paid by Company A, as reasonably allocated and apportioned to the relevant benefits, although the incremental use of the database for the benefit of Company B did not result in an increase in the license fee paid by Company A.

Example 2. (i) Company A is a consumer products company located in the United States. Companies B and C are wholly owned subsidiaries of Company A and are located in Countries B and C, respectively. Company A and its subsidiaries manufacture products for sale in their respective markets. Company A hires a consultant who has expertise regarding a manufacturing process used by Company A and its subsidiary, Company B. Company C, the Country C subsidiary, uses a different manufacturing process, and accordingly will not receive any benefit from the outside consultant hired by Company A. In allocating and apportioning the cost of hiring the outside consultant (100), Company A determines that sales constitute the most appropriate allocation key.

(ii) Company A and its subsidiaries have the following sales:

Company	A	B	C	Total
Sales	400	100	200	700

(iii) Because Company C does not obtain any benefit from the consultant, none of the costs are allocated to it. Rather, the costs of 100 are allocated and apportioned ratably to Company A and Company B as the entities that obtain a benefit from the campaign, based on the total sales of those entities (500). An appropriate allocation of the costs of the consultant is as follows:

Company	A	B	Total
Allocation ..	400/500	100/500	.....
Amount	80	20	100

(l) *Controlled services transaction*—(1) *In general.* A controlled services transaction includes any activity (as defined in paragraph (l)(2) of this section) by one member of a group of controlled taxpayers (the renderer) that results in a benefit (as defined in paragraph (l)(3) of this section) to one or more other members of the controlled group (the recipient(s)).

(2) *Activity.* An activity includes the performance of functions, assumptions of risks, or use by a renderer of tangible or intangible property or other resources, capabilities, or knowledge, such as knowledge of and ability to take advantage of particularly advantageous situations or circumstances. An activity also includes making available to the recipient any property or other resources of the renderer.

(3) *Benefit*—(i) *In general.* An activity is considered to provide a benefit to the recipient if the activity directly results in a reasonably identifiable increment of economic or commercial value that enhances the recipient's commercial position, or that may reasonably be anticipated to do so. An activity is generally considered to confer a benefit if, taking into account the facts and circumstances, an uncontrolled taxpayer in circumstances comparable to those of the recipient would be willing to pay an uncontrolled party to perform the same or similar activity on either a fixed or contingent-payment basis, or if the recipient otherwise would have performed for itself the same activity or a similar activity. A benefit may result to the owner of an intangible if the renderer engages in an activity that is reasonably anticipated to result in an increase in the value of that intangible.

(ii) *Indirect or remote benefit.* An activity is not considered to provide a benefit to the recipient if, at the time the activity is performed, the present or reasonably anticipated benefit from that activity is so indirect or remote that the recipient would not be willing to pay, on either a fixed or contingent-payment basis, an uncontrolled party to perform a similar activity, and would not be willing to perform such activity for itself for this purpose. The determination whether the benefit from an activity is indirect or remote is based on the nature of the activity and the situation of the recipient, taking into consideration all facts and circumstances.

(iii) *Duplicative activities.* If an activity performed by a controlled taxpayer duplicates an activity that is performed, or that reasonably may be anticipated to be performed, by another controlled taxpayer on or for its own account, the activity is not considered to provide a benefit to the recipient, unless the duplicative activity itself provides an additional benefit to the recipient.

(iv) *Shareholder activities.* An activity is not considered to provide a benefit if the primary effect of that activity is to protect the renderer's capital investment in the recipient or in other members of the controlled group, or if the activity relates primarily to compliance by the renderer with reporting, legal, or regulatory requirements applicable specifically to the renderer, where the renderer controls every other member in such group. Activities in the nature of day-to-day management generally do not relate to protection of the renderer's capital investment. Based on analysis of the facts and circumstances, activities in connection with a corporate reorganization may be considered to provide a benefit to one or more controlled taxpayers.

(v) *Passive association.* A controlled taxpayer generally will not be considered to obtain a benefit where that benefit results from the controlled taxpayer's status as a member of a controlled group. A controlled taxpayer's status as a member of a controlled group may, however, be taken into account for purposes of evaluating comparability between controlled and uncontrolled transactions.

(4) *Examples.* The principles of this paragraph (l) are illustrated by the following examples. In each example, assume that Company X is a U.S. corporation and Company Y is wholly owned subsidiary of Company X in Country B.

Example 1. In general. In developing a worldwide advertising and promotional campaign for a consumer product, Company X pays for and obtains designation as an official sponsor of the Olympics. This designation allows Company X and all its subsidiaries, including Company Y, to identify themselves as sponsors and to use the Olympic logo in advertising and promotional campaigns. The Olympic sponsorship campaign generates benefits to Company X, Company Y, and other subsidiaries of Company X.

Example 2. Indirect or remote benefit. Based on recommendations contained in a study performed by its internal staff, Company X implements certain changes in its management structure and the compensation of managers of divisions located in the United States. No changes were recommended or considered for Company Y in Country B. The internal study and the resultant changes in its management may increase the competitiveness and overall efficiency of Company X. Any benefits to Company Y as a result of the study are, however, indirect or remote. Consequently, Company Y is not considered to obtain a benefit from the study.

Example 3. Indirect or remote benefit. Based on recommendations contained in a study performed by its internal staff, Company X decides to make changes to the management structure and management compensation of its subsidiaries, in order to increase their profitability. As a result of the recommendations in the study, Company X implements substantial changes in the management structure and management compensation scheme of Company Y. The study and the changes implemented as a result of the recommendations are anticipated to increase the profitability of Company X and its subsidiaries. The increased management efficiency of Company Y that results from these changes is considered to be a specific and identifiable benefit, rather than remote or speculative. Consequently, Company Y is considered to obtain a benefit from the study.

Example 4. Duplicative activities. At its corporate headquarters in the United States, Company X performs certain treasury functions for Company X and for its subsidiaries, including Company Y. These treasury functions include raising capital, arranging medium and long-term financing for general corporate needs, including cash management. Under these circumstances, the treasury functions performed by Company X do not duplicate the functions performed by Company Y's staff. Accordingly, Company Y is considered to obtain a benefit from the functions performed by Company X.

Example 5. Duplicative activities. The facts are the same as in *Example 4,* except that Company Y's functions include ensuring that the financing requirements of its own operations are met. Analysis of the facts and circumstances indicates that Company Y independently administers all financing and cash-management functions necessary to support its operations, and does not utilize financing obtained by Company X. Under the circumstances, the treasury functions performed by Company X are duplicative of similar functions performed by Company Y's staff, and the duplicative functions do not enhance Company Y's position. Accordingly, Company Y is not considered to obtain a benefit from the duplicative activities performed by Company X.

Example 6. Duplicative activities. Company X's in-house legal staff has specialized expertise in several areas, including intellectual property law. Company Y is involved in negotiations with an unrelated party to enter into a complex joint venture that includes multiple licenses and cross-licenses of patents and copyrights. Company Y retains outside counsel that specializes in intellectual property law to review the transaction documents. Outside counsel advises that the terms for the proposed transaction are advantageous to Company Y and that the contracts are valid and fully enforceable. Before Company Y executes the contracts, the legal staff of Company X also reviews the transaction documents and concurs in the opinion provided by outside counsel. The activities performed by Company X substantially duplicate the legal services obtained by Company Y, but they also reduce the commercial risk associated with the transaction. Accordingly, Company Y is considered to obtain a benefit from Company X's duplicative review of the contracts.

Example 7. Shareholder activities. Company X is a publicly held corporation. U.S. laws and regulations applicable to publicly held corporations such as Company X require the preparation and filing of periodic reports that show, among other things, profit and loss statements, balance sheets, and other material financial information concerning the company's operations. Company X analyzes and compiles data regarding operation of its subsidiaries, including Company Y. The periodic reports prepared and filed by Company X include information on the financial results of Company Y and other subsidiaries. Because Company X's preparation and filing of the reports relate primarily to its role as an investor of capital and a shareholder in Company Y, these activities constitute shareholder activities and therefore Company Y is not considered to obtain a benefit from the preparation and filing of the reports.

Example 8. Shareholder activities. The facts are the same as in *Example 7*, except that Company Y is subject to reporting requirements in Country B similar to those applicable to Company X in the United States. Much of the data that Company X analyzes and compiles regarding Company Y's operations for purposes of complying with the U.S. reporting requirements is made available to Company Y for its use in preparing reports that must be filed in Country B. Company Y incorporates these data, after minor adjustments for differences in local accounting practices, into the reports that it files in Country B. Under these circumstances, because Company X's analysis and compilation of Company Y's financial data do not relate primarily to its role as an investor of capital or shareholder in Company Y, Company Y is considered to obtain a benefit from the analysis and compilation of Company Y's financial data.

Example 9. Shareholder activities. Members of Company X's internal audit staff

visit Company Y on a semiannual basis in order to review the subsidiary's adherence to internal operating procedures issued by Company X and its compliance with U.S. anti-bribery laws, which apply to Company Y on account of its ownership by a U.S corporation. Because the reviews by Company X's audit staff relate primarily to Company X's investment in Company Y by ensuring that Company X and its subsidiaries are in compliance with Company X's internal operating procedures and Country A laws, the visits are shareholder activities and therefore Company Y is not considered to obtain a benefit from the visits.

Example 10. Shareholder activities. Country B recently enacted legislation that changed the foreign currency exchange controls applicable to foreign shareholders of Country B corporations. Company X concludes that it may benefit from changing the capital structure of Company Y, thus taking advantage of the new foreign currency exchange control laws in Country B. Company X engages an investment banking firm and a law firm to review the Country B legislation and to propose possible changes to the capital structure of Company Y. Because Company X retains and pays the firms in order to facilitate Company Y's ability to pay dividends and other amounts, these expenses relate primarily to Company X's role as an investor of capital and therefore Company Y is not considered to obtain a benefit from the activities.

Example 11. Shareholder activities. The facts are the same as in *Example 10,* except that Company Y bears the full cost of retaining the firms to evaluate the new foreign currency control laws in Country B and to make appropriate changes to its stock ownership by Company X. Company X is considered to obtain a benefit from the rendering by Company Y of these activities, which would be shareholder activities if conducted by Company X (see *Example 10*).

Example 12. Shareholder activities. The facts are the same as in *Example 10,* except that the new laws relate solely to corporate governance in Country B, and Company X retains the law firm and investment banking firm in order to evaluate whether restructuring would increase Company Y's profitability, reduce the number of legal entities in Country B, and increase Company Y's ability to introduce new products more quickly in Country B. Because Company X retained the law firm and the investment banking firm solely to enhance Company Y's profitability and the efficiency of its operations, the activities do not relate primarily to Company X's role as a shareholder or investor of capital and therefore Company Y is considered to obtain.

Example 13. Shareholder activities. Company X establishes detailed personnel policies for its subsidiaries, including Company Y. Company X also reviews and approves the performance appraisals of Company Y's executives, monitors levels of compensation paid to all Company Y personnel, and is involved in hiring and firing decisions regarding the senior executives of Company Y. Because this personnel-related activity by Company X involves day-to-day management of Company Y, it does not relate primarily to Company X's role as an investor of capital or a shareholder of Company Y, and therefore Company Y is considered to obtain a benefit from the activity.

Example 14. Shareholder activities. Each year, Company X conducts a two-day retreat for its senior executives. The purpose of the retreat is to refine the long-term business strategy of Company X and its subsidiaries, including Company Y, and to produce a confidential strategy statement. The strategy statement identifies several potential growth initiatives for Company X and its subsidiaries and lists general means of increasing the profitability of the company as a whole. The strategy statement is made available without charge to Company Y and the other subsidiaries of Company X. Company Y independently evaluates whether to implement some, all, or none of the initiatives contained in the strategy statement. Because the preparation of the strategy statement does not relate primarily to Company X's role as an investor of capital or a shareholder of Company Y, the expense of preparing the document is not a shareholder expense. In determining whether Company Y obtained a benefit from the making available of access to the strategy statement, the test is whether, based on the facts and circumstances, Company Y would be willing to pay for a similar analysis and similar recommendations, or otherwise would have undertaken a similar analysis on its own if it were an uncontrolled taxpayer operating under similar conditions as Company Y.

Example 15. Passive association/benefit. Company X is the parent corporation of a large controlled group that has been in operation in the information-technology sector for ten years. Company Y is a small corporation that was recently acquired by the Company X controlled group from local Country B owners. Several months after the acquisition of Company Y, Company Y obtained a contract to redesign and assemble the information-technology networks and systems of a large financial institution in Country B. The project was significantly larger and more complex than any other project undertaken to date by Company Y. Company Y did not use Company X's marketing intangibles to solicit the contract, and Company X had no involvement in the solicitation, negotiation, or anticipated execution of the contract. For purposes of this section, Company Y is not considered to obtain a benefit from Company X or any other member of the controlled group because the ability of Company Y to obtain the contract, or to obtain the contract on more favorable terms than would have been possible prior to its acquisition by the Company X controlled group, was due to Company Y's status as a member of the Company X controlled group and not to any specific activity by Company X or any other member of the controlled group.

Example 16. Passive association/benefit. The facts are the same as in *Example 15*, except that Company X executes a performance guarantee with respect to the contract, agreeing to assist in the project if Company Y fails to meet certain mileposts. This performance guarantee allowed Company Y to obtain the contract on more favorable terms than otherwise would have been possible. Company Y is considered to obtain a benefit from Company X's execution of the performance guarantee.

Example 17. Passive association/benefit. The facts are the same as in *Example 15*, except that Company X began the process of negotiating the contract with the financial institution in Country B before acquiring Company Y. Once Company Y was acquired by Company X, the contract with the financial institution was entered into by Company Y. Company Y is considered to obtain a benefit from Company X's negotiation of the contract.

(m) *Coordination with transfer pricing rules for other transactions*—(1) *Services transactions that include other types of transactions.* A transaction structured as a controlled services transaction may include other elements for which a separate category or categories of methods are provided, such as a loan or advance, a rental, or a transfer of tangible or intangible property. See §§ 1.482–1(b)(2) and 1.482–2(a), (c), and (d). Whether such an integrated transaction is evaluated as a controlled services transaction under this section or whether one or more elements should be evaluated separately under other sections of the section 482 regulations depends on which approach will provide the most reliable measure of an arm's length result. Ordinarily, an integrated transaction of this type may be evaluated under this section and its separate elements need not be evaluated separately, provided that each component of the transaction may be adequately accounted for in evaluating the comparability of the controlled transaction to the uncontrolled comparables and, accordingly, in determining the arm's length result in the controlled transaction. See § 1.482–1(d)(3).

(2) *Services transactions that effect a transfer of intangible property.* A transaction structured as a controlled services transaction may in some cases result in a transfer, in whole or in part, of intangible property, or may have an effect similar to the transfer of intangible property, or may include an element that constitutes the transfer of intangible property. If such element relating to intangible property is material to the evaluation, the arm's length result for the element of the transaction that involves intangible property generally must be corroborated or determined by an analysis under § 1.482–4.

(3) *Services subject to a qualified cost sharing arrangement.* Services provided by a controlled participant under a

qualified cost sharing arrangement are subject to § 1.482–7.

(4) *Other types of transactions that include controlled services transactions.* A transaction structured other than as a controlled services transaction may include one or more elements for which separate pricing methods are provided in this section. Whether such an integrated transaction is evaluated under another section of the section 482 regulations or whether one or more elements should be evaluated separately under this section depends on which approach will provide the most reliable measure of an arm's length result. Ordinarily, a single method may be applied to such an integrated transaction, and the separate services component of the transaction need not be separately analyzed under this section, provided that the controlled services may be adequately accounted for in evaluating the comparability of the controlled transaction to the uncontrolled comparables and, accordingly, in determining the arm's length results in the controlled transaction. See § 1.482–1(d)(3).

(5) *Global dealing operations.* [Reserved].

(6) *Examples.* The following examples illustrate paragraphs (m)(1) through (4) of this section:

Example 1. (i) U.S. parent corporation Company X enters into an agreement to maintain equipment of Company Y, a foreign subsidiary. The maintenance of the equipment requires the use of spare parts. The cost of the spare parts necessary to maintain the equipment amounts to approximately 25 percent of the total costs of maintaining the equipment. Company Y pays a fee that includes a charge for labor and parts.

(ii) Whether this integrated transaction is evaluated as a controlled services transaction or is evaluated as a controlled services transaction and the transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. If it is not possible to find comparable uncontrolled services transactions that involve similar services and tangible property transfers as the controlled transaction between Company X and Company Y, it will be necessary to determine the arm's length charge for the controlled services, and then to evaluate separately the arm's length charge for the tangible property transfers under § 1.482–1 and §§ 1.482–3 through 1.482–6. Alternatively, it may be possible to apply the comparable profits method of § 1.482–5, to evaluate the arm's length profit of Company X or Company Y from the integrated controlled transaction. The comparable profits method may provide the most reliable measure of measure of an arm's length result if uncontrolled parties are identified that perform similar, combined functions of maintaining and providing spare parts for similar equipment.

Example 2. (i) U.S. parent corporation Company X sells industrial equipment to its foreign subsidiary, Company Y. In connection with this sale, Company X renders to Company Y services that consist of demonstrating the use of the equipment and assisting in the effective start-up of the equipment. Company X structures the integrated transaction as a sale of tangible property and determines the transfer price under the comparable uncontrolled price method of § 1.482–3(b).

(ii) Whether this integrated transaction is evaluated as a transfer of tangible property or is evaluated as a controlled services transaction and a transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. In this case, the controlled services may be similar to services rendered in the transactions used to determine the comparable uncontrolled price, or they may appropriately be considered a difference between the controlled transaction and comparable transactions with a definite and reasonably ascertainable effect on price for which appropriate adjustments can be made. See § 1.482–1(d)(3)(ii)(A)(*6*). In either case, application of the comparable uncontrolled price method to evaluate the integrated transaction may provide a reliable measure of an arm's length result, and application of a separate transfer pricing method for the controlled services element of the transaction is not necessary.

Example 3. (i) The facts are the same as in *Example 2* except that, after assisting Company Y in start-up, Company X also renders ongoing services, including instruction and supervision regarding Company Y's ongoing use of the equipment. Company X structures the entire transaction, including the incremental ongoing services, as a sale of tangible property, and determines the transfer price under the comparable uncontrolled price method of § 1.482–3(b).

(ii) Whether this integrated transaction is evaluated as a transfer of tangible property or is evaluated as a controlled services transaction and a transfer of tangible property depends on which approach will provide the most reliable measure of an arm's length result. It may not be possible to identify comparable uncontrolled transactions in which a seller of merchandise renders services similar to the ongoing services rendered by Company X to Company Y. In such a case, the incremental services in connection with ongoing use of the equipment could not be taken into account as a comparability factor because they are not similar to the services rendered in connection with sales of similar tangible property. Accordingly, it may be necessary to evaluate separately the transfer price for such services under this section in order to produce the most reliable measure of an arm's length result. Alternatively, it may be possible to apply the comparable profits method of § 1.482–5 to evaluate the arm's length profit of Company X or Company Y from the integrated controlled transaction. The comparable profits method may provide the most reliable measure of an arm's length result if uncontrolled parties are identified that perform the combined functions of selling equipment and rendering ongoing after-sale services associated with such equipment. In that case, it would not be necessary to separately evaluate the transfer price for the controlled services under this section.

Example 4. (i) Company X, a U.S. corporation, and Company Y, a foreign corporation, are members of a controlled group. Both companies develop and manufacture adhesives. Company X also renders research and development services. As part of rendering these services, Company X provides technical manuals and documentation relating to Company X's manufacturing activities. In the process of performing research and development activities for Company Y, Company X developed know-how regarding a more cost-effective process to manufacture adhesives. Company X memorialized this know-how in technical manuals and other related technical documentation, and provided these documents to Company Y, without any restrictions on Company Y's use of the know-how or related materials.

(ii) The controlled services transaction between Company X and Company Y includes an element that constitutes the transfer of intangible property (*i.e.*, know-how). Because the element relating to the intangible property is material to the arm's length evaluation, the arm's length result for that element must be corroborated or determined by an analysis under § 1.482–4.

(n) *Effective date.* This section is generally applicable for taxable years beginning on or after the date of publication of this section as final regulations in the **Federal Register**.

Par. 8. In § 1.6038A–3(a)(3), *Example 4,* the text is revised to read as follows:

§ 1.6038A–3 Record maintenance.

(a) * * *

(3) * * *

Example 4. S, a U.S. reporting corporation, provides computer consulting services for its foreign parent, X. Based on the application of section 482 and the regulations thereunder, it is determined that the cost of services plus method, as described in § 1.482–9(d), will provide the most reliable measure of an arm's length result, based on the facts and circumstances of the controlled transaction between S and X. S is required to maintain records to permit verification upon audit of the comparable transactional costs (as described in § 1.482–9(d)(2)(iii)) used to calculate the arm's length price. Based on the facts and circumstances, if it is determined that X's records are relevant to determine the correct U.S. tax treatment of the controlled transaction between S and X, the record maintenance requirements under section 6038A(a) and this section will be applicable to the records of X.

* * * * *

Par. 9. Section 1.6662–6 is amended by:

1. Redesignating paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(G) as paragraphs (d)(2)(ii)(A)(*1*) through

(d)(2)(ii)(A)(*7*), respectively, and redesignating paragraph (d)(2)(ii) introductory text as paragraph (d)(2)(ii)(A).

2. Adding a new paragraph (d)(2)(ii)(B).

3. Revising paragraphs (d)(2)(iii)(B)(*4*) and (d)(2)(iii)(B)(*6*).

4. Adding a third sentence to paragraph (g).

The revisions and additions read as follows:

§ 1.6662–6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) *Simplified cost-based method.* A taxpayer's selection of the simplified cost-based method for certain services, described in § 1.482–9(f), and its application of that method to a controlled services transaction will be considered reasonable for purposes of the specified method requirement only if the taxpayer reasonably concluded that the controlled services transaction meets the conditions of § 1.482–9(f)(3) and is not described in paragraphs § 1.482–9(f)(2)(iii) or (f)(4). Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include those described in paragraph (d)(2)(ii)(A) of this section, to the extent applicable.

(iii) * * *

(B) * * *

(*4*) A description of the method selected and an explanation of why that method was selected, including an evaluation of whether the regulatory conditions and requirements for application of that method, if any, were met;

* * * * *

(*6*) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. For example, if a profit split method is applied, the documentation must include a schedule providing the total income, costs, and assets (with adjustments for different accounting practices and currencies) for each controlled taxpayer participating in the relevant business activity and detailing the allocations of such items to that activity. Similarly, if a cost-based method (such as the cost plus method, the simplified cost-based method for certain services, or a comparable profits method with a cost-based profit level indicator) is applied, the documentation must include a description of the manner in which relevant costs are determined and are allocated and apportioned to the relevant controlled transaction.

* * * * *

(g) * * * Paragraphs (d)(2)(ii)(B), (iii)(B)(*4*) and (iii)(B)(*6*) of this section are applicable for taxable years beginning after the date the final regulations are published in the **Federal Register**.

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

Par. 10. The authority citation for part 31 continues to read in part as follows:

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

Par. 11. Section 31.3121(s)–1 is amended by:

1. Revising the fourth sentence and adding a fifth sentence in paragraph (c)(2)(iii).

2. Adding a second sentence to paragraph (d).

The revision and additions read as follows:

§ 31.3121(s)–1 Concurrent employment by related corporations with common paymaster.

* * * * *

(c) * * *

(2) * * *

(iii) *Group-wide allocation rules.* * * * To the extent practicable, the Commissioner may use the principles of § 1.482–2(b) of this chapter in making the allocations with respect to wages paid after December 31, 1978, and on or before the date the final regulations are published in the **Federal Register**. To the extent practicable, the Commissioner may use the principles of § 1.482–9 of this chapter in making the allocations with respect to wages paid after the date of the final regulations are published in the **Federal Register**.

(d) *Effective date.* * * * The fifth sentence of paragraph (c)(2)(iii) of this section is applicable with respect to wages paid on or after the date of publication of that sentence as final regulations in the **Federal Register**.

Dale F. Hart,

Acting Deputy Commissioner for Services and Enforcement.

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2738/P.L. 108–77

United States-Chile Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 909)

H.R. 2739/P.L. 108–78

United States-Singapore Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 948)

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Prison Rape Elimination Act of 2003 (Sept. 4, 2003; 117 Stat. 972)

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