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Presidential Documents

Title 3—

The President

Proclamation 7735 of November 14, 2003

National American Indian Heritage Month, 2003

By the President of the United States of America

A Proclamation

During National American Indian Heritage Month, we honor the accomplishments and culture of American Indians and Alaska Natives and recognize their contributions to our country. To help educate Americans and illustrate the important role of these native people to our Nation, the new National Museum of the American Indian will open next year.

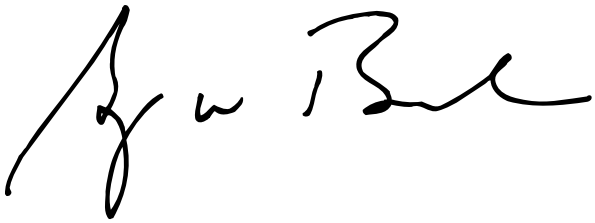
American Indians and Alaska Natives have a long tradition of serving with pride and accomplishment in the United States Armed Forces. Today, their patriotism is reflected in the more than 13,000 American Indians and Alaska Natives serving on active duty and the more than 6,400 reservists. In Iraq, Specialist Lori Piestewa of the Army's 507th Maintenance Company and a member of the Hopi tribe, was the first American servicewoman killed in Operation Iraqi Freedom and the only known American Indian woman killed in action in any conflict. Her bravery, service, and sacrifice are an inspiration to our men and women in uniform and to all Americans.

To ensure the future success of America's tribal communities, my Administration is committed to improving education, increasing employment and economic development, and ensuring better access to health and human services for all American Indians and Alaska natives. Government-wide, we proposed in the 2004 Budget to spend over $11 billion on Native American programs. The Department of Education's Office of Indian Education is working to implement the No Child Left Behind Act of 2001 within the Native American community. Indian tribes, schools, and local education agencies that serve American Indian and Native Alaska children will have access to nearly $122 million in grants to improve education opportunities. In addition, the Department of the Interior's 2004 program includes over $49 million for America's tribal colleges and universities. This investment will help American Indian students reach their full potential and achieve their dreams. We are also working to address the healthcare needs of American Indians, particularly the rising incidence of diabetes.

The United States has a strong relationship with American Indian tribes and Alaska Native entities. By continuing to work on a government-to-government basis with these tribal governments, we are fostering greater understanding and promoting tribal self-determination and self-governance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2003 as National American Indian Heritage Month. This month, I encourage citizens to learn more about the rich heritage of American Indians and Alaska Natives and the role they have played in building and sustaining our Nation and to commemorate this month with appropriate programs and activities.

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



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Presidential Documents

Proclamation 7736 of November 14, 2003

National Employer Support of the Guard and Reserve Week, 2003

By the President of the United States of America

A Proclamation

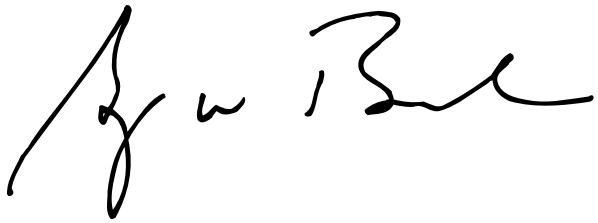
From before the American Revolution, to the Civil War, to the wars in Vietnam and the Persian Gulf, our National Guard and Reserve have served our country with distinction. Today, our National Guard and Reserve forces are active on every front in the War on Terror. During National Employer Support of the Guard and Reserve Week, we honor our courageous citizen-soldiers and their employers, whose continued support is vital to the success of our Armed Forces and to the strength of our country.

America's Guard and Reserve personnel are training hard and deploying frequently to meet new challenges worldwide. These brave defenders have performed combat operations in Iraq and Afghanistan. They have provided security at Guantanamo Bay. They have prepared for homeland security missions. Our Nation is blessed and grateful for the service of the brave men and women of the National Guard and Reserve.

By supporting our Guardsmen and Reservists, employers across our Nation also are helping to advance freedom and democracy around the world. At the same time, these employers benefit from the experience and leadership skills these citizen-soldiers bring home. Employer support of our Guard and Reserve in the United States and abroad helps ensure our troops are mission-ready and is a source of pride and assurance for all Americans. This country is grateful to employers and workers for their support of Guard and Reserve members and their families. Because military deployment often disrupts families and businesses, my Administration is working to make deployments more predictable. Together, our National Guard and Reserve forces and their employers are united in purpose and reflect the highest standards of professionalism and honor.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 16 through November 22, 2003, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the members of our National Guard and Reserve and their civilian employers for their extraordinary sacrifices on behalf of our Nation. I also call on State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

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



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Rules and Regulations

Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–22–AD; Amendment 39–13369; AD 2003–23–05–AD]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes. This AD requires, within 24 months after the effective date of the AD, inspection of certain Titeflex Corporation hoses for proper date and paint code, replacement if necessary, and inspection for proper heat treatment of aluminum B-nuts, if necessary. This AD is prompted by certain Titeflex Corporation hoses discovered with incorrect heat treatment of B-nuts. We are issuing this AD to prevent fire extinguishing system and fuel system hose failure due to improperly heat treated aluminum B-nuts.

DATES: This AD becomes effective December 24, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 24, 2003.

ADDRESSES: You can get the service information identified in this AD from Boeing Commercial Airplane Group, PO Box 3703, Seattle, Washington 98124–2207; telephone (206) 544–5000.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes. We published the proposed AD in the **Federal Register** on March 13, 2003 (68 FR 11999). That action proposed to require within 24 months after the effective date of the AD, inspection of hoses for proper date and paint code, replacement if necessary, and inspection for proper heat treatment of aluminum B-nuts, if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

List Only Specific Aircraft

One commenter requests that only specific aircraft be listed in the applicability, and requests that we eliminate the statement ''used on, but not limited to'' from the applicability statement.

The FAA does not agree. Since the hoses can be used on many airplanes, the FAA uses the statement ''used on, but not limited to'' to include any operator who may have installed a hose on an airplane other than the ones called out in the service bulletins.

Entire Fleet's Effectivity

One commenter requests that the AD include the entire fleet's effectivity, because hoses may have been exchanged between aircraft.

The FAA agrees that hoses may have been exchanged between aircraft. However, as detailed above, no change to the AD is needed because the statement ''installed on, but not limited to'' already includes the entire fleet.

Ensure Adequacy of Service Bulletins

One commenter notes that the service bulletins should contain adequate information to do the inspection requirements, and that an adequate number of spare hoses should be made available.

The FAA agrees. The alert service bulletins contain adequate information to do the inspection requirements, and the FAA has been advised by Titeflex Corporation that an adequate supply of spare hoses is available.

Correct a Reference to Service Bulletins

One commenter requests that the reference to service bulletins listed in Table 1, be removed from the compliance paragraph preceding Table 1 because those service bulletins are not referenced in Table 1.

The FAA does not agree. The compliance paragraph mandates the inspection of the manufacture date code on all hoses listed in Table 1 of this AD, using the Accomplishment Instructions of the applicable Boeing alert service bulletins (ASBs) contained in Table 1 of this AD. Table 1 lists six different Alert Service Bulletins. Therefore, no change will be made to the AD.

Allow Use of Aircraft Records For AD Compliance

One commenter requests that the use of aircraft records be permitted as an alternate means of compliance (AMOC) with the inspections requirements of this AD.

The FAA agrees. The operator can request an AMOC and the FAA will review the operator's records to determine AMOC acceptability.

New Revision to Service Bulletin

The proposed AD incorporated by reference Boeing ASB 737–26A1109, Revision 1, dated November 7, 2002. The final rule has replaced that ASB with Boeing ASB 737–26A1109, Revision 2, dated May 8, 2003.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described

previously. We have determined that these changes 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 published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2002–NE–22–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–23–05 Titeflex Corporation: Amendment 39–13369. Docket No. 2002–NE–22–AD.

Effective Date

(a) This AD becomes effective December 24, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Titeflex Corporation hoses that are identified by Boeing part number (P/N), or for certain hoses, by Titeflex parts manufacturer approval (PMA) P/N in this AD. These hoses are used on, but not limited to, Boeing 737–300, –400, –500, –600, –700, –700C, –800, and –900; 757–200 and –300; 767–200, –300, and –300F; and 747–400 airplanes.

Unsafe Condition

(d) This AD is prompted by certain Titeflex Corporation hoses discovered with incorrect heat treatment of B-nuts. The actions specified in this AD are intended to prevent fire extinguishing system and fuel system hose failure due to improperly heat treated aluminum B-nuts.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

(f) Within 24 months after the effective date of this AD, inspect the manufacture date code on all hoses listed in Table 1 of this AD. Use the Accomplishment Instructions of the applicable Boeing alert service bulletins (ASB) contained in the following Table 1.

TABLE 1.—APPLICABLE HOSE P/NS

Airplane model	Boeing hose P/N	Titeflex PMA P/N	Used for	Applicable alert service bulletin
(1) 737–300, –400, and –500 airplanes.	S312N512–5 S312N512–6 BACH5R0110YP BACH5S0110XN	113701–5 113701–6	Engine and cargo compartment fire extinguishing bottles.	737–26A1108, Revision 1, dated June 27, 2002.
(2) 737–600, –700,–700C, –800, –900 airplanes.	S316A001–1 S316A001–2 S312N512–15 S312N512–17 S312N512–18 BACH5R0110YP BACH5S0110XN	115398–1 115398–2 113701–15 113701–17 113701–18	Engine, auxiliary power unit (APU), and cargo compartment and fire extinguishing bottles, and wing-to-strut fuel hoses.	737–26A1109, Revision 12, dated May 8, 2003.
(3) 747–400 airplanes	BACH5R0080YY BACH5R0140YU BACH5S0140XT BACH5R0186YY BACH5R0186XX BACH5S0080XX BACH5S0080YY BACH5S0110XN		Forward cargo and main deck cargo compartment fire extinguishing bottles..	747–26A2269, Revision 1, dated June 6, 2002.
(4) 757–200 airplanes	S312N512–1 S312N512–2 S312N512–3 S312N512–4 BACH5R0110YP BACH5S0110XN	113701–1 113701–2 113701–3 113701–4	Engine, APU, and cargo compartment fire extinguishing bottles.	757–26A0043, Revision 1, dated November 14, 2002.

TABLE 1.—APPLICABLE HOSE P/NS—Continued

Airplane model	Boeing hose P/N	Titeflex PMA P/N	Used for	Applicable alert service bulletin
(5) 757–300 airplanes	S312N512–1 S312N512–2 S312N512–3 S312N512–4 BACH5R0110YP BACH5S0074XN	113701–1 113701–2 113701–3 113701–4	Engine and cargo compartment fire extinguishing bottles.	757–26A0044, Revision 1, dated November 14, 2002.
(6) 767–200, –300, and –300F airplanes.	BACH5R0085YU BACH5R0140YU BACH5S0077XT BACH5S0140XT BACH5S0184XX BACH5R0127YY		Cargo compartment fire extinguishing bottles.	767–26A0121, dated December 19, 2001.

(g) If the hose manufacture date code is before 11/99 or after 1/01, or if the manufacture date is 11/99 through 1/01 and there is a permanent white dot on the ID band, no further action is required for that hose.

(h) If the hose manufacture date code is 11/99 through 1/01 inclusive and there is no permanent white dot on the ID band, replace the hose with a serviceable hose or perform an indirect conductive inspection/test for proper heat treat. Use the accomplishment instructions of the applicable ASB listed in Table 1 of this AD.

(i) Replace the hose with a serviceable hose if any B-nut is improperly heat treated.

Credit For Previous Inspections

(j) Previous inspections performed using ASB 737–26A1108, dated November 15, 2001, ASB 737–26A1109, dated November 15, 2001, ASB 737–26A1109, Revision 1, dated November 7, 2002, ASB 747–26A2269, dated November 1, 2001, ASB 757–26A0043, dated November 15, 2001, and ASB 757–26A0044, dated November 15, 2001, comply with the inspection requirements of this AD.

Alternative Methods of Compliance

(k) The Manager, Boston Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 2 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

TABLE 2.—INCORPORATION BY REFERENCE

Alert service bulletin	Page number(s)	Revision	Date
737–26A1108 Total Pages: 48	ALL	1	June 27, 2002.
737–26A1109 Total Pages: 68	ALL	2	May 8, 2003.
747–26A2269 Total Pages: 36	ALL	1	June 6, 2002.
757–26A0043 Total Pages: 40	ALL	1	November 14, 2002.
757–26A0044 Total Pages: 34	ALL	1	November 14, 2002.
767–26A0121 Total Pages: 20	ALL	Original	December 19, 2001.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on November 10, 2003.

Francis A. Favara,

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

[FR Doc. 03–28730 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16411; Airspace Docket No. 03–ACE–77]

Modification of Class E Airspace; Johnson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Johnson, KS Class E airspace area. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) and a nondirectional radio beacon (NDB) SIAP have been developed to serve Stanton County Municipal Airport. The existing SIAP serving Stanton County Municipal Airport will be cancelled when these new SIAPs become effective. An examination of controlled airspace for Johnson, KS revealed a discrepancy in the Stanton County Municipal Airport Airport Reference Point (ARP) used in the legal description of the Class E airspace area. The examination also revealed that this airspace area does not provide adequate airspace for diverse

departures. This action provides controlled airspace of appropriate dimensions to protect aircraft departing Stanton County Municipal Airport in instrument weather conditions and aircraft executing SIAPs to the airport. It also incorporates the revised Stanton County Municipal Airport ARP into the Class E airspace legal description and brings the airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, February 19, 2004. Comments for inclusion in the Rules Docket must be received on or before December 16, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16411/ Airspace Docket No. 03–ACE–77, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level fo the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Johnson, KS. A review of controlled airspace at Johnson, KS revealed a discrepancy in the Stanton County Municipal Airport ARP used in the legal description for this airspace area. The review also indicates existing 700 feet Above Ground Level (AGL) airspace does not meet criteria for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. This airspace area also encompasses required airspace for the newly developed RNAV (GPS) SIAPs that serve Runway (RWY) 17 and RWY 35 at Stanton County Municipal Airport. The new NDB SIAP has a higher final approach fix crossing altitude than the NDB or GPS SIAP being cancelled. This eliminates the need for the north extension of the Johnson, KS Class E airspace area. This action brings the legal description of this airspace area into compliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16411/Airspace Docket No. 03–ACE–77.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective

September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Johnson, KS

Johnson, Stanton County Municipal Airport, KS
(Lat. 37°34′58″ N., long. 101°43′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stanton County Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 03–28825 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15695; Airspace Docket No. 03–AAL–17]

Establishment of Class E Airspace; Kivalina, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kivalina, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kivalina, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, August 19, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface and 1,200 ft. above the surface at Kivalina, AK (68 FR 49727). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Kivalina Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 30 original, and (2) RNAV (GPS) Runway 12 original. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Kivalina, Alaska. This additional Class E airspace was created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Kivalina Airport, Kivalina, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kivilina, AK [New]

Kivilina Airport, AK
(Lat. 67°44′10″ N., long. 164°33′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kivilina Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 67°16′50″ N., 163°46′00″ W., to 67°12′50″ N., 163°53′00″ W., to 67°30′00″ N., 164°30′00″ W., to point of beginning and that airspace extending upward from 1,200 feet above the surface between Federal Colored Airway Blue 2 and Victor Airway V531 south of a line at 68°10′00″ N. to the point at which B2 and V531 join at 67°19′50″ N., 163°28′00″ W., excluding that airspace designated for Federal airways.

* * * * *

Issued in Anchorage, AK, on October 27, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–28823 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15693; Airspace Docket No. 03–AAL–13]

Establishment of Class E Airspace; Akiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Akiak, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Akiak, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, August 11, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Akiak, AK (68 FR 47516). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Akiak Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 03 original, and (2) RNAV (GPS) Runway 21 original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Akiak Airport excluding that airspace within the Bethel, Alaska Class E airspace area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Akiak, Alaska. This additional Class E airspace was created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Akiak Airport, Akiak, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Akiak, AK [New]

Akiak Airport, AK
(Lat. 60°54′10″ N., long. 161°13′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Akiak Airport excluding that airspace within the Bethel, Alaska Class E Airspace area.

* * * * *

Issued in Anchorage, AK, on October 27, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–28822 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15091; Airspace Docket No. 03–AAL–08]

Establishment of Class E Airspace; Kotlik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kotlik, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Kotlik, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, August 11, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface

at Kotlik, AK (68 FR 47518). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Kotlik/New Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 2 original, and (2) RNAV (GPS) Runway 20 original. New Class E controlled airspace extending upward from 700 feet above the surface within a 7.3 mile radius of the Kotlik/New Airport is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Kotlik, Alaska. This additional Class E airspace was created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Kotlik/New Airport, Kotlik, Alaska.

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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kotlik, AK [New]

Kotlik/New Airport, AK
(Lat. 63°01′50″ N., long. 163°31′58″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Kotlik/New Airport.

* * * * *

Issued in Anchorage, AK, on October 27, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–28821 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15694; Airspace Docket No. 03–AAL–12]

Establishment of Class E Airspace; Chevak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Chevak, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Chevak, AK.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* .

SUPPLEMENTARY INFORMATION:

History

On Monday, August 11, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. above the surface at Chevak, AK (68 FR 47515). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new SIAPs for the Chevak Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Runway 14 original, and (2) RNAV (GPS) Runway 32 original. New Class E controlled airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Chevak Airport excluding that airspace within the Hooper Bay, Alaska Class E airspace area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Chevak, Alaska. This additional Class E airspace was created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot

reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Chevak Airport, Chevak, Alaska.

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. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Chevak, AK [New]

Chevak Airport, AK
(Lat. 61°31′01″ N., long. 165°35′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Chevak Airport excluding that airspace within the Hooper Bay, Alaska Class E Airspace area.

* * * * *

Issued in Anchorage, AK, on October 27, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–28820 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 206

Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions

AGENCY: International Trade Commission.

ACTION: Interim rules with request for comments.

SUMMARY: The United States International Trade Commission (Commission) amends its interim Rules of Practice and Procedure for investigations relating to alleged market disruption from imports from China. These amendments are necessary to respond to exigencies created by statutory time constraints and to address concerns created by the existing rules. The intended effect of the amendments is to resolve concerns created by the existing rules, codify actual Commission practice, and provide consistency in and greater transparency regarding the subject Commission investigations.

DATES: Effective Date: These amendments are effective as of November 19, 2003, but do not apply to petitions filed on or before the effective date or to investigations in progress as of the effective date.

Comment Date: The deadline for filing written comments on the amendments is 5:15 p.m. on January 20, 2004. The comments must arrive at the address listed below by that deadline in order to receive consideration by the Commission and its staff. See sections 201.3 and 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.3 and 201.8).

ADDRESSES: A signed original and 3 copies of each set of comments on these amendments to the Commission's rules, along with a cover letter, should be submitted by mail or hand-delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments may be submitted electronically to the extent provided by section 201.8 of the Commission's rules, as amended at 67 FR 68063 (Nov. 8, 2002) and 68 FR 32971 (June 4, 2003).

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3091. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission also may be obtained by accessing its Internet server, *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding the interim amendments the Commission is making to its Rules of Practice and Procedure in part 206. The preamble begins with a discussion of the background of the rulemaking, then explains why an interim rulemaking procedure was adopted, provides a section-by-section analysis of the interim amendments, and ends with a regulatory analysis addressing government-wide statutes and issuances on rulemaking. The Commission encourages members of the public to comment—in addition to any other comments they wish to make regarding the amendments—on whether the amendments are in language that is sufficiently plain for users of the rules to understand.

Background

Section 421(b) of the Trade Act of 1974, as amended, requires the Commission to investigate, in specified circumstances, ''to determine whether products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.'' The circumstances that mandate the initiation of an investigation include the filing of a petition by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

Public Law 106–286, 114 Stat. 880, which added section 421 to the Trade Act, was signed by the President on October 10, 2000. The Commission promulgated interim rules for petitions and investigations under section 421, which are set forth in part 206, subparts A and E, of the Commission's Rules of Practice and Procedure. See 67 FR 8183

(Feb. 22, 2002) and 67 FR 38614 (June 5, 2002).

The Commission has completed three such investigations to date. See 68 FR 48938 (Aug. 15, 2003), 68 FR 8926 (Feb. 26, 2003), and 67 FR 69557 (Nov. 18, 2002). A fourth investigation is in progress. See 68 FR 54010 (Sept. 15, 2003). Each investigation was initiated in response to a petition. The Commission's experiences with those petitions and investigations have led it to conclude that provisions of the interim rules should be revised without delay.

The Procedure for Adopting the Interim Amendments

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). That procedure entails publishing a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, considering the public comments in deciding on the final content of the amendments, and publishing the final amendments at least 30 days prior to their effective date. In this instance, however, the Commission is amending its rules in 19 CFR part 206 on an interim basis, effective upon publication of this notice in the **Federal Register**.

The Commission's authority to adopt interim amendments without following all steps listed in section 553 of the APA is derived from section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and section 553 of the APA.

Section 335 of the Tariff Act authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. The Commission has determined that the need for interim rulemaking is clear in this instance. Section 421 of the Trade Act requires the Commission to evaluate the petition, institute the requested investigation, conduct a hearing, compile an investigative record, and make the required determination(s) in each investigation ''at the earliest practicable time'' but no later than the prescribed deadline. Rulemaking is essential for orderly administration and compliance with the duties, responsibilities, and deadlines imposed by section 421.

Section 553(b) of the APA allows an agency to dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The rules in question are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public comment on the rules are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates that finding and the reasons therefor into the rules adopted by the agency.

In this instance, the Commission has determined that the requisite circumstances exist for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking that solicits public comment, the Commission finds that the interim amendments to part 206 are ''agency rules of procedure and practice.''

In light of the statutory time constraints for an investigation under section 421(b), the petitioner and the petition must serve as primary sources of information in each investigation based on a petition. The current rules do not require the petition to provide certain information that is critical for the commencement of key investigative activity such as the preparation and issuance of Commission questionnaires and the verification of allegations set forth in the petition. As a result, the issuance of questionnaires and the verification process have been delayed and petitioners have been forced to compile and provide the necessary information on an expedited basis after the petition was filed and the statutory period for completing the investigation had begun to run.

Experience also has shown that there is a need for greater clarity regarding (1) the petitioner's service of public and/or nonconfidential copies of the petition on other parties to the investigation, (2) limitations on the content of written comments filed by parties following submission of their post-hearing briefs, and (3) the closing of the investigative record.

The facts and circumstances described above make it necessary for the Commission to amend the existing rules without delay. Hence, it would be impracticable for the Commission to publish a notice of proposed rulemaking, and to consider any comments received in response to the notice, prior to making the necessary rule changes.

Section 553(d)(3) of the APA allows an agency to dispense with the publication of notice of final rules at least thirty days prior to their effective date if the agency finds that good cause exists for not meeting the advance publication requirement and the agency publishes that finding along with the rules. The Commission finds that the facts and circumstances described above also constitute good cause for the purpose of invoking that exemption.

The Commission recognizes that interim amendments to the rules should not respond to anything more than the exigencies created by the aforesaid facts and circumstances. Each amendment set forth in this notice accordingly does one or more of the following: (1) Addresses a concern regarding the existing rule specifying the required content of a petition under section 421(b) of the Trade Act; (2) provides clarity about the petitioner's obligation to serve copies of the petition on other parties to the investigation, the appropriate content of written comments filed after submission of the post-hearing briefs, and the closing of the investigative record; or (3) resolves a matter not adequately addressed in the current rules, such as the deadline for the petitioner to serve copies of the petition on other parties to the investigation following notification by the Secretary to the Commission of acceptance of an administrative protective order application or issuance of a service list and amendment thereto.

The Commission will replace the interim rules in part 206 with final rules promulgated in accordance with the notice, comment, and advance publication procedure prescribed in section 553 of the APA after taking into account (1) all comments received in response to the interim rules as originally adopted (see 67 FR 8183), (2) any comments received in response to the amendments set forth in this notice, and (3) the experience acquired in all investigations under section 421(b) that are conducted prior to commencement of the APA procedure for final rulemaking.

Section-by-Section Analysis of the Interim Amendments

Section 206.44

Paragraphs (a)–(i) of section 206.44 list the required content of a petition for an investigation under section 421(b)(1) of the Act. The Commission amends section 206.44 by making substantive and/or technical revisions to existing paragraphs (a), (c), (j), and (i) and adding a new paragraph (j).

Paragraph (a). Paragraph (a) of section 206.44 imposes the basic requirement that the petition must provide specific information to support the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as

to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. Paragraph (a) also states that each petition should provide the information specified in paragraphs (a) through (i)—*i.e.*, a product description and information about representativeness, imports, domestic production, injury or threat of injury, cause of injury, critical circumstances, the relief sought and the purpose thereof—to the extent that such information is reasonably available to the petitioner with due diligence.

The Commission redesignates the current paragraph (a) as paragraph (a)(1). The Commission adds a new paragraph (a)(2) that requires an additional certification if the petition fails to include any data or information that is required by a provision of section 206.44 that applies to a petition for an investigation under section 421(b)(1) of the Act. In such a case, the new paragraph (a)(2) will require the petition to include a certification that the missing information was not reasonably available to the petitioner. The Commission intends for the additional certification to impress upon each petitioner the importance of exercising due diligence to compile and submit the information specified in section 206.44 to the extent that the information is reasonably available to the petitioner.

The Commission also amends paragraph (a) of section 206.44 to make technical revisions. Paragraph (a) contains two references to ''paragraphs (b)–(i).'' Because the Commission is adding a new paragraph (j) to section 206.44 (as discussed below), the Commission changes the reference from ''paragraphs (b)–(i)'' to ''paragraphs (b)–(j).''

Paragraph (c). A petition for an investigation under section 421(b)(1) of the Act must be filed by an entity described in 19 U.S.C. 2252(a)—that is, an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. To enable the investigative staff to promptly verify the information that the petition provides to comply with paragraph (c) of section 206.44, the Commission revises paragraph (c)(1) to require the petition to include the name and telephone number of a contact person for each producer that is represented in the petition or that employs or previously employed workers represented in the petition. The Commission also revises paragraph (c)(3) to require the petition to provide the name and telephone number of a contact person for each other producer of the domestic product known to the petitioner. Requiring the aforesaid information to be set forth in the petition will expedite the Commission's gathering of information and relieve the petitioner from having to provide it on an expedited basis after the petition is filed.

New Paragraph (j). Much of the information that will be critical in helping the Commission make the required determination(s) in an investigation under section 421(b)(1) of the Trade Act is obtained from responses to Commission questionnaires. The Commission seeks to issue the questionnaires as expeditiously as possible. However, Commission staff cannot complete the drafting of questionnaires or mail them until it has compiled certain information about the subject products and the names and addresses of domestic and foreign producers, importers, and purchasers believed to have information relevant to the investigation. Section 206.44 does not currently require the petition to provide such information.

The Commission accordingly adds a new paragraph (j) to section 206.44. Paragraph (j)(1) requires the petition to include the name, address, and telephone number of each U.S. importer and producer in China of the products under investigation. Paragraph (j)(3) requires the petition to furnish the name, address, primary contact person, and telephone number for each of the 10 largest purchasers of each domestic producer represented in, or that employs or formerly employed workers represented in, the petition. The Commission believes that the information required by paragraphs (j)(1) and (j)(3) should be readily available to petitioner(s) from its (their) own records, public sources, or other sources.

New paragraph (j) of section 206.44 includes a paragraph (j)(2) that requires the petition to provide a detailed description of each product for which the petitioner wants the Commission to seek pricing information in its questionnaires and an explanation of why the petitioner believes the Commission should collect pricing information for that product.

The Commission believes that having the information specified in paragraphs (j)(1), (j)(2), and (j)(3) should enable the investigative staff to prepare and mail the Commission questionnaires sooner—which, in turn, would give the recipients more time to respond and give the staff, the Commission, and authorized representatives of parties to the investigation more time to evaluate the responses.

The new paragraph (j) also includes a paragraph (j)(4) that requires the petition to furnish information to support each allegation of a lost sale or lost revenue. The required supporting information includes the date, value, and product quantity of each such alleged loss. It also includes the name of the company that lost the sale, the name of the customer involved, and the name of the company that captured the sale or whose competition resulted in the lost revenue, and company addresses, contact persons, and telephone numbers. The Commission believes that requiring the petition to provide such information will facilitate staff verification of the allegation and will relieve the petitioner of the burden of having to furnish the information on a expedited basis after the petition is filed.

Current Paragraph (j). Having amended section 206.44 by adding a new paragraph (j) as discussed above, the Commission redesignates the current paragraph (j) as paragraph (k).

The Creation of a New Section 206.44a

The Commission further amends Part 206 of its Rules of Practice and Procedure by adding a new section 206.44a to establish special rules for investigations under section 421(b) of the Trade Act.

Paragraph (a) of the new section 206.44a addresses the petitioner's obligation to serve confidential and/or public copies of the petition on other parties to the investigation and provides for earlier service of the petition. The Commission intends for paragraph (a) to provide clarity about a matter not adequately addressed in the current rules, namely the deadline for the petitioner to serve copies of the petition on other parties to the investigation following notification by the Secretary of approval of an application for disclosure under an administrative protective order, before establishment of a service list; the deadline for such service upon notification of the establishment of a service list; and the deadline for such service upon notification of an amendment of the service list.

Paragraph (b) of the new section 206.44a addresses the submission of written comments by parties after submission of their post-hearing briefs. The Commission adopts this paragraph to provide greater clarity on the issue of when the record closes. The Commission also intends for paragraph (b) to have the effect of preventing the recurrence of a problem that occurred in a recently completed investigation, namely, a party's inclusion of new

information in written comments submitted after the post-hearing briefs were filed. Paragraph (b) is similar to section 207.30(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.30(b)), which governs parties' written comments on new information during the final phase of a countervailing duty investigation or an antidumping duty investigation under Title VII of the Tariff Act of 1930. The Commission intends for paragraph (b) of the new section 206.44a to make it clear that a party to an investigation under section 421(b) of the Trade Act should not include new information in comments filed after the submission of its post-hearing brief, unless the Commission grants the party leave to do so.

Regulatory Analysis

The Regulatory Flexibility Act

The Commission notes that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under section 553(b) of the APA. (See the discussion above concerning the procedure for adopting the interim amendments.)

Even if the Regulatory Flexibility Act applied, the Commission's interim amendments to part 206 are not likely to affect small entities in the manner that the Act is intended to prevent. The interim amendments are agency rules of procedure and practice. Some procedures codified in the amendments are the same as or substantially similar to procedures codified in existing rules for other types of investigations. Moreover, the Commission has no reason to believe, at this point, that a large number of the petitioners will be small entities. For those reasons, the Commission certifies, pursuant to 5 U.S.C. 605(b), that the interim rule amendments in this notice will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Commission has determined that the interim amendments to part 206 do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order. As noted, they merely respond to exigencies created by the statutory time constraints and concerns created by the existing rules. The interim amendments to part 206 will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Executive Order 13132

The interim amendments to part 206 of the Commission's rules do not contain federalism implications warranting the preparation of a Federalism Assessment pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

The Unfunded Mandates Reform Act of 1995

The interim amendments to part 206 of the Commission's rules 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 are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*).

The Small Business Regulatory Enforcement Fairness Act of 1996

The interim amendments to part 206 of the Commission's rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). The interim amendments will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Contract With America Advancement Act of 1996

The interim amendments to part 206 of the Commission's rules are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 19 CFR Part 206

Administrative practice and procedure, investigations.

■ For the reasons stated in the preamble, the Commission amends 19 CFR part 206 as follows:

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, AND REVIEW OF RELIEF ACTIONS

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

Authority: 19 U.S.C. 1335, 2251–2254, 2451–2451a, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

■ 2. Amend § 206.44 by revising paragraph (a), revising paragraphs (c)(1) and (c)(3), re-designating paragraph (j) as paragraph (k), and adding a new paragraph (j), to read as follows:

§ 206.44 Contents of a petition under section 421(b) or (o) of the Trade Act.

(a) *Petitions under section 421(b).* (1) A petition for relief under section 421(b) of the Trade Act shall provide specific information in support of the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, such petition shall include the information described in paragraphs (b) through (j) of this section. The petition shall provide the information required by this paragraph and paragraphs (b) through (j) of this section to the extent that such information is reasonably available to the petitioner with due diligence.

(2) If the petition fails to provide any item of information specified in paragraphs (b) through (j) of this section, the petition shall include a certification that such information was not reasonably available to the petitioner.

* * * * *

(c) *Representativeness.* Each petition shall include:

(1) The names and street addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition, the locations of the establishments in which each such firm produces the domestic product, and the telephone number and contact person(s) for each such firm;

* * * * *

(3) The names and street addresses of all other producers of the domestic product known to the petitioner, and

the telephone number and contact person(s) for each such producer.

(j) *Additional information.* The petition shall include:

(1) The names of all U.S. importers and all producers in China of the subject merchandise known to petitioner, and the street address, telephone and fax number, and primary contact person(s) for each such importer and producer in China;

(2) A detailed description of each product for which the petitioner requests the Commission to seek pricing information in its questionnaires, and an explanation of why the petitioner believes the Commission should collect pricing information for each such product;

(3) For each domestic producer represented by petitioner, the company names of its 10 largest purchasers, and the street address, telephone number, and primary contact person(s) for each such purchaser;

(4) For each allegation of lost sales and/or lost revenues, supporting information with regard to each such alleged loss, including the name of the company represented by petitioner that lost the sale or revenue, the name of the company that captured the sale or whose competition resulted in lost revenue (including company street address, company contact person, and telephone and fax numbers for each contact person), the date and total value of the lost sale or lost revenue, and the total quantity of product involved (by weight or number of units).

(k) *Petitions under section 421(o).*

* * * * *

■ 2. Amend part 206 by adding § 206.44a to read as follows:

§ 206.44a Special rules for conducting investigations under section 421(b) of the Trade Act.

(a) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4) of this part, he or she approves an application under § 206.17(a)(2) of this part pursuant to § 206.47. When practicable, this notification shall be made by facsimile transmission. The petitioner shall then serve a copy of the petition, including all confidential business information, on the approved lead authorized applicants in accord with § 206.17(f) within 2 calendar days of the time notification is made by the Secretary.

(ii) Upon establishment and issuance of the service list, the petitioner shall serve the lead authorized applicants enumerated on the list established by the Secretary pursuant to § 206.17(a)(4) that have not been served pursuant to paragraph (a)(1)(i) of this section within 2 calendar days of the establishment and issuance of the Secretary's list.

(2) As the Secretary adds new authorized applicants to the service list described in paragraph (a)(1) of this section, the Secretary shall notify the petitioner and issue an amended list, and the petitioner shall serve new lead authorized applicants with a copy of the petition in the same manner as under paragraph (a)(1)(i) of this section.

(3) The petitioner shall serve a copy of the non-confidential version of the petition on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within 2 calendar days of the establishment and issuance of the Secretary's list, and on any additional persons within 2 calendar days of receiving notification from the Secretary of an amended list.

(4) The petitioner shall attest service of the petition by filing a certificate of service with the Commission.

(b) *Comment on information.* The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief. Comments shall concern only such information, and shall not exceed 15 pages of textual material, double-spaced and on single-sided stationery measuring 8½ x 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. New factual information and arguments based on that information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed. The record shall close on the date such comments are due, except with respect to changes in bracketing of confidential business information permitted by § 206.8(c) of this part.

Issued: November 13, 2003.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–28879 Filed 11–18–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Dexamethasone Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group, Ltd. The ANADA provides for the veterinary prescription use of dexamethasone injectable solution in dogs, cats, cattle, and horses.

DATES: This rule is effective November 19, 2003.

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

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed ANADA 200–312 that provides for use of DEXIUM (dexamethasone) Solution for the treatment of primary bovine ketosis and as an anti-inflammatory agent in dogs, cats, cattle, and horses. Cross Vetpharm Group's DEXIUM Solution is approved as a generic copy of Schering-Plough Animal Health's AZIUM Solution 2 milligrams, approved under NADA 12–559. The ANADA is approved as of October 20, 2003, and the regulations are amended in 21 CFR 522.540 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.540 [Amended]

■ 2. Section 522.540 *Dexamethasone injection* is amended in paragraph (a)(2)(i) by removing ''and 059130'' and by adding in its place '', 059130, and 061623''.

Dated: November 3, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–28872 Filed 11–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1096–F]

RIN 1120–AA92

Occupational Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations on occupational education programs to allow inmates currently under an order of deportation, exclusion, or removal, to participate in Bureau occupational education programs if Bureau resources are available after participation by inmates who will be released within the United States. This rule also removes obsolete or redundant provisions. We intend this amendment to help ensure that we allocate available educational opportunities for occupational training to inmates who will be returning to the community within, rather than outside, the United States upon release.

DATES: This rule is effective December 19, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105 e-mail *boprules@bop.gov.*

SUPPLEMENTARY INFORMATION: The Bureau published this rule change as a proposed rule on July 17, 2000 (65 FR 44401). We received no comments on the proposed rule.

What Will This Rule Change Do?

This rule change revises our regulations on occupational education programs to allow inmates currently under an order of deportation, exclusion, or removal, to participate in Bureau occupational education programs if Bureau resources are available after participation by inmates who will be released within the United States. This rule change also removes obsolete or redundant provisions.

The proposed rule which we published on July 17, 2000, would have excluded inmates under orders of deportation, exclusion or removal from participation in Bureau occupational education programs. However, after internal deliberation, the Bureau has determined that there is a less restrictive alternative to excluding such inmates from participation: We will instead allow participation by such inmates if Bureau resources are available after participation by inmates who will be released within the United States.

In limiting participation by inmates under an order of deportation, removal, or exclusion from consideration, we intend to help ensure that available educational opportunities for occupational training ordinarily will be allocated to inmates who will be returning to the community within, rather than outside, the United States upon release.

Under these rules, regardless of availability of resources, we may consider an inmate or detainee currently under an order of deportation, exclusion, or removal for placement in an occupational education program if the Attorney General determines that the inmate or detainee cannot be removed from the United States because the designated country of removal will not accept his/her return.

Under internal agency procedures, the Bureau of Immigration and Customs Enforcement (BICE, formerly the Immigration and Naturalization Service) is responsible for informing us when an inmate/detainee's designated country of removal will not accept his/her return.

In these regulations, we revised the occupational education application procedures consistent with our revised procedures for postsecondary education programs (see our proposed rule published on July 17, 2000 at 65 FR 44399). We also reorganized the provisions to remove obsolete or redundant provisions and improve clarity.

Executive Order 12866

The Office of Management and Budget (OMB) determined that certain rules are part of a category of actions which are not ''significant regulatory actions'' under section 3(f) of Executive Order 12866. Because this rule falls within that category, OMB did not review it.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under 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 § 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 costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 544

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 544 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

■ 1. Revise the authority citation for 28 CFR part 544 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Subpart F is revised to read as follows:

Subpart F—Occupational Education Programs

Sec.
544.50 Purpose and scope.
544.51 Procedures.
544.52 Levels of Occupational Education Programs.

Subpart F—Occupational Education Programs

§ 544.50 Purpose and scope.

The Bureau of Prisons offers eligible inmates the opportunity under its occupational education programs to participate in occupational education courses for the purpose of obtaining marketable skills designed to enhance post-release employment opportunities.

§ 544.51 Procedures.

(a) *Eligibility.* All inmates are eligible to participate in an institution's occupational education program. An eligible inmate must apply through the inmate's unit team for placement consideration. The unit team will determine whether the occupational education course is appropriate for the inmate's apparent needs.

(b) *Special considerations for inmates under orders of deportation, exclusion, or removal:* (1) Generally, inmates under orders of deportation, exclusion, or removal may participate in an institution's occupational education program if Bureau resources permit after meeting the needs of other eligible inmates.

(2) Inmates under orders of deportation, exclusion, or removal who the Attorney General has determined cannot be removed from the United States because the designated country of removal will not accept the inmate's return are exempted from the limitation in paragraph (b)(1) of this section, and may participate in an institution's occupational education in the same manner as other eligible inmates.

§ 544.52 Levels of Occupational Education Programs.

Occupational education programs are offered at the certificate level and the classroom level. Each level may include the following types of training:

(a) *Exploratory Training.* Exploratory training is a study of occupations and industries for the purpose of providing the student with a general knowledge of the occupation and the world of work, rather than specific skill development.

(b) *Marketable Training.* Marketable training provides specific entry-level or advanced job skills. Marketable training may include ''live work'', that is, the training would result in a product or service produced by the inmate for actual use by the institution, FPI, another federal agency, or community service project.

(c) *Apprentice Training.* Apprentice training provides an inmate the opportunity to participate in training which prepares the inmate for employment in various trades through structured apprenticeship programs approved at the state and national levels by the Bureau of Apprenticeship and Training, U.S. Department of Labor.

[FR Doc. 03–28853 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

[BOP–1019–F]

RIN 1120–AA25

Postsecondary Education Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau) finalizes, without change, a proposed rule it published on July 17, 2000, at 65 FR 44400 to exclude from postsecondary education programs courses offered as part of an occupational education program. Occupational education programs are covered in separate Bureau regulations.

DATES: This rule is effective December 19, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau amends its regulations on postsecondary education programs to exclude courses offered as part of an occupational education program, which we cover in separate Bureau regulations.

Under this final rule, the inmate is responsible for paying postsecondary education tuition costs either through personal funds, community resources, or scholarships available to the inmate. We intend this amendment to simplify the organization of the Bureau's regulations and to conform with the usual community standards of government-funded educational opportunities available to the general public.

We published this rule change as a proposed rule on July 17, 2000 (65 FR 44400). We received two comments on the proposed rule.

First Public Comment

One commenter proposed that we include brief language in our rule to allow staff to use the postsecondary education programs as a sign of positive adjustment by an inmate, favorably affecting the custody score on our Custody Classification Form.

The Bureau uses the Custody Classification Form to accurately evaluate and classify an inmate so that we can give the inmate an appropriate security level. The Bureau must properly determine an inmate's security level to ensure the safety and security of the inmate and the institution.

The Custody Classification Form that the commenter refers to is made up of many factors that staff can use to evaluate the inmate. One of these factors is called ''Responsibility Demonstrated.'' To illustrate an inmate's level of responsibility, we instruct our staff to consider the inmate's general demeanor as reflected in peer group associates, degree of program involvement, level of dependability, and nature of interaction with staff and other inmates.

Although staff determine what behavior illustrates the inmate's level of responsibility, postsecondary education programs are not excluded. Under current Bureau policy, staff may use postsecondary education programs as a sign of positive adjustment by an inmate, as the commenter suggests. Because our current policy already allows for the commenter's suggestion, and because this is a matter of internal agency administration, we do not add further language to this final rule on this subject.

Second Public Comment

The second commenter suggested that we should include language in the rule ''restricting refusal of postsecondary courses based solely on the information contained within the course (syllabus or informational) text.'' The commenter felt that ''refusal should be limited to courses that pose a tangible threat, such as contact/handling of chemicals, unauthorized objects, or the required construction of unauthorized * * * objects. Except in extreme circumstances, a decision to refuse a postsecondary course should not be made based solely on the knowledge offered by a particular text.''

Because of the many different security levels and individual characteristics of our institutions, we afford our Wardens discretion in determining where possible security risks might arise. The Warden delegates this responsibility to the postsecondary education coordinator, who, under § 544.21(b) of these regulations, ''determines that the course is appropriate in light of the institution's need for discipline, security, and good order.''

If we do what the commenter suggests by articulating a uniform set of factors for Wardens to consider when determining whether or not to allow an inmate to take a particular course, we remove the Warden's discretion.

Also, because our institutions are varied and have individual characteristics, a uniform set of guidelines would curtail a Warden's flexibility in dealing with a particular institution's unique situation or security issue.

In addition, how a Warden makes the decision to allow or deny a particular course is an internal, agency administrative matter. For these reasons, we do not add further language to this final rule on this subject.

Executive Order 12866

The Director determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and therefore it was not reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under 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 § 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 costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 544

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 544 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 544—EDUCATION

■ 1. Revise the authority citation for 28 CFR part 544 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise Subpart C as follows:

Subpart C—Postsecondary Education Programs for Inmates

Sec.
544.20 Purpose and scope.
544.21 Procedures.

Subpart C—Postsecondary Education Programs for Inmates

§ 544.20 Purpose and scope.

The Bureau of Prisons offers inmates the opportunity under its postsecondary education program to participate in postsecondary education courses (courses for college credit other than those courses which pertain to occupational education programs) which have been determined to be appropriate in light of the institution's need for discipline, security, and good order. Participation in postsecondary education courses which are part of occupational education programs is governed by the provisions of the Bureau's occupational education program (see subpart F of this part).

§ 544.21 Procedures.

(a) The Warden or designee must appoint a postsecondary education coordinator (ordinarily an education staff member) for the institution. The postsecondary education coordinator is responsible for coordinating the institution's postsecondary education program.

(b) An inmate who wishes to participate in a postsecondary education course must apply through the postsecondary education coordinator. If the postsecondary education coordinator determines that the course is appropriate in light of the institution's need for discipline, security, and good order, the inmate may enroll provided that:

(1) The inmate meets eligibility requirements for the course which have been set by the course provider,

(2) The inmate is responsible for payment of any tuition either through personal funds, community resources, or scholarships available to the inmate, and

(3) The unit team determines that the course is appropriate for the inmate's apparent needs.

[FR Doc. 03–28852 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC93

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API RP 14C

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Correcting amendment.

SUMMARY: This document makes a correction to the final rule titled ''Oil and Gas and Surphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API RP 14C'' that was published August 9, 2002 (67 FR 51757). A portion of the text in 30 CFR 250.803(b) was inadvertently deleted. This amendment will add the paragraphs back into the regulation.

EFFECTIVE DATE: This rule becomes effective on November 19, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Operations Analysis Branch at (703) 787–1587.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction supersede Section 250.803(b)(7) paragraphs (i), (ii), (iii), and (iv), Title 30 of the CFR, parts 200 to 699 inadvertently deleted.

Need for Correction

As published, the final regulations contain deletions that need to be reinstated.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Correction of Publication

■ Accordingly, 30 CFR Part 250 is corrected by making the following correcting amendment:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.803, revise paragraph (b)(7) to read as follows:

§ 250.803 Additional production system requirements.

* * * * *

(b)(7) *Gas compressors.* You must equip compressor installations with the following protective equipment as required in API RP 14C, Sections A4 and A8 (incorporated by reference as specified in § 250.198).

(i) A Pressure Safety High (PSH), a Pressure Safety Low (PSL), a Pressure Safety Valve (PSV), and a Level Safety High (LSH), and an LSL to protect each interstage and suction scrubber.

(ii) A Temperature Safety High (TSH) on each compressor discharge cylinder.

(iii) The PSH and PSL shut-in sensors and LSH shut-in controls protecting compressor suction and interstage scrubbers shall be designated to actuate automatic shutdown valves (SDV) located in each compressor suction and fuel gas line so that the compressor unit and the associated vessels can be isolated from all input sources. All automatic SDV's installed in compressor suction and fuel gas piping shall also be actuated by the shutdown of the prime mover. Unless otherwise approved by the District Supervisor, gas—well gas affected by the closure of the automatic SDV on a compressor suction shall be diverted to the pipeline or shut in at the wellhead.

(iv) A blowdown valve is required on the discharge line of all compressor installations of 1,000 horsepower (746 kilowatts) or greater.

* * * * *

Dated: October 30, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–28869 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA85

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03)

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule contains several provisions found in the NDAA–03, Public Law 107–314, signed on December 2, 2002. Specifically this rule addresses eliminating the requirement for TRICARE preauthorization of inpatient mental health care for Medicare-eligible beneficiaries where Medicare is primary payer and has already authorized the care using Medicare certification of individual professional providers as sufficient documentation to also certify individual professional providers under TRICARE; and expanding the TRICARE Dental Program (TDP) eligibility for dependents of deceased members. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: This rule is effective November 19, 2003. The effective date for the 32 CFR 199.4(a)(12)(ii)(E)(*2*) is October 1, 2003. The effective date for 32 CFR 199.13(c)(3)(ii)(E)(*2*) is December 2, 2002.

APPLICABILITY: The applicability date for 32 CFR 199.6(c)(2)(v) is for any TRICARE contract entered into on or after December 2, 2002.

COMMENTS: Comments will be accepted until January 20, 2004.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, (303) 676–3803 (The sections of this rule regarding elimination of mental health preauthorization and Medicare providers as TRICARE providers) or Major Shannon Lynch, (303) 676–3496 (The section of this rule regarding the TRICARE Dental Program). Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Elimination of Mental Health Pre-Authorization

Section 701 of the NDAA–03 eliminates the preauthorization requirement for inpatient mental health where Medicare is primary payer and has already authorized the care. Currently, in situations were a Medicare beneficiary, who is also TRICARE eligible, receives inpatient mental health care, TRICARE applies its rules for preauthorization even though TRICARE is not the primary payer. The language found in section 701 of the NDAA–03 changes the way we currently operate. Once this change is implemented, Medicare beneficiaries who are also TRICARE eligible, will follow Medicare's rules until their Medicare benefit is exhausted. Once the Medicare benefit is exhausted, TRICARE's rules regarding preauthorization will apply. We expect implementation of this change will reduce providers' administrative burden as they will no longer have to obtain a preauthorization from TRICARE until the beneficiary's Medicare benefit is exhausted. It will also reduce the burden on our contractors as they will be required to obtain preauthorization only after the patient's Medicare benefits are exhausted.

Additionally, Section 701 of the NDAA–03 continues our current policy that pre-authorization is not required in the case of an emergency.

II. Medicare Provider Certification Applicable to TRICARE Individual Professional Providers

Section 705 of the NDAA–03 provides that Medicare certification of individual professional providers shall be considered sufficient documentation to also certify authorized individual professional providers under TRICARE. When an individual professional provider has been certified by Medicare and meets one of the TRICARE individual professional provider categories, the Medicare certification shall be considered sufficient documentation to certify the provider under TRICARE.

Our contractors are currently in compliance with this provision. By accepting Medicare certification as sufficient documentation, TRICARE has reduced the administrative burden of separately applying for certification under two federal health care programs. While our contractors are currently in compliance with this provision this interim final rule is necessary to add the statutory language to our regulation.

Section 705 continues the current TRICARE policy of excluding providers who are sanctioned or who have program integrity violations under Medicare, TRICARE, or other Federal health programs. Such providers are specifically excluded as TRICARE providers.

III. TRICARE Dental Program

Currently, eligibility in the TDP includes any such dependent of a member who died while on active duty for a period of more than 30 days or a member of the Ready Reserve if the dependent was enrolled on the date of the death of the member. The exception to this is that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death. Section 703 of the NDAA FY03 TRICARE changes eligibility in the TDP by including any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready reserve if, on the date of the death of the member, the dependent is enrolled in dental benefits plan or is not enrolled in such a plan by reason of a discontinuance of a former enrollment due to transfer to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan. The exception remains that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

IV. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities. This rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (a)(12)(ii)(A) and the first sentence in paragraph (b)(6)(ii)(A) and adding a new paragraph (a)(12)(ii)(E) to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(12) * * *

(ii) *Preadmission authorization.* (A) This section generally requires preadmission authorization for all non-emergency inpatient mental health services and prompt continued stay authorization after emergency admissions with the exception noted in paragraph (a)(12)(ii) of this section. It also requires preadmission authorization for all admissions to a partial hospitalization program, without exception, as the concept of an emergency admission does not pertain to a partial hospitalization level of care. Institutional services for which payment would otherwise be authorized, but which were provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

* * * * *

(E) Preadmission authorization for inpatient mental health services is not required in the following cases:

(*1*) In the case of an emergency.

(*2*) In a case in which benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c *et seq.*) subject to paragraph (a)(12)(iii) of this section.

(*3*) In a case of inpatient mental health services in which paragraph (a)(12)(ii) of this section applies, the Secretary shall

require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

* * * * *

(b) * * *

(6) * * *

(iii) *Preauthorization requirements.* (A) With the exception noted in paragraph (a)(12)(ii)(E) of this section, all non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission. * * *

* * * * *

■ 3. Section 199.6 is amended by adding a new paragraph (c)(2)(v) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(2) * * *

(v) Subject to section 1079(a) of title 10, U.S.C., chapter 55, a physician or other health care practitioner who is eligible to receive reimbursement for services provided under Medicare (as defined in section 1086(d)(3)(C) of title 10 U.S.C., chapter 55) shall be considered approved to provide medical care authorized under section 1079 and section 1086 of title 10, U.S.C., chapter 55 unless the administering Secretaries have information indicating Medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner. That is, TRICARE shall accept Medicare certification of providers who have a like class of providers under TRICARE without further authorization unless that provider is under sanctions as stated herein. Providers without a like class (*i.e.,* chiropractors) under TRICARE shall be denied.

* * * * *

■ 4. Section 199.13 is amended revising paragraph (c)(3)(ii)(E)(*2*) to read as follows:

§ 199.13 TRICARE Dental Program.

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Selected Reserve or Individual Ready Reserve. Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Selected Reserve or Individual Ready Reserve members, as specified in 10 U.S.C. 10143 and 10144(b) respectively, if on the date of the death of the member, the dependent is enrolled in the TDP, or if not enrolled by reason of a discontinuance of a former enrollment under paragraphs (c)(4)(ii) and (c)(4)(iii) of this section shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death. This 3-year period of continued enrollment also applies to dependents of active duty members who died within the year prior to the beginning of the TDP while the dependents were enrolled in the TFMDP. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

* * * * *

Dated: November 12, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28756 Filed 11–18–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–175]

RIN 1625–AA08

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek and Severn River, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations during the Eastport Yacht Club Lights Parade, a marine event to be held December 13, 2003, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 will be enforced from 4:45 p.m. to 9:15 p.m. on December 13, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2513.

SUPPLEMENTARY INFORMATION: The Eastport Yacht Club will sponsor a lighted boat parade on the waters of Spa Creek and the Severn River at Annapolis, Maryland. The event will consist of approximately 75 boats traveling at slow speed along two separate parade routes in Annapolis Harbor. The participating boats will range in length from 10 to 90 feet, and each will be decorated with holiday lights. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be enforced for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be enforced for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: October 27, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–28816 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–045]

RIN 1625–AA09

Drawbridge Operating Regulation; St. Croix River, Prescott, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a

temporary deviation from the regulation governing the operation of the Burlington Northern Railroad Drawbridge, across the St. Croix River, mile 0.2, at Prescott, Wisconsin. This deviation allows the drawbridge to remain closed to navigation except upon 24 hours notice to open for 28 days from 8 a.m., November 17, 2003, until 11:59 p.m., December 14, 2003, central standard time. The deviation will facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 8 a.m., November 17, 2003, until 11:59 p.m., December 14, 2003.

ADDRESSES: Materials referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railroad requested a temporary deviation on October 17, 2003 for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. Presently, the draw opens on signal for passage of river traffic; except that from December 15 through March 31, the draw must open on signal if at least 24 hours notice is given. This deviation allows the bridge to remain closed to navigation except upon 24 hours notice to open for 28 days from 8 a.m., November 17, 2003, until 11:59 p.m., December 14, 2003, Central Standard Time. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 0.2, St. Croix River.

The Burlington Northern Santa Fe Railroad Drawbridge provides a vertical clearance of 20.4 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of recreational watercraft. In order to repair the bridge console and associated electrical system, the bridge must be kept inoperative and in the closed to navigation position. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 6, 2003.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 03–28815 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–160]

RIN 1625–AA09

Drawbridge Operation Regulation; Canaveral Barge Canal, Cape Canaveral, Brevard County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations of the Christa McAuliffe Bridge, SR 3, across the Canaveral Barge Canal at Cape Canaveral, Florida. Under this final rule, the bridge need open only twice an hour from 6 a.m. to 10 p.m. for vessel traffic, except during the morning and evening rush hours when the bridge may remain closed to facilitate vehicular traffic. The rule will also require the bridge to open with 3 hours notice from 10:01 p.m. to 5:59 a.m. This change will improve the flow of vehicular traffic without significantly impacting the needs of navigation.

DATES: This rule is effective December 19, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–02–160] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Branch of the Seventh Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Canaveral Barge Canal, Cape Canaveral, Brevard County, FL, in the **Federal Register** (68 FR 27504). We received two letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Christa McAuliffe Bridge, SR 3, across the Canaveral Barge Canal is a twin, double bascule leaf bridge with a vertical clearance of 21.6 feet at mean high water and a horizontal clearance of 90.3 feet. The current operating regulations, published in 33 CFR 117.273(a), provide for the bridge to open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and from 3:30 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the bridge need not open for the passage of vessels. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least three hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of public vessels of the United States, tugs and tows and vessels in distress. The local residents requested a change to the current operating schedule to ease the flow of vehicular traffic on and off of Cape Canaveral through their neighborhood. On May 22, 2002, a temporary final rule was published in the **Federal Register** (67 FR 35903) to facilitate repairs to the bridge. In pertinent part, for four months, from 8:15 a.m. to 3 p.m., Monday through Friday except Federal holidays, the draw opened on the hour and half hour for the passage of vessels. This temporary change to the bridge openings for a limited time during the day met the reasonable needs of navigation and improved the flow of vehicular traffic in the neighborhood while facilitating repairs to the bridge. In addition, the difference between the number of bridge openings under the temporary rule and the historical number of bridge openings under the existing, permanent rule is minimal. Accordingly, based on the results of the temporary rule and the minimal difference in bridge openings, the final rule will meet the reasonable needs of navigation on this waterway.

Discussion of Comments and Changes

We received two comments concerning this rule, one from the Florida Division of Historical Resources, which determined that this rule did not affect historical properties, and one from a concerned citizen, which stated that the rule would not relieve vehicular traffic congestion due to the dynamics of vehicular traffic routing problems in a nearby intersection. While the intersection in question may contribute to overall traffic difficulties, this rule will assist in easing traffic flow during peak vehicular hours of movement to and from Cape Canaveral.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The final rule only slightly modifies the current closure periods, from 6:15 a.m. to 7:45 a.m. and 3:30 p.m. to 5:15 p.m., to 6:15 a.m. to 8:15 a.m. and 3:10 p.m. to 5:59 p.m. The final rule also continues to provide for regular openings, from 6 a.m. to 10 p.m., twice an hour, which results in almost the same number of openings provided under the existing rule.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Coast Guard categorical exclusions include the promulgation of operating regulations for drawbridges by the Bridge Administration Program.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33

CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.273(a) is revised to read as follows:

§ 117.273 Canaveral Barge Canal.

(a) The draws of the Christa McAuliffe bridge, SR 3, mile 1.0, across the Canaveral Barge Canal need only open daily for vessel traffic on the hour and half-hour from 6 a.m. to 10 p.m.; except that from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

* * * * *

Dated: October 31, 2003.

Harvey E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 03–28814 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–033]

RIN 1625–AA00

Security Zone: Pacific Ocean, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security zone off the coast of Coronado and Imperial Beach in San Diego, California in support of naval military operations for the purposes of national security. This security zone is necessary to protect the vessels and crew involved in these military operations. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 a.m. (p.s.t.) on November 10, 2003, until 11:59 p.m. (p.s.t.) on November 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–033] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the vessels and crew involved in this operation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Due to complex planning and national security reasons, information regarding the precise location and date of the event necessitating promulgation of this security zone and other logistical details surrounding the event were not provided until a date fewer than 30 days prior to the event. Due to the sensitive nature of the operations involved, it was necessary for this information to be finalized at a later date.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent to U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures.

The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against naval vessels and personnel would have on the public interest, the Coast Guard is establishing a security zone off the coast of San Diego.

The security zone consists of the navigable waters of the Pacific Ocean off San Diego, California in the areas known locally as Coronado and Imperial Beach. The exact coordinates can be found in the regulatory text.

This rule is effective from 8 a.m. (p.s.t.) on November 10, 2003, until 11:59 p.m. (p.s.t.) on November 21, 2003.

Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

Discussion of Rule

The United States Navy will be conducting military operations on the navigable waters of the Pacific Ocean off the coast of San Diego, California. Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000) and in rem liability against

the offending vessel. Any person who violates this section using a dangerous weapon or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

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

Due to national security interests, the implementation of this security zone is necessary for the security of the Navy and its vessels and crews. The size of the zone is the minimum necessary to provide for the security of the vessels involved in the military operations. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the Naval vessels. Accordingly, full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zone will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic can pass safely around the security zone and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new § 165.T11–031 to read as follows:

§ 165.T11–031 Security Zone: Pacific Ocean, San Diego, CA.

(a) *Location.* The navigable waters encompassed by a line connecting the following points: starting from a point on shore at 32°38.88′ N, 117°09.02′ W, then west to point 32°38.88' N, 117°12.2′ W, then southwest to point 32°36.70′ N, 117°13.83′ W, then south to point 32°32.88′ N, 117°13.83′ W, then east along latitude 32°32.88′ N to shoreline.

(b) *Enforcement period.* This section will be enforced from 8 a.m. (P.s.t.) on November 10, 2003, until 11:59 p.m. (P.s.t.) on November 21, 2003. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into, transit through, loitering, or anchoring within this security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zone will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted via VHF–FM channel 16.

Dated: November 7, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–28810 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–16476, Notice 1]

RIN 2127–AI82

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the amendments we made in December 2001 to our May 2000 Advanced Air Bag Rule. Because of time constraints faced by vehicle manufacturers in certifying a portion of their fleet to the advanced air bag requirements, we bifurcated our response. This document addresses detailed seat and dummy positioning procedures. In particular, we are responding to those portions regarding seat positioning procedures when using the 5th percentile adult female test dummy in the barrier test and the low risk deployment test; when using the 3-year-old and 6-year-old test dummies in the low risk deployment test; the fore and aft seat location for rear facing child restraint systems (RFCRSs); and the seat track position for the low risk deployment test. This document responds to test dummy positioning procedure issues, specifically those addressing foot positioning of the 5th percentile adult female test dummy; positioning out-of-position test dummies; and positioning of test dummy hands. This document amends the definition of ''Plane B'' and ''Plane D'' as they relate to test dummy positioning, Point 1 under the low risk deployment tests, and addresses other reference points and definitions. This document also amends the list of child restraint systems required for certain compliance testing. A previous document has already dealt with the time sensitive issues and minor technical issues raised in the petitions for reconsideration.

DATES: *Effective date:* The amendments made in this rule are effective January 20, 2004.

Petitions: Petitions for reconsideration must be received by January 5, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

ADDRESSES: Submissions may be made [identified by DOT DMS Docket Number NHTSA–03–16476, Notice 1] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays

FOR FURTHER INFORMTION CONTACT: For non-legal issues, you may contact Louis Molino, Office of Crashworthiness Standards, at (202) 366–2264, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita or Rebecca MacPherson, Office of Chief Counsel, at (202) 366–2992, and fax them at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

On May 12, 2000, we published an interim final rule to require advanced air bags (65 FR 30680: Docket No. NHTSA 00–7013; Notice 1) (Advanced Air Bag Rule). The rule addressed the risk of serious air bag-induced injuries, particularly for small women and young children, and amended Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection,* to require that future air bags be designed to minimize such risk.

The issuance of the Advanced Air Bag Rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. The rule was also required by the Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998. TEA 21 required us to issue a rule amending FMVSS No. 208:

> to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

Eight petitions for reconsideration of the Advanced Air Bag Rule were submitted to the agency (see Docket No. NHTSA 00–7013). In addition, NHTSA received two requests for clarification within the time period for filing petitions and three comments that would have been considered petitions for reconsideration had they been timely filed.

Petitioners raised a large number of concerns about the various test procedures in their written submissions. To adequately address these issues, the agency held a technical workshop so that we could better understand the specific concerns and better determine if the test procedures needed refinement.[1]

All submissions were addressed in the agency response published in the **Federal Register** on December 18, 2001 and several changes were made to the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01–11110) (December 2001 final rule). These changes included a number of refinements to the test dummy positioning procedures for the 5th percentile adult female, 12-month-old, 3-year-old, and 6-year-old test dummies used in the barrier tests and the low risk deployment tests. The December 2001 final rule also amended the list of child restraint systems in Appendix A for use in certain compliance tests. The list was amended to remove those restraints no longer in production and replacement restraints were added.

II. Petitions for Reconsideration

We have received eight petitions for reconsideration of the December 2001 final rule. These petitions were filed by the Alliance of Automobile Manufacturers (Alliance), Volkswagen, Honda, Porsche, DaimlerChrysler, and Toyota. Additionally, BMW, and Autoliv (an air bag manufacturer) filed petitions shortly after the deadline for filing petitions for reconsideration had passed. Under agency regulation (49 CFR 553.35(a)), late filed petitions for reconsideration are treated as petitions for rulemaking. However, BMW and Autoliv's petitions did not raise any issues that had not also been addressed by timely petitions. Thus as a practical matter, the issues in BMW and Autoliv's petitions will be considered as part of the agency response to the timely-filed petitions for reconsideration. TRW submitted a request for clarification on one of the issues raised by other petitioners, namely the positioning of the 3-year-old and 6-year-old dummies for the ''head on the instrument panel test.'' Ford submitted a request for interpretation (RFI) concerning dummy positioning. To the extent that Ford's RFI overlaps timely petitions, it will be addressed in this document. Several supplemental docket submissions were also made after the deadline. These documents provided additional information on issues previously raised in the petitions for reconsideration. In addition, Evenflo, a child restraint manufacturer, has petitioned the agency to remove certain Evenflo restraints from Appendix A and replace them with other models. Some of the issues raised by that petition are discussed in today's rule.

In this document, we are responding to those portions of the petitions regarding detailed seat and test dummy positioning procedures, positioning reference planes, low risk deployment and unbelted barrier test speeds, inclusion of CRSs in FMVSS No. 208 Appendix A for suppression testing, and the use of neck and chest injury criteria in in-position tests. The remaining issues raised by petitioners have been addressed in a previous notice. (68 FR 504; January 6, 2003.)

III. Summary of Response to Petitions

As previously noted, this document addresses the remaining issues raised in the petitions for reconsideration: Issues impacting seat positioning procedures and dummy positioning procedures, other test procedure clarifications, issues associated with the child restraints specified in Appendix A of FMVSS No. 208, and corrections to inadvertent changes that were made to the regulatory text in the December 2001 final rule.

[1] The workshop was held on December 6, 2000 at NHTSA's Vehicle Research and Test Center in East Liberty, Ohio. Representatives of 18 vehicle manufacturers and 13 seat, sensor, and dummy manufacturers attended the workshop. Five different vehicles were used as test vehicles. Some of the five had been provided by manufacturers because they were experiencing particular problems with the existing test procedures in these vehicles.

We are amending several seat positioning and dummy positioning test procedures for the purpose of clarification and to accommodate design diversity. Based on petitioners requests, the dummy positioning procedures for the barrier test and the low risk deployment test with the 5th percentile adult female test dummy are being amended for clarity. The positions will be maintained as initially intended, but the regulatory text is modified to clarify the descriptions of seat adjustment controls and to add a definition of ''seat cushion reference.'' To clarify the seat set-up for the infant low risk deployment test using RFCRSs, we are amending the regulatory text to specify that the test is to be performed with the seat in the full forward position only. To further clarify the infant low risk deployment test seat set-up and eliminate any inadvertent confusion created by the December 2001 final rule, we are also amending the seating positioning procedure for the 64 km/h (40 mph) indicant test to specify that it be performed at the full forward, middle, and full rearward seat positions. We are denying petitioners' request that the passenger low risk deployment indicant test only be performed with the seat in the mid-track position.

As a result of issues raised by petitioners and to address the use of asymmetrical seats, the dummy positioning procedures for the 5th percentile adult female test dummy in the barrier tests and the procedures for advanced air bag tests with a CRS now reference the seating reference point (SgRP) when determining the longitudinal centerline of a bucket seat cushion.

In this document, we also address several issues that deal with dummy positioning procedures. We are establishing a prioritized list of three foot positioning adjustments to clear undesirable contact by the left foot of the 5th percentile adult female test dummy in the barrier tests. In response to a request for guidance in the instances where the heel of the right foot cannot initially contact the vehicle floor, the agency is amending the compliance test procedure to allow for the extension of the lower leg towards the accelerator. The procedure for positioning the test dummy in the driver's seat for the low risk deployment test is amended to limit adjustment positions so there is no contact between the dummy legs and the steering wheel. As a result of issues raised by petitioners, the positioning procedures for the 3-year-old and 6-year-old dummies in low risk deployment testing are amended to indicate that as the dummy is moved forward its height is to be maintained from the point the dummy loses contact with the seat cushion. The low risk deployment testing positioning procedures are also amended to reflect that the femur angle of the test dummy with respect to the horizontal plane must be maintained.

In response to petitions to amend the reference point for positioning out-of-position dummies, we are establishing an objective method to transfer a point onto the air bag cover, relying on the volumetric center of the folded air bag and the volumetric center of the static inflated air bag.

This document also deals with issues associated with child restraints specified in Appendix A of FMVSS No. 208, and sets forth the methodology that the agency will utilize in making changes to the appendix in the future. Specifically, the appendix is amended to remove CRSs that are no longer in production and add CRSs that have the LATCH system. Several minor, non-substantive changes are also made to the final rule.

While the effective date of the amendments adopted today is sixty days after publication, manufacturers may choose to comply with the new requirements prior to such time. If asked, manufacturers will be required to tell NHTSA which set of requirements it relied on in certifying a particular vehicle.

IV. Seat Positioning Procedures

A. Barrier Test (5th Percentile Adult Female Test Dummy), Low Risk Deployment Test (5th Percentile Adult Female, 3-Year-Old, and 6-Year-Old Test Dummies), and Other Test Procedures

Based on requests for clarification in several petitions for reconsideration, we are amending the regulatory language to clarify the seat positioning procedures for the barrier test and low risk deployment testing procedures. In their petitions for reconsideration, Mitsubishi and Autoliv requested clarification of the requirements for seat cushion height and angle as they relate to the mid-height determination. The December 2001 final rule amended the seating procedure for the 5th percentile adult female test dummy in the barrier test. The amendments addressed the potential problem of early dummy contact with the steering wheel, steering column, or knee bolster when the dummy is in the full forward position.

Autoliv stated that there is sometimes a conflict between achieving the true midpoint height and maintaining the seat cushion reference angle when following the seating procedure. With respect to S16.2.10.3.2, Autoliv stated:

> The problem arises if [the correct mid-position] results in a discrepancy between the seat cushion angle and the ''seat cushion reference angle''—where do you hold the height as you adjust the cushion angle? It would seem logical that the midpoint height should be held at the h-point, but this is not the most convenient reference to use, as it is not an actual part of the seat. (Docket No. NHTSA 2001–11110–7.)

Mitsubishi questioned whether the revised S16.2.10.3.3 takes into account the type of seat cushion capable of being adjusted up and down independently of the seat back, or if S16.2.10.3.3 applies only to up and down height adjustment mechanisms as they relate to the whole seat.

Ford, in its RFI, asked a related question about the position of the seat in the low risk deployment test with the 5th percentile adult female test dummy (S26.2.3). Ford asked:

> Is a seat with separate controls/mechanism for adjusting the front and rear seat height an example of an ''independent seat cushion angle adjustment mechanism''? If it is, then would setting front and rear heights independently to their respective mid height positions represent the proper seat cushion angle setting?

Based on these petitions, there appears to be some confusion in how to position the seat, both in terms of height and seat cushion angle, as well as the interaction between these two requirements. Therefore, the agency is amending the regulatory language to clarify the positioning procedures in S16.2 and S26.2 of FMVSS No. 208. The position will be maintained as initially intended, but is now clarified by the modification of the descriptions of seat adjustment controls and the addition of a definition of ''seat cushion reference.''

The regulatory text frequently uses the term ''controls which move the seat fore and aft,'' and in traditional seat designs this would refer to the seat track adjustment. In fully powered seats there is typically an analogous control. However, both the manual and powered adjustments often also cause the seat height to change slightly, due to the pan/seat track angle from horizontal. As a result there may not be a seat adjustment mechanism that solely moves the seat fore and aft. Therefore, in S16.2 and S26.2, we are amending ''seat adjustment'' to include the phrase, ''control which *primarily* moves the seat fore and aft.'' (Emphasis added.) For consistency, similar amendments are being made to S16.3 and S26.3.

S20, S22, and S24, which define test procedures for the suppression and low risk deployment testing for 12-month-

old, 3-year-old, and 6-year-old dummies and activation testing using the 5th percentile adult female test dummy, respectively, utilize the seat cushion reference angle generated in S16.2.10.3.1. Although petitioners did not refer to these sections, we believe that consistency between S16 and S26 and S20, S22, and S24 is important. As such, these sections are being similarly amended.

For additional clarification, we are adding a definition of ''seat cushion reference point'' (SCRP) as a new section, S16.3.1.12. The SCRP is a point on the side of the seat cushion. This definition, along with seat cushion angle, clearly specifies the desired seat position. The mid-height positioning previously specified in S20, S22, and S24 is maintained, but now defined in terms of the SCRP.

It is also important to note that if the regulatory text requires ''seat adjustment,'' this is a change in position of the entire seat including the seat cushion and back. If ''seat cushion'' or ''seat back'' is specified, it indicates adjustment of these components independent of the rest of the seat.

We recognize that the amendments made to the barrier tests that use the 5th percentile adult female test dummy may be appropriate for incorporation into the barrier tests that use the 50th percentile adult male test dummy. However, we also recognize the time sensitive nature of the petitions for reconsideration and the need to address the issues raised in those petitions. Therefore, at this time we are not incorporating such amendments into the barrier tests that use the 50th percentile adult male dummy, but may consider such changes at a later date.

B. Rear Facing Child Restraint System (RFCRS) (Low Risk Deployment and Indicant Test Procedures)

In the December 2001 final rule, the agency specified seat track, seat height, head restraint, and seat back angle in the positioning procedures for each of the low risk deployment tests, including the infants in RFCRS test option. DaimlerChrysler subsequently petitioned the agency, requesting clarification as to whether the infants in RFCRS test option, under the requirements of S19.3 of FMVSSS No. 208, is performed with the seat in the full forward position only, or in the full forward, middle, and full rearward positions.

DaimlerChrysler claimed that there is an inconsistency in the seating position requirements of the General Provisions of S20.1.2 and the low risk deployment test procedure specified in S20.4.1. Section 20.1.2 states that certification is required at full forward, middle and full rearward positions. S20.4.1, which is under the low risk deployment test procedure, simply specifies a full forward position. DaimlerChrysler recommended that if it is the agency's desire to perform the low risk deployment test in the full forward position, the agency should place the phrase ''unless otherwise specified'' into S20.1.1. This would be consistent with the regulatory text covering the 3-year-old low risk deployment test in S22.1.2.

We do not believe there is any inconsistency between the general seating positioning procedures and the low risk deployment tests. Although S20.1.2 does not make the qualifying statement, ''unless otherwise specified,'' S20.1.9, *Seat set-up,* does. However, in order to alleviate confusion, we are amending S20.1.2 to include the phrase ''unless otherwise specified.'' The text in S20.1.2 is now consistent with S22.1.2 and S24.1.2, which specify seat track positions in the General Provisions for the requirements using the 3-year-old and 6-year-old, respectively.

In light of the petitioner's confusion, the agency is also amending S20.4.9, which specifies the required seating position for the 64 km/h (40 mph) indicant test. It may have been unclear from the text in the December 2001 final rule that the indicant test is to be performed in the rearward facing position at the full forward, middle, and full rearward seat positions. In the December 2001 final rule, the position reference in S20.4.9 was changed from S20.2.1 to S20.4. This change served to emphasize that only the rearward facing position of the CRS is necessary for the 64 km/hr (40 mph) indicant test. However, this had the inadvertent effect of limiting the indicant test to only the full forward position of the seat. This was not our intent. Therefore, S20.4.9 is amended to reference S20.4 for the dummy positioning and S20.2.1 for the seat track positions; full forward, middle, and full rearward.

C. Low Risk Deployment Test Procedure—Seat Track Position

We are denying the petition to amend the seat track position requirements for the low risk deployment 26 km/h (16 mph) indicant test under S22.5. The Advanced Air Bag Rule specified the use of the 50th percentile adult male test dummy in the mid-track position. The December 2001 final rule amended the passenger side requirement to a 5th percentile adult female test dummy seated in any track position. The agency stated that it did not want ''manufacturer's to rely on seat track based systems to assure a low risk deployment at speeds up to 26 km/h (16 mph).'' 66 FR 65376, 65393.

The Alliance again petitioned the agency to amend S22.5 so that for systems that do not rely on seat-track-based sensors to determine the air bag deployment stage, the low risk deployment 26 km/h (16 mph) indicant test would only be performed at the mid-track position. The Alliance stated that for such systems, testing in all positions was superfluous.

There is not sufficient reason to grant Alliance's request. The test is done simply to determine the stage of air bag deployment and is not required to have an instrumented dummy. If a manufacturer's system is not affected by seat track position, then the seat position will not influence the air bag deployment stage(s), and only a single test would be needed.

V. Test Dummy Positioning Procedures

A. Left Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

We are clarifying the guidance for pedal interference with the dummy's left foot by establishing a prioritized list of avoidance positioning and we are extending this guidance to avoiding undesirable contact with the foot rest. The December 2001 final rule amended the driver's left foot positioning requirement for the 5th percentile adult female test dummy under FMVSS No. 208, by stipulating that the foot must not be placed on the foot rest or wheel-well projection. Mitsubishi, Honda, and Toyota have further petitioned the agency regarding procedures for positioning the left foot of the 5th percentile adult female test dummy in the barrier test. Mitsubishi, Toyota, and Honda recommended revisions to the placement of the left foot.

Mitsubishi and Honda petitioned the agency to allow the left foot of the dummy to be placed on the foot rest in the frontal barrier test, just as the 50th percentile adult male dummy's foot is placed in the frontal barrier test. Toyota suggested a revision to S16.3.2.2.3 to avoid a conflict between the knee and foot positions.

Honda stated that if, because of the variability of the knee positioning, a small part of the left foot sits on the foot rest there will be an increase in chest and femur loads due to ankle rotation. Honda additionally stated that if positioning resulted in the left foot resting on the foot rest, ''it is not natural or reasonable that the foot should be moved rearward so that the heel does not contact the foot rest.''

Mitsubishi requested guidance on what should be done to avoid foot rest contact. They stated that the dummy could be rotated about the center of the waist area to get the foot off of the foot rest. Mitsubishi also requested guidance on what to do if the foot were to get caught behind the clutch or brake pedal or between the pedal and the foot rest.

Toyota stated that placing the left knee ''the same distance from the midsagittal plane of the dummy as the right knee,'' as specified by S16.3.2.1.8, would naturally position the left foot on the foot rest. However, according to S16.3.2.2.3, the left foot is not to be placed on the foot rest. Toyota stated that priority should be given to positioning the dummy so that the left foot is not on the ''wheel-well projection or foot rest.''

We have determined that further guidance is required as to the necessary action to be taken if foot rest/wheel well contact occurs. The regulatory text, in S16.3.2.2.5, does give guidance on what to do if pedal interference occurs. We are clarifying the guidance on pedal interference and extending it to foot rest contact.

Currently, to avoid pedal contact, the foot may be rotated and, if necessary, the leg may be rotated at the hip. Although rotation of the foot and hip may be effective at clearing contact with the pedals, in vehicles with a small space between the pedal and foot rest, this action may lead to contact with the foot rest. However, an effective means of clearing both pedal and foot rest/wheel well contact may be to fit the foot under the pedal. To achieve this, the ankle joint may need to be extended such that the toes are closer to the toe pan.

We are establishing a prioritized list of three foot positioning adjustments to clear the undesirable contact. In order, starting with highest priority, the first is foot rotation (adduction/abduction), the second is ankle joint extension (foot plantar flexion), and the third is leg rotation at the hip. Each subsequent adjustment allows all previous adjustments.

For some vehicles there may be no position which totally avoids pedal and foot rest contact. For these situations, pedal avoidance has priority. This may, in some small percentage of vehicles, force the foot to rest partially on the foot rest. Although some petitioners wished to avoid such positioning, the only other alternative would be to force foot positioning on the entire foot rest. However, we believe that this is a more unnatural position than partial foot rest contact.

B. Right Foot—5th Percentile Adult Female Test Dummy (Barrier Test)

Autoliv petitioned the agency to provide guidance on instances where the driver's right foot cannot reach the floor when positioned according to S16.3.2.2. Autoliv stated that one solution would be to lower the seat, but that this may not work for all vehicles. The Ford RFI also indicated that there are some Ford models where the driver's right heel cannot touch the floor while maintaining the specified contact with the accelerator.

Autoliv's request for guidance has merit; however, the agency does not believe that lowering the seat is an acceptable solution for any vehicle. To address the situation where the heel cannot initially contact the vehicle floor, the agency is amending the compliance test procedure to allow for the extension of the lower leg towards the accelerator pedal rather than leaving the leg hanging vertically. For the situation where the heel can initially contact the floor, but cannot maintain contact and reach the pedal, lower leg extension with the heel leaving the floor is also the preferred position. If the final position results in the heel being off of the floor, a spacer block is to be used to support the foot.

C. Chin-on-Steering Wheel Test Procedure

The Advanced Air Bag Rule adopted a low risk deployment test to address the risk air bags pose to out-of-position drivers, particularly those of small stature. The test is performed using two ''worst case'' positions: placing the dummy's chin on the module and placing the dummy's chin on the steering wheel. The December 2001 final rule amended S26.3.7 of FMVSS No. 208 to specify a point on the dummy's chin, which is to rest on the upper most point of the steering wheel, to adequately ensure that the dummy's chin would not catch on the steering wheel.

Volkswagen stated that the December 2001 amendments to S26.3.7 introduced additional steering wheel adjustment that could significantly affect the stringency of the test because of the lower position. They believed that there was no justification presented for the change and petitioned to amend the test as prescribed under the Advanced Air Bag Rule.

We believe the change in steering wheel position was justified. Toyota's petition for reconsideration of the Advance Air Bag Rule asked that NHTSA provide a more detailed test procedure to avoid the possibility of the dummy chin hooking on the steering rim. As part of the response, we provided a well-defined contact point on the chin. Another part of the response was to allow for the repositioning of the steering wheel, if necessary, to get the chin and steering wheel to the proper relative position. Volkswagen stated that this change could result in more stringent requirements, yet as the agency stated in the December 2001 preamble, ''(t)he purpose of the chin-on-rim test is to determine the risk of injury when a person's chest is directly in the path of the deploying air bag.'' (66 FR 65376, 65396.) The goal has always been to test in the worst-case configuration.

Autoliv stated that they were concerned that lowering the steering wheel to position the rim for contact with the dummy chin may pin the occupant in place, affecting the dummy injury readings. Autoliv petitioned the agency, asking for clarification on the amount of ''effort'' that should be exerted in positioning the steering wheel if contact occurs with the dummy legs. Ford raised similar concerns in their RFI. Autoliv also requested clarification on whether the agency's intent was to allow angular adjustment of the steering wheel, and, if adjustment other than angular adjustment of the steering wheel is allowed, what is the order of adjustment.

In response to the question raised by Autoliv, S26.3.7 is amended. The regulatory text will now limit adjustment to positions that would not cause contact between the dummy legs and steering wheel. This is consistent with the dummy positioning in the rigid barrier test, which uses the 5th percentile adult female test dummy (S16.3.2.1.8).

Conversely, clarification is not necessary in the regulatory text related to the allowable types of steering wheel adjustment. S26.3.2 indicates that the geometric center of the entire range of steering wheel adjustments is to be found. Therefore, when positioning the steering wheel to comply with S26.3.7, the tester is not limited to angular adjustment. Further, it is not necessary to specify the order of adjustment. Although it may be technically correct that the point of contact on the steering wheel may not be unique, *i.e.*, there may be a line of potential contact points, we believe the variation in the steering wheel orientation will be quite small.

Mitsubishi stated that the preamble to the December 2001 final rule appears to state that the initial thorax instrument cavity rear face angle should take precedence during dummy position, but further on in the preamble it appears

that keeping the dummy parallel to the steering wheel angle should take precedence. Mitsubishi requested clarification on what should take precedence during dummy positioning.

With respect to Mitsubishi's comment, positioning the thorax instrument cavity rear face 6 degrees forward of the steering wheel angle is the methodology prescribed to ensure that the dummy torso is parallel to the steering wheel.

D. Head-on-Instrument Panel Test Procedure

1. Test Dummy Height

S22.4.3.4 and S24.4.3.4 of FMVSS No. 208 were modified in the December 2001 final rule so that, as a dummy is pushed forward, the height of the dummy must be maintained. (66 FR 65394.) Autoliv and BMW commented that requiring the dummy's height to be maintained as it is pushed forward did not make sense until the dummy leaves the seat. Clearly, to the extent that a seat is not a horizontal flat surface, the dummy height will change until it loses contact with the seat cushion. The preamble to the December 2001 final rule was silent on the reason for this restriction. Therefore, S22.4.3.4 and S24.4.3.4 are amended to indicate that dummy height is to be maintained from the point the dummy loses contact with the seat cushion.

2. Torso Positioning

S22.4.3.4 and S24.4.3.4 were also modified in the December 2001 final rule by adding the restriction that, as the dummy is pushed forward the angle of the thigh with respect to the horizontal had to be maintained. (66 FR 65376, 65394.) This was in response to a petition for reconsideration from Honda, in which Honda stated that the leg position could affect the dummy measurements. Also in response to the Advanced Air Bag Rule, Volkswagen and DaimlerChrysler recommended that the dummy femurs be kept parallel to the floor pan.

The preamble to the December 2001 final rule contained statements that seemed to contradict each other. First, the agency stated that we were rejecting the recommendations of Volkswagen and DaimlerChrysler. (66 FR 65376, 65395.) Then we stated that head contact with the IP is critical, even if the legs must be rotated out of the horizontal plane.[2] The preamble then stated that dummy torso rotation could result in a relatively severe leg angle, as measured against the pelvis, but ''we believe it is more critical that the head contact the (IP) than that [the leg] angle remain constant.'' (66 FR 65376, 65395.) The first statement implies that which if the appropriate head position requires the femur to rotate out-of-position with respect to the horizontal plane, this is acceptable. The second statement implies that if the torso to femur angle must become severe in order to simultaneously provide the appropriate head position while maintaining leg position with respect to the horizontal plane, this is acceptable. The December 2001 final rule amended the regulatory text to reflect the second statement in that it required the femur angle with respect to the horizontal plane to be maintained.

In their petitions for reconsideration of the December 2001 final rule, Toyota and BMW commented that requiring the thigh position to be maintained under the positioning procedures of S22.4.3.5 and S24.4.3.5 was not possible because of the molded hip joint of the dummies. We have determined that in some vehicles, as indicated by the Toyota and BMW petitions, the required angle between the torso and the femurs is too small for the dummy to physically accommodate because of insufficient articulation. Therefore, we are amending the regulation so that the femurs may be released from their horizontal constraints to achieve the appropriate head position, if a specific condition is met. The orientation of the legs is to be maintained with respect to the horizontal until a force on the dummy torso of 222 N (50 lb) is reached. At that point the legs are allowed to rotate about their point of contact with the seat. If the legs have already lost seat contact or lose seat contact during the process of leg rotation, the entire dummy is constrained to rotate about its H-point. The 222 N (50 lb) force specification was selected because it is less than the 311 N (70 lb) force specified in S22.4.3.6 and S24.4.3.6 that can be used to keep the dummy in place.

E. Hand Positioning

Under S22.4.2.2.3, S22.4.3.2.3, S24.4.3.2(c), S26.2.4.5, and S26.3.4.5, test dummies are to be positioned with their hands ''in contact with the thighs.'' Autoliv petitioned for the positioning text to require hands be placed ''beside the thighs.'' Autoliv stated that they do not believe it is possible to place the hands in contact with the thighs without using tape or some other method.

In conducting compliance tests, the agency has not experienced the problem described by Autoliv and no other comments were made related to this issue. The problem could be an anomaly in the Autoliv dummy related to wrist joint interference with the dummy skin. As such, we are denying Autoliv's petition with respect to amending the language on dummy hand positioning.

VI. Planes, Points, and Definitions

A. Plane B

Based on issues raised by a petitioner, we are amending the dummy seating positioning procedures for the 5th percentile adult female dummy and Plane B for child safety tests to reference the SgRP. As finalized in the December 2001 final rule, S16.3.1.10 (general provision for the 5th percentile adult female dummy seating positioning procedures) and S20.1.10 (general provision of the test procedure for the requirements to provide protection for infants in rear facing and convertible child restraints and car beds) of FMVSS No. 208 used the seat cushion centerline as a reference (Plane B). The December 2001 final rule defined the longitudinal centerline as being at the center of the widest part of the seat cushion. In their petition, Mitsubishi stated that for asymmetric seat cushions the centerline will not pass through the seat back centerline, and that the difference can be significant. They further stated:

> (T)he offset dummy position created by positioning the test dummy based on the centerline of an asymmetric seat cushion can cause the test dummy to shift as the vehicle is towed toward the barrier, which could adversely affect test repeatability. (Docket No. NHTSA 2001–11110–2.)

Mitsubishi recommended that for bucket seats the seat back centerline should be used as the reference, but the diagrams they submitted used the SgRP as the reference point. The Ford RFI also requested that S16.3.1.10, under the general provisions for the 5th percentile adult female test dummy seating positioning procedures, be amended to reference the SgRP for bucket seats.

The Advanced Air Bag Rule used ''the center of the seat cushion'' to position the 5th percentile female test dummy in the rigid barrier test and Plane B in the child protection tests. In the Mitsubishi petition for reconsideration of the Advanced Air Bag Rule, it asked for clarification on dummy position relative to the center of the seat cushion. Also in response to the Advanced Air Bag Rule, Toyota petitioned for Plane B to reference the seat's H-point. In the agency's December 2001 response to clarify the reference point, we defined

[2] Although the preamble made reference to the horizontal plane (66 FR 65376, 65395), the regulatory text did not require that the thighs be in this plane. Rather, it was required that the thighs maintain their position with respect to the horizontal plane (66 FR 65376, 65416 and 65418).

the center of the seat as being determined at the widest part of the seat cushion. We stated that we rejected Toyota's petition because the difference in lateral position between the H-point and the center of the seat, as we were defining it, would not be significant.

We believe that the current Mitsubishi petition raises a valid issue, and are amending the definition of the longitudinal centerline of a bucket seat cushion, which is used in the dummy seating positioning procedures (sometimes by reference to Plane B) for the 5th percentile adult female dummy and the positioning procedures for advanced air bag tests with a CRS. The amended definition now references the seating reference point (SgRP). There are current seat designs that lack symmetry, both in terms of seat cushion and seat back. This may become even more common with the proliferation of seat-mounted side air bags and seats with fully integrated belts. The argument that the difference between the middle of the widest part of the seat and the center of the designated seating position (H-point or SgRP) is not significant may not be valid with some current and future seat designs.

It is the agency's intent to have the 5th percentile adult female test dummy and the CRS placed in a normal lateral position. Therefore, S16.3.1.10 under the dummy seating positioning procedures for the 5th percentile adult female test dummy and S20.1.10 under the test procedures for the child safety tests are amended, for bucket seats, to reference the SgRP, which the manufacturers will provide to the agency.

We recognize that the amendments made to the barrier test that uses the 5th percentile adult female test dummy may be appropriate for incorporation into the barrier tests that use the 50th percentile adult male test dummy. However, as stated above, we also recognize the time sensitive nature of the petitions for reconsideration and the need to address the issues raised in those petitions. Therefore, we are not at this time incorporating such amendments into the barrier test that uses the 50th percentile adult male dummy, but may consider such changes at a later date.

B. Plane D and Plane C

''Plane D'' and ''Plane C,'' which are used to position test dummies in the out-of-position test procedures, are redefined to reference an axis based on the volumetric center of the folded and the volumetric center of the static inflated air bag. The December 2001 final rule had defined ''Plane D'' and ''Plane C'' by referencing the ''geometric center of the opening through which the air bag deploys. ''The agency stated in the preamble of the December 2001 final rule that ''[t]his would not necessarily be the same as the geometric center of the air bag cover. Rather, it would be the geometric center of whatever frame or casing is used to allow the air bag to deploy in a controlled manner.''

Toyota and Volkswagen petitioned the agency as a result of a lack of clarity with the regulatory text. The Ford RFI also asked for clarification on the target point as contained in S26.2 (driver out-of-position test Position 1—Chin on Module). Toyota asked if the geometric center is to be measured for the tear seam of the air bag door or for the opening through which the air bag deploys. Ford asked if the geometric center should be ''determined in three-dimensional space,'' or ''from a projection of the opening to a single plane parallel to the steering wheel rim or to the airbag reaction surface.'' Ford continued:

> If the cover of the airbag is ''adaptive'' to differing conditions; *e.g.* varying deployment path dependent upon resistance to bag opening, which ''opening'' should be used: the ''opening'' common to a normal deployment or the anticipated ''alternative opening'' for low risk deployment conditions?

Both Toyota and Volkswagen recommended amended language to clarify the reference point. Toyota suggested that the phrase of interest be changed to the ''point where the air bag door intersects the horizontal line traveling through the center point of the inflator.'' Volkswagen stated that in order to make the identification of the target point more objective in the 3-year-old and 6-year-old dummy tests, the regulatory text describing the target point should be amended to read the ''point determined by the perpendicular projection onto the instrument panel of the geometric center of the opening in the inflator module through which the air bag deploys into the occupant compartment.''

We agree that the regulatory text adopted in the December 2001 final rule is not sufficiently objective, and are establishing an objective method to transfer a point onto the air bag cover. The agency considered several methods for identifying this point and is adopting a method that relies on the volumetric center of the folded air bag and the volumetric center of the static inflated air bag (Static Inflated Air Bag Method).

One method considered was the use of high-speed film or video of the deploying bag in a static environment and without test dummies present to determine an axis of air bag deployment. However, in some cases the bag may not deploy in a uniform or repeatable manner, resulting in an unacceptable level of variability in the target point. Additionally, we have observed deployments where the cover deflects the bag and causes it to initially squeeze out along an axis away from the occupant towards the vehicle floor pan. This would result in a very low target point.

In developing a reference, our initial assumption was that the target point should be located somewhere on the air bag cover surface because the test dummy would be in a position to either be struck by the deploying air bag cover or by the air bag pushing through its cover into the passenger compartment. A target line could be defined as the intersection of a vehicle's vertical longitudinal plane, which bisects the air bag laterally, and the portion of the air bag cover surface that is displaced during air bag deployment. The target point would then be the mid-point of the target line. While this may be a relatively simple determination for a rigid door-type cover, it would be difficult for a flexible flap-type configuration because the portion of the cover displaced during deployment is hard to define. Also, the mid-point of the intersection of the air-bag cover with the vehicle longitudinal plane may have no relationship to the path the air bag takes when deploying.

Another method considered for defining the target point was to determine the unobstructed deployment path of the air bag into the passenger compartment (Clear Deployment Path Method). Toyota's recommendation for revision to the target point location involved the intersection of an imaginary axis or ''axis of deployment,'' with the outer surface of the air bag cover. Toyota recommended that the axis of deployment be defined by the centerline of the air bag inflator. This does not work well if the inflator is remotely located with respect to the air bag.

We have determined that a technique similar to the Clear Deployment Path Method is best for determining the target point. The technique adopted in this document, the Static Inflated Air Bag Method, is similar to the Clear Path Deployment Path Method in that the reference axis passes through the volumetric center of the folded air bag, but differs by also using the volumetric center of the static inflated air bag. Determination of the direction of the deployment axis is done by blocking the air bag vents and inflating the air bag. For air bags that vent through the bag

material, it may be necessary to seal the material to reduce the venting. The volumetric center of the static fully inflated air bag is the second point that the deployment axis passes through.

The intersection of this reference axis and the surface of the dash board or steering wheel hub is the point used to line-up the dummy for the low risk deployment tests. When marking a target point at this intersection, we will allow a tolerance of ±6 mm (±0.2 in). A reference point on the dummy is aligned with vertical and horizontal planes that pass through the previously defined dash board or steering wheel hub target point. We will allow the reference planes a tolerance of ±10 mm (±0.4 in) about the target point. This is in recognition that the target point placement on the dash board or steering wheel hub will have inherent variability as will the placement of the dummy reference point on the target.

Key to this method is that the air bag must be inflated with sufficient pressure that no additional pressure alters the location of the center of volume. In addition, the inflated air bag must be stationary. Thus, it may be necessary to dampen any inherent oscillation. In reality, the agency anticipates that manufacturers will provide the target point based on their computer based drawings of the air bag system and surrounding structure.

The Static Inflated Air Bag Method provides a more objective procedure and more clearly defines the previous intent of the agency when it specified the ''opening through which the air bag deploys.'' Furthermore, the Static Inflated Air Bag Method does not have the major disadvantages of the other methods discussed.

The agency will monitor the deployment path of air bags using high-speed cinematography during compliance and research test programs to confirm that our method continues to adequately represent the trajectory of the air bag itself.

C. Point 1 (Low Risk Deployment Test)

The December 2001 final rule redefined the location of ''Point 1'' to place it in a location relative to the upper edge of the chest jacket rather than the center of the chest/rib plate. (''Point 1'' is a point on the child dummy's chest used for positioning the dummy in the low risk deployment tests under S22.4 and S24.4.) Toyota stated that the new location of ''Point 1'' on the flexible jackets of the 3-year-old and 6-year-old dummies will result in variability. Further, they petitioned that because this change was made without sufficient notice, the regulatory text should revert back to that specified in the Advanced Air Bag final rule.

In the preamble to the December 2001 final rule we decided against measuring ''Point 1'' relative to fixed hardware because we determined that degree of specificity is not required, and also there is very little exposed fixed hardware from which to reference. While the chest jacket moves about the dummy's ribcage the upper edge of the chest jacket remains in largely the same location, making it a preferable point of reference. (66 FR 65376, 65395.) Furthermore, ''Point 1'' was defined in the Advanced Air Bag Rule using the chest/rib plate, but was redefined to address concerns raised by manufacturers' during the December 2000 technical workshop. Based on the above, we are denying Toyota's petition to amend the definition of ''Point 1.''

D. ''Air Bag System''

DaimlerChrysler requested clarification of two issues pertaining to the phrase ''deploy the right front outboard frontal air bag system,'' as it appears in the test procedures for the low risk deployment tests (S20.4.9, S22.4.4 and S24.4.4). First, DaimlerChrysler asked if it is the agency's intent to have, in addition to the air bag, other pyrotechnic devices such as seat belt pretensioners, inflatable seat belts, inflatable knee bolsters, etc. also deploy. Second, they point out that if the reference to ''right'' air bags is intended to signify passenger-side air bags, this would not be appropriate for right hand drive vehicles.

While neither ''air bag [system]'' or ''inflatable restraint [system]'' is defined in FMVSS No. 208 or any other place in 49 CFR Part 571, the intent of the term ''air bag'' is to describe the components that make up the passenger-side dash-mounted and driver-side steering wheel hub-mounted, inflatable restraints used for occupant protection in a frontal impact. This does not refer to any other pyrotechnic system such as a belt pretensioner or inflatable knee bolster. We are not aware of other pyrotechnic devices contemplated for vehicles in frontal impacts, such as inflatable belts or inflatable seat components intended to reduce occupant submarining, but such devices would not be included in the term ''air bag.''

The agency has no data on the effect deploying devices other than the frontal air bag will have on the Advanced Air Bag Rule low risk deployment test procedure. Nor do we have any data on the performance of any of these other pyrotechnic devices for out-of-position occupants in the field. We are concerned that inflatable knee bolsters could negatively impact the repeatability of the low risk deployment tests, even though they would inflate in a real crash. Only the infant low risk deployment test is conducted with the seat belt fastened. Accordingly, any inflatable restraints incorporated into the seat belt should not impact the test. In order to maximize repeatability, we have decided that only the frontal air bag should be deployed in the low risk deployment tests. More specifically, only the dash or steering wheel mounted air bag should be deployed in these tests. We do not believe that the regulatory text should be amended to specify this because there may be a future frontal air bag mounting location other than the dash or steering wheel.

The agency also notes that for the suppression option, only the frontal air bag (dash or steering wheel mounted) should be suppressed. Again, we have no data to determine if other pyrotechnic devices should be suppressed in the suppression compliance option. These other devices should be suppressed at the option of the manufacturer, who should be in a position to determine the relative merits of suppression or deployment.

The DaimlerChrysler petition also indicated a concern with the reference to the ''right front outboard frontal air bag'' in S20.4.9, 22.4.4, and 24.4.4. The more appropriate term and the term used elsewhere is ''passenger air bag.'' Accordingly, we have replaced ''right front outboard'' with ''front outboard passenger'' in these sections. For consistency the regulatory text has also been amended to replace the term ''left front outboard frontal air bag'' with ''driver frontal air bag'' in S26.4.

VII. Miscellaneous Issues

A. Separation in Test Speed Between the Low Risk Deployment Indicant and the Unbelted Barrier Test

DaimlerChrysler petitioned the agency to amend FMVSS No. 208 such that a 14 km/h (9 mph) separation exists between the low risk deployment indicant test (S22.5) and the Unbelted Barrier Test (S5.1.2(b) and S16.1(b)). The petition is denied. DaimlerChrysler had previously requested similar amendments in comments to the Supplementary Notice of Proposed Rulemaking (SNPRM) (64 FR 60556; November 5, 1999) and comments to the Advanced Air Bag Rule.[3]

In the SNPRM, the agency proposed a 29 km/h (18 mph) indicant test. We

[3] See, DaimlerChrysler's comments and petitions at NHTSA–1999–6407–44 and NHTSA–2001–11110–7.

further proposed a minimum unbelted test speed of 29 km/h (18 mph) and stated we were considering a maximum unbelted test speed of between 40 and 48 km/h (25 and 30 mph). In DaimlerChrysler's comments to the SNPRM, it requested that the only unbelted test speed should be 40 km/h (25 mph). It further commented that the indicant test should be at a speed of 24 km/h (15 mph) so that a 16 km/h (10 mph) ''gray zone'' would exist between the two tests. DaimlerChrysler and other commenters stated that there was a conflict between meeting the low risk requirements and meeting the unbelted rigid barrier test with the 50th percentile adult male test dummies.

Air bags designed to vary their performance in response to sensed differences in crash severity or other conditions have a range of conditions in which the air bag changes from one level of performance to another; *i.e.* ''gray zones.'' At very low speeds, there may be uncertainty within a gray zone about whether the air bag will deploy or not deploy, and at higher speeds, there will be uncertainty about which level of performance will be triggered. Manufacturers stated that in many cases a first stage air bag that would not harm children would not be sufficient to satisfy the injury criteria performance limits for the 50th percentile adult male test dummy in a test at 40 km/h (25 mph) and may be insufficient to certify compliance in a 29 km/h (18 mph) test. In response to DaimlerChrysler and other commenters, the Advanced Air Bag Rule reduced the indicant test speed to 26 km/h (16 mph) and selected a speed range for the unbelted test of 32–40 km/h (20–25 mph). In the preamble to the Advanced Air Bag Rule we stated that we believed the speed difference (6 km/h gray zone) should be sufficient to resolve manufacturers' concerns.

In DaimlerChrysler's petition for reconsideration to the Advanced Air Bag Rule, it once again requested additional separation between the indicant and low risk deployment tests. On this occasion the request was reduced to 14 km/h (9 mph) of separation. The basis for its request was the same as when it commented on the SNPRM. In the preamble of the December 18, 2001 final rule, the agency stated that DaimlerChrysler was basically arguing again for an unbelted test speed of 40 km/h (25 mph) and denied the petition. However the December 2001 final rule did limit the test dummy size for the indicant test on the passenger side to the 5th percentile adult female test dummy. We stated:

> Thus, if a vehicle manufacturer faces a situation where deployment of both stages of a dual stage air bag is necessary to meet the unbelted barrier test requirements for 50th percentile adult male dummies in a 32 km/h (20 mph) crash test, and, because of gray zone issues, it is possible that both stages may fire in a 26 km/h (16 mph) crash, the manufacturer can design its air bag system, using occupant recognition technology, so that only the first stage will fire in the presence of 5th percentile adult female dummies in crash tests at these severity levels. (66 FR 65376, 65384.)

In DaimlerChrysler's petition for reconsideration to the December 2001 final rule, it again requested additional test speed separation and repeated its desire for a 14 km/h (9mph) separation. It also stated that the agency misinterpreted DaimlerChrysler's petition to the Advanced Air Bag Rule, in that an unbelted test speed of 40 km/h (25 mph) was only one potential result of a 14 km/h (9mph) test speed separation. It gave the example of conducting the low risk deployment indicant test at 23 km/h (14 mph) with a minimum test speed for the unbelted test of 37 km/h (23 mph). It further stated that using the 5th percentile adult female test dummy in the indicant test provides no relief because the problem at hand is one of crash severity sensing and not occupant classification.

The agency may have provided a single interpretation of DaimlerChrysler's previous petition for a 14 km/h (9 mph) separation request by viewing it as a request for a 40 km/h (25 mph) unbelted test. But given an unbelted test of 40 km/h (25 mph), any other interpretation that keeps the minimum unbelted test below 40 km/h (25 mph) would result in a low risk deployment indicant test speed of less than 26 km/h (16 mph).

The NPRM for the Advanced Air Bag Rule (63 FR 49958; September 18, 1998) proposed 32 km/h (20 mph) as the impact speed for the low risk deployment indicant test. The SNPRM proposed 29 km/h (18 mph) and the Advanced Air Bag Rule required 26 km/h (16 mph) for the low risk deployment indicant test. Any further reduction in the indicant test speed may result in a further reduction in the benefits to children and adults who happen to be out-of-position in a crash above this threshold speed. This reduction may create the situation where no bag deploys during the indicant test.

DaimlerChrysler's petition provides no new information and makes no new arguments related to the issue of an appropriate ''gray zone'' separating the low risk deployment indicant test and the unbelted test. Therefore, DaimlerChrysler's petition is denied.

B. Test Procedures for Automatic Suppression Requirements (Belt Cinching)

In compliance testing for the automatic suppression features with CRSs under S20.2, S22.2, and S24.2, the belted tests require the seat belt to be cinched down at 134 N (30 lb) as measured at the outboard section of the lap belt. Some manufacturers place a button (latchplate button) on belts, which can prevent the belt from being cinched down to the required level. These buttons are placed on belts to keep the buckle from sliding down on the unsecured belt, ensuring that the latchplate remains accessible by restricting the movement of the latchplate on the seat belt. In the December 2001 final rule, we stated that:

> While we are not adding a provision to the regulatory text, we do intend to remove the plastic button if it prevents us from reaching a 134 N (30 lbf) force. This button is not required under any Federal motor vehicle safety standards. (66 FR 65376, 65389.)

DaimlerChrysler petitioned the agency to require that no compliance test procedure detailed in S20.2, S22.2, or S24.2 allow the removal of latchplate buttons. DaimlerChrysler claimed that this button is necessary to meet the requirement of S7.4.4, *Latchplate access,* of FMVSS No. 208, and that testing requiring the removal of the button ''may force manufacturers to certify to a non-saleable condition.''

DaimlerChrysler's petition with regard to the latchplate button is denied. It is critical to achieve the cinch down load of 134 N (30 lbf) in order to test the suppression systems in what we have found to be a real world configuration. Keeping the latchplate button (or webbing loop in the case of GM vehicles) will, in some instances, not allow this force to be achieved. However, for many vehicles the button is not a problem. Removing the button to allow achievement of the required cinch down load allows for the agency to have a more objective requirement.

Further, removal of the button for suppression testing does not result in vehicle certification in a ''non-saleable condition.'' Many other test procedures in the FMVSSs require modifications to the vehicle as a specific aspect of performance. For example, FMVSS No. 207, *Seating systems,* requires bracing to be added between the seat base and seat back before pulling on the seat to test the strength of the seat anchorage to the vehicle. The cinch force required for the suppression test is to test a ''worst case scenario,'' and removal of the latchplate button simply allows the belt to be

cinched to force levels that reflect this scenario.

C. Appendix A of FMVSS No. 208

The Alliance, with emphasis added from Mitsubishi, Volkswagen, and Porsche, petitioned for changes to Appendix A of FMVSS No. 208. Appendix A lists which car beds and CRSs the agency may use to test the suppression system of a vehicle. The Alliance, Volkswagen, and Porsche requested that the list include the production dates for the CRSs. The Alliance stated that alterations to the CRS list should only be made if the alteration will affect certification of a vehicle. Mitsubishi, Volkswagen, and Porsche believe that surrogate devices being developed at UMTRI should replace the list of CRSs as soon as possible. Mitsubishi requested a 2-year phase-in for changes to Appendix A and stated that it believes FMVSS No. 213, *Child restraint systems,* could specify the weight and shell dimensions of CRSs. However they have not petitioned to have FMVSS No. 213 amended.

As noted earlier, Evenflo has also petitioned the agency to remove certain Evenflo seats from Appendix A and replace them with newer, LATCH models. Evenflo states that the older seats should be removed because only LATCH seats have been manufactured since September 1, 2002.

A recent analysis by the agency found that about one fourth of the CRSs currently in Appendix A are no longer available. This is indicative of the dynamic nature of the CRS industry. Because of the nature of this industry, NHTSA has decided to perform an annual review of Appendix A with the objective of making appropriate updates. The number of CRSs in Appendix A may change slightly as it is updated. This is because the review may identify different trends in the use of CRSs from prior periods. Because it is impossible to know the nature of these trends, we cannot commit to increasing or decreasing the number of restraints in Appendix A by a set number. As a general guideline, however, we believe the number of CRSs should not vary by more than 10–20 percent absent dramatic changes in the design of restraints.

In deciding whether to amend Appendix A, NHTSA will consider a number of factors, such as whether a particular restraint has been a high volume model, whether it has mass and dimensions that are representative of many restraints on the market, whether its mass and dimensions represent outliers, and whether a variety of restraint manufacturers are represented in the appendix. This approach will allow us to limit Appendix A to those restraints that represent large portions of the CRS market, while including exceptionally large or small restraints. We believe a combination of restraints is needed to assure the robustness of automatic suppression systems under real world conditions.

We believe this annual review will serve to maintain a spectrum of CRSs in the appendix that are representative of the CRS population in production at that time. This routine assessment will ensure that only relatively current restraints will be used for compliance testing. It will also enable NHTSA to determine the availability of the CRSs and determine any change in design, other than those that are purely cosmetic. Although NHTSA will review the appendix every year, we may not amend it annually. In those years where we tentatively conclude that the appendix needs updating, we will publish an NPRM with a 30 day comment period. This shorter comment period will allow us to issue a final rule expeditiously, reducing the possibility that a proposed restraint will no longer be available for purchase on the date of publication.

Even with diligent review of Appendix A, there may be rare occasions when a new addition to the list becomes unavailable or undergoes a significant design change between the time an amendment is proposed and when it is issued as a final rule. Under this limited circumstance, the agency would not use the unavailable or altered CRS for compliance testing and the manufacturers would likewise be relieved of any burden to procure the CRS or use it to test for suppression. Conversely, if a CRS becomes unavailable or is altered after publication of the list, we will assume that the manufacturer was able to acquire the CRS and has it available for certification testing. The effect of this requirement is that vehicle manufacturers and NHTSA will need to procure all child restraints listed in Appendix A not already in their possession when the list is published.

The preamble to the December 2001 final rule stated that, to provide sufficient lead time for vehicle compliance, any future changes to Appendix A would have an effective date of one year after publication of the amended list. 66 FR 65376, 65390. This means that after a new CRS appears in Appendix A, manufacturers would not have to certify compliance of their vehicles when using that restraint for a full year. We also stated that ''early compliance'' with the amended list (as opposed to the previous list) was permissible so long as the manufacturer notified the agency that it was exercising this option.

We are concerned that a two-year lead time could result in a greater percentage of the CRSs in Appendix A being removed from production before the amended appendix takes effect. Additionally, the one-year lead time is consistent with the agency's intent that occupant detection systems be robust and able to detect any CRS, including those that are relatively new to the market. However, in recognition that manufacturers need to know what CRSs will be included as they design their new models, we have decided to slightly change our position on lead time by making any changes to Appendix A effective for the next model year introduced one year after publication of the final rule modifying Appendix A. (Consistent with our past practice, for this purpose, the model year begins on September 1 of the prior calendar year.) This will result in a one to two year lead time. For example, if Appendix A were updated March 1, 2004, the revised appendix would become effective September 1, 2005, a period of eighteen months after publication. We believe this approach will allow manufacturers to tie their certification to the automatic suppression requirements with the introduction of a new model year.

However, as explained further below, we are concerned about the fact that CRSs with LATCH (Lower Anchors and Tethers for Children) are increasingly used in the real world for transporting children. There have been no CRSs with LATCH included in Appendix A since the initial publication of the May 2000 Advanced Air Bag Rule. Therefore, for this final rule, we are taking exception to our future process and are requiring that the effective date for the CRSs listed in this notice be September 1, 2004.

The September 1, 2004 effective date for Appendix A should not present a problem for manufacturers. By September 1, 2004, LATCH attachments will have been required for two years, as established under the March 5, 1999 final rule (64 FR 10786). Vehicle manufacturers have been aware of the changes to CRSs and should have been testing accordingly. Even if the CRSs used for testing by the manufacturers were not the models in Appendix A, the LATCH mechanisms should be substantially similar. As such, providing less than one year of lead time for compliance with the amended appendix is not unduly burdensome.

We have determined that Alliance's petition for Appendix A to be altered

only when a change to a CRS would affect vehicle certification is not practical from either a regulatory or manufacturing perspective. The agency's knowledge of particular suppression systems, typically, is not sufficient to allow us to make such determinations. Likewise, limiting changes to the appendix based on whether a CRS would affect vehicle certification could result in manufacturers designing systems that only test obsolete restraints. While such a scenario may not prove particularly problematic from a compliance perspective, it could prove quite risky in the real world. The intent of requiring automatic suppression systems to detect the presence of CRSs that are on the market is to ensure that the systems actually work in the real world. If a change to a CRS were clearly cosmetic, such as color scheme or upholstery, the list would not be affected.

We continue to believe that the CRS surrogates under development by UMTRI are insufficiently representative of the CRS market to adopt at this time. The surrogates do not attempt to represent dimensional outliers. As such, they cannot ensure the robustness of an automatic suppression system under real world conditions. Additionally, without amending FMVSS No. 213 to require restraints to be dimensionally similar to the surrogates, there is no assurance that the surrogates will continue to represent even the average dimensions of restraints on the market. We have already determined that it is inappropriate to amend FMVSS No. 213 to accommodate the requirements of FMVSS No. 208.

We recognize that Appendix A is not perfect. Indeed, regularly updating the appendix is a significant amount of work for the agency. Nevertheless, at this time there is no alternative that will test whether automatic suppression systems are capable of recognizing those child restraints that are likely to be used by the owners of vehicles with advanced air bags.

We do find that the industry request that we identify specific CRS production dates has merit. This will allow for a more precise identification of which CRSs may be used in compliance testing. However, in future amendments, Appendix A will, as a general matter, only include the production start dates, since the agency is in no position to know, beforehand, when a restraint manufacturer will cease production of a particular model. The fact that a particular restraint may not be produced for the entire time that it is included in Appendix A underscores the need for vehicle manufacturers to procure all restraints in the appendix promptly after the revised appendix is published. The agency may specify a production end date in an amendment to the appendix if a CRS undergoes a significant change without a change in the name and model number and the agency wishes to keep the older version on the list.

Beginning in September 2000, vehicle manufacturers were required to begin a phase-in of vehicles with child restraint anchorage systems, consisting of a tether anchorage and two lower anchorages. (See FMVSS No. 225.) CRS manufacturers began selling CRSs with LATCH to utilize these vehicle anchorages, and as of September 1, 2002, all CRSs must have LATCH. As noted by Evenflo, all child restraints currently manufactured, other than booster seats, harnesses, and the car bed, are required to have LATCH. Accordingly, the agency believes it is imperative to add some LATCH seats to the appendix and to have them tested in the next model year. When the amendments made to Appendix A in this document are effective, September 1, 2004, CRSs with LATCH will have been required for almost two years. To reflect this change in the market, two new LATCH CRSs are included in the amended Appendix A. We have decided against replacing all of the seats other than booster seats and the car bed with new LATCH seats because to do so would dramatically amend the appendix and would fail to account for those non-LATCH seats still widely in use. As subsequent amendments are made to the appendix, these older seats will be replaced to account for their decreased presence in vehicles.

In a related issue, we note that many child restraint manufacturers place an expiration date, typically six years, on their seats. Given the intent of child restraint manufacturers that the restraints not be used after their expiration date, this information will also be considered by the agency in Appendix A amendment proposals.

Appendix A requires that vehicles certified to FMVSS No. 208 S19, S21, or S23 and produced between December 18, 2001 and September 1, 2004 may be tested with one car bed, ten rear facing child restraints, seven forward facing child restraints, and four booster seats for a possible 22 child restraints. All of the child restraints used in testing must be manufactured after December 1, 1999.

As of September 1, 2004, three of the rear facing child restraints will not be used in testing (designated by ''Terminated''), while two additional forward facing child restraints are added to the list (designated by ''Effective''). Thus, for vehicles produced as of September 1, 2004, up to 21 child restraints may be used in testing.

D. Neck and Chest Injury Criteria

DaimlerChrysler petitioned the agency to use neck injury criteria (Nij) only in static out-of-position tests and not in belted and unbelted in-position tests. DaimlerChrysler also petitioned the agency to use a threshold of 73 g for the 5th percentile adult female test dummy chest acceleration.

In comments to the SNPRM (NHTSA–1999–6407–44) and in a petition for reconsideration on the Advanced Air Bag Rule (NHTSA–2000–7013–022), DaimlerChrysler asked for this change to the chest acceleration performance limit as well as expressed a desire for the elimination of Nij from the regulation.

In the December 2001 final rule, we denied both of DaimlerChrysler's petitions. In denying the petition for a 73 g threshold, the agency relied on crash tests in which the lower thorax/abdomen of the 5th percentile adult female test dummy contacted the steering wheel rim, producing high chest g measurements and low chest deflection. Chest deflection, measured only at the central upper thorax, and chest acceleration with a performance limit of 73 g would not identify these cases of steering wheel rim contact as injurious, whereas a performance limit of 60 g would. See 66 FR 65376, 65398. The agency also determined that the Nij formula incorporates the relevant measurements for evaluating neck injury during frontal impact and that much of the automotive industry has accepted Nij as a valid injury measurement. See 66 FR 65376, 65399.

DaimlerChrysler has not provided any new information with respect to these two issues in its current petition for reconsideration. The agency still concurs with our previous determination and therefore is denying DaimlerChrysler's petition with respect to the chest g and Nij measurements.

E. Technical Corrections of the Regulatory Text

S14.3(a) contains a typographical error which is corrected in this document. As correctly identified in the heading, this section applies to vehicles manufactured on or after September 1, 2007 and before September 1, 2010. The regulatory text incorrectly states that it applies to vehicles manufactured on or before September 1, 2007 and before September 1, 2010. This error has been corrected.

In the December 18, 2001 final rule the reference to ''Plane A'' in S20.2.1.2

was inadvertently changed to ''Plane.'' This error has been corrected.

The dummy positioning procedures for the 3-year-old test dummy, 6-year-old test dummy, and the 5th percentile adult female test dummy have been amended to specify a degree of latitude when positioning a dummy in reference to its midsagittal plane. This tolerance is in recognition that the placement of the dummy reference line coincident to a plane or point on the vehicle will have inherent variability.

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document has not been reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review,'' because it was not deemed significant under the executive order. The rulemaking action has also been determined to not be significant under the Department's regulatory policies and procedures. The agency has concluded that the impacts of today's amendments are so minimal that a regulatory evaluation is not required. Rather, readers who are interested in the overall costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 final rule (Docket No. NHTSA–2000–7013–02). NHTSA has determined that the costs and benefits analysis provided in that document are unaffected by today's rule.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule or the December 2001 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule remain unchanged from the December 2001 final rule.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2001 rule, which, in turn, made only small adjustments to the May 2000 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicle of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout the initial phase-in. Once the initial phase-in is complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement

Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [4] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule or the December 2001 final rule as a result of this final rule.

L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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 in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

[4] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

■ 2. Section 571.208 is amended by revising S14.3(a), S16.2.10, S16.3.1, S16.3.2, S16.3.3, S20.1.2, S20.1.9, S20.1.10, S20.2.1.3, S20.3.1, S20.4.1, S20.4.4, S20.4.9, S22.1.2, S22.1.7, S22.2.2.1, S22.2.2.3, S22.2.2.4, S22.2.2.5, S22.2.2.6, S22.2.2.7, S22.3.1, S22.4.1, S22.4.2, S22.4.3, S22.4.4, S24.1.2, S24.2.3, S24.3.1, S24.4.1, S24.4.2, S24.4.3, S24.4.4, S26.2.2, S26.2.3, S26.2.4.1, S26.3.1, S26.3.4.1, S26.3.6, S26.3.7, S26.4, and Appendix A, and by adding figure 13 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.3(a) For vehicles manufactured for sale in the United States on or after September 1, 2007, and before September 1, 2010, a percentage of the manufacturer's production, as specified in S14.3.1, shall meet the requirements specified in S14.5.1(b) (in addition to the other requirements of this standard).

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S16.2.10 *Driver and passenger seat set-up.*

S16.2.10.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S16.2.10.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position any adjustable head restraint in the lowest and most forward position.

S16.2.10.3 *Seat position adjustment.* If the passenger seat does not adjust independently of the driver seat, the driver seat shall control the final position of the passenger seat.

S16.2.10.3.1 Using only the controls that primarily move the seat and seat cushion independent of the seat back in the fore and aft directions, move the seat cushion reference point (SCRP) to the rearmost position. Using any part of any control, other than those just used, determine the full range of angles of the seat cushion reference line and set the seat cushion reference line to the middle of the range. Using any part of any control other than those that primarily move the seat or seat cushion fore and aft, while maintaining the seat cushion reference line angle, place the SCRP to its lowest position.

S16.2.10.3.2 Using only the control that primarily moves the seat fore and aft, move the seat reference point to the full forward position.

S16.2.10.3.3 If the seat or seat cushion height is adjustable, other than by the controls that primarily move the seat or seat cushion fore and aft, determine the maximum and minimum heights of the seat reference point, while maintaining, as closely as possible, the angle determined in S16.2.10.3.1. Set the seat reference point at the midpoint height with the seat cushion reference line angle set as closely as possible to the angle determined in S16.2.10.3.1. Mark location of the seat for future reference.

* * * * *

S16.3.1 *General provisions and definitions.*

S16.3.1.1 All angles are measured with respect to the horizontal plane unless otherwise stated.

S16.3.1.2 The dummy's neck bracket is adjusted to align the zero degree index marks.

S16.3.1.3 The term ''midsagittal plane'' refers to the vertical plane that separates the dummy into equal left and right halves.

S16.3.1.4 The term ''vertical longitudinal plane'' refers to a vertical plane parallel to the vehicle's longitudinal centerline.

S16.3.1.5 The term ''vertical plane'' refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

S16.3.1.6 The term ''transverse instrumentation platform'' refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap's machined inferior-superior mounting surface.

S16.3.1.7 The term ''thigh'' refers to the femur between, but not including, the knee and the pelvis.

S16.3.1.8 The term ''leg'' refers to the lower part of the entire leg, including the knee.

S16.3.1.9 The term ''foot'' refers to the foot, including the ankle.

S16.3.1.10 The longitudinal centerline of a bucket seat cushion is defined by a vertical plane that passes through the SgRP and is parallel to the longitudinal centerline of the vehicle.

S16.3.1.11 For leg and thigh angles, use the following references:

S16.3.1.11.1 *Thigh*—a straight line on the thigh skin between the center of the 1/2–13 UNC–2B tapped hole in the upper leg femur clamp (see drawings 880105–504 (left thigh) and 880105–505 (right thigh), upper leg femur clamp) and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assembly without potentiometer).

S16.3.1.11.2 *Leg*—a straight line on the leg skin between the center of the ankle shell (parts 880105–609 & 633 in drawing 880105–660, ankle assembly)

and the knee pivot shoulder bolt (part 880105–527 in drawing 880105–528R & 528L, sliding knee assembly without potentiometer).

S16.3.1.12 The term ''seat cushion reference point'' (SCRP) means a point placed on the outboard side of the seat cushion at a horizontal distance between 150 mm (5.9 in) and 250 mm (9.8 in) from the front edge of the seat used as a guide in positioning the seat.

S16.3.1.13 The term ''seat cushion reference line'' means a line on the side of the seat cushion, passing through the seat cushion reference point, whose projection in the vehicle vertical longitudinal plane is straight and has a known angle with respect to the horizontal.

S16.3.2 *Driver dummy positioning.*

S16.3.2.1 *Driver torso/head/seat back angle positioning.*

S16.3.2.1.1 With the seat in the position determined in S16.2.10.3.3, use only the control that primarily moves the seat fore and aft to place the seat in the rearmost position. If the seat cushion reference line angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference line angle determined in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.2.1.11. The seat cushion reference angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

S16.3.2.1.2 Fully recline the seat back, if adjustable. Install the dummy into the driver's seat, such that when the legs are positioned 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.2.1.3 *Bucket seats.* Place the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion, within ±10 mm (±0.4 in).

S16.3.2.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned within ±10 mm (±0.4 in) of the center of the steering wheel rim.

S16.3.2.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.2.1.6 Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.2.1.7 Gently rock the upper torso laterally in a side to side motion three times through a ±5 degree arc (approximately 51 mm (2 in) side to side).

S16.3.2.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. Keeping the leg and the thigh in a vertical plane, place the foot in the vertical longitudinal plane that passes through the centerline of the accelerator pedal. Rotate the left thigh outboard about the hip until the center of the knee is the same distance from the midsagittal plane of the dummy as the right knee ±5 mm (±0.2 in). Using only the control that primarily moves the seat fore and aft, attempt to return the seat to the full forward position. If either of the dummy's legs first contacts the steering wheel, then adjust the steering wheel, if adjustable, upward until contact with the steering wheel is avoided. If the steering wheel is not adjustable, separate the knees enough to avoid steering wheel contact. Proceed with moving the seat forward until either the leg contacts the vehicle interior or the seat reaches the full forward position. (The right foot may contact and depress the accelerator and/or change the angle of the foot with respect to the leg during seat movement.) If necessary to avoid contact with the vehicles brake or clutch pedal, rotate the test dummy's left foot about the leg. If there is still interference, rotate the left thigh outboard about the hip the minimum distance necessary to avoid pedal interference. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seat is a power seat, move the seat fore and aft to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. If the steering wheel was moved, return it to the position described in S16.2.9. If the steering wheel contacts the dummy's leg(s) prior to attaining this position, adjust it to the next higher detent, or if infinitely adjustable, until there is 5 mm (0.2 in) clearance between the wheel and the dummy's leg(s).

S16.3.2.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ±0.5 degree, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to ensure that it is properly installed. If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments, or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S16.2.9. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S16.2.9 and the point of contact on the dummy.

S16.3.2.1.10 If it is not possible to achieve the head level within ±0.5 degrees, minimize the angle.

S16.3.2.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gauge (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O of this chapter). The angle shall be set to 20.0 degrees ±2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible by adjustments specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.2.1.12 If the dummy is contacting the vehicle interior after these adjustments, using only the control that primarily moves the seat fore and aft, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is a maximum of 5 mm (0.2 in) from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position that causes no contact, or until the seat reaches its forwardmost position, whichever occurs first.

S16.3.2.2 *Driver foot positioning.*

S16.3.2.2.1 If the vehicle has an adjustable accelerator pedal, adjust it to

the full forward position. If the heel of the right foot can contact the floor pan, follow the positioning procedure in (a). If not, follow the positioning procedure in (b).

(a) Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal in the full rearward position still does not touch the foot, leave the pedal in that position. Extend the foot and lower leg by decreasing the knee flexion angle until any part of the foot contacts the undepressed accelerator pedal. If the foot does not contact the pedal, place the highest part of the foot at the same height as the highest part of the pedal.

(b) Extend the foot and lower leg by decreasing the knee flexion angle until any part of the foot contacts the undepressed accelerator pedal or the highest part of the foot is at the same height as the highest part of the pedal. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot.

S16.3.2.2.2 If the ball of the right foot does not contact the pedal, increase the ankle plantar flexion angle such that the toe of the foot contacts or is as close as possible to contact with the undepressed accelerator pedal.

S16.3.2.2.3 If, in its final position, the heel is off of the vehicle floor, a spacer block must be used under the heel to support the final foot position (see figure 13). The surface of the block in contact with the heel must have an inclination of 30 degrees, measured from the horizontal, with the highest surface towards the rear of the vehicle.

S16.3.2.2.4 Place the left foot on the toe-board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toe-board and floor pan, and not on or in contact with the vehicle's brake pedal, clutch pedal, wheel-well projection or foot rest, except as provided in S16.3.2.2.6.

S16.3.2.2.5 If the left foot cannot be positioned on the toe board, place the foot perpendicular to the lower leg centerline as far forward as possible with the heel resting on the floor pan.

S16.3.2.2.6 If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible. If necessary to avoid contact with the vehicle's brake pedal, clutch pedal, wheel-well, or foot rest, use the three foot position adjustments listed in (a)–(c). The adjustment options are listed in priority order, with each subsequent option incorporating the previous. In making each adjustment, move the foot the minimum distance necessary to avoid contact. If it is not possible to avoid all prohibited foot contact, priority is given to avoiding brake or clutch pedal contact;

(a) Rotate (abduction/adduction) the test dummy's left foot about the lower leg,

(b) Plantar flex the foot,

(c) Rotate the left leg outboard about the hip.

S16.3.2.3 *Driver arm/hand positioning.*

S16.3.2.3.1 Place the dummy's upper arms adjacent to the torso with the arm centerlines as close to a vertical longitudinal plane as possible.

S16.3.2.3.2 Place the palms of the dummy in contact with the outer part of the steering wheel rim at its horizontal centerline with the thumbs over the steering wheel rim.

S16.3.2.3.3 If it is not possible to position the thumbs inside the steering wheel rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering wheel rim as possible.

S16.3.2.3.4 Lightly tape the hands to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 lb) and not more than 22 N (5 lb), the tape releases the hand from the steering wheel rim.

S16.3.3 *Passenger dummy positioning.*

S16.3.3.1 *Passenger torso/head/seat back angle positioning.*

S16.3.3.1.1 With the seat at the mid-height in the full forward position determined in S16.2.10.3.3, use only the control that primarily moves the seat fore and aft to place the seat in the rearmost position, without adjusting independent height controls. If the seat cushion reference line angle automatically changes as the seat is moved from the full forward position, maintain as closely as possible the seat cushion reference line angle in S16.2.10.3.1, for the final forward position when measuring the pelvic angle as specified in S16.3.3.1.11. The seat cushion reference line angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

S16.3.3.1.2 Fully recline the seat back, if adjustable. Install the dummy into the passenger seat, such that when the legs are 120 degrees to the thighs, the calves of the legs are not touching the seat cushion.

S16.3.3.1.3 *Bucket seats.* Place the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion, within ±10 mm (±0.4 mm).

S16.3.3.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the midsagittal plane of the driver dummy.

S16.3.3.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.3.1.6 Place the legs at 120 degrees to the thighs. Set the initial transverse distance between the longitudinal centerlines at the front of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion.

S16.3.3.1.7 Gently rock the upper torso laterally side to side three times through a ±5 degree arc (approximately 51 mm (2 in) side to side).

S16.3.3.1.8 If needed, extend the legs slightly so that the feet are not in contact with the floor pan. Let the thighs rest on the seat cushion to the extent permitted by the foot movement. With the feet perpendicular to the legs, place the heels on the floor pan. If a heel will not contact the floor pan, place it as close to the floor pan as possible. Using only the control that primarily moves the seat fore and aft, attempt to return the seat to the full forward position. If a dummy leg contacts the vehicle interior before the full forward position is attained, position the seat at the next detent where there is no contact. If the seats are power seats, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S16.3.3.1.9 For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ±0.5 degrees, making sure that the pelvis does not interfere with the seat bight. Inspect the abdomen to insure that it is properly installed.

S16.3.3.1.10 If it is not possible to orient the head level within ±0.5 degrees, minimize the angle.

S16.3.3.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gauge (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O, of this chapter). The angle shall be set to 20.0 degrees ±2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible, as specified in S16.3.3.1.9 and S16.3.3.1.10.

S16.3.3.1.12 If the dummy is contacting the vehicle interior after these adjustments, using only the control that primarily moves the seat fore and aft, move the seat rearward until there is a maximum of 5 mm (0.2 in) between the contact point of the dummy and the interior of the vehicle or if it has a manual seat adjustment, to the next rearward detent position. If after these adjustments, the dummy contact point is more than 5 mm (0.2 in) from the vehicle interior and the seat is still not in its forwardmost position, move the seat forward until the contact point is a maximum of 5 mm (0.2 in) from the vehicle interior, or if it has a manual seat adjustment, move the seat to the closest detent position that causes no contact, or until the seat reaches its forwardmost position, whichever occurs first.

S16.3.3.2 *Passenger foot positioning.*

S16.3.3.2.1 Place the passenger's feet flat on the toe board.

S16.3.3.2.2 If the feet cannot be placed flat on the toe board, set them perpendicular to the leg centerlines and place them as far forward as possible with the heels resting on the floor pan. If either foot does not contact the floor pan, place the foot parallel to the floor pan and place the lower leg as perpendicular to the thigh as possible.

S16.3.3.3 *Passenger arm/hand positioning.*

S16.3.3.3.1 Place the dummy's upper arms in contact with the seat back and the torso.

S16.3.3.3.2 Place the palms of the dummy in contact with the outside of the thighs.

S16.3.3.3.3 Place the little fingers in contact with the seat cushion.

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S20.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position, if adjustable fore and aft, at full rearward, middle, and full forward positions. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance, or if the seat is a power seat, using only the control that primarily moves the seat fore and aft, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance between the dummy or child restraint and the vehicle interior.

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S20.1.9 *Seat set-up.* Unless otherwise stated.

S20.1.9.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S20.1.9.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S20.1.9.3 Set the seat and seat cushion in the position determined in S16.2.10.3.1.

S20.1.9.4 Using only the control that primarily moves the seat in the fore and aft direction, determine the full rearward, middle, and full forward positions of the SCRP. Using any part of any seat or seat cushion adjustments, other than that which primarily moves the seat or seat cushion fore-aft, determine the SCRP mid-point height for each of the three fore-aft test positions, while maintaining, as closely as possible, the seat cushion reference line middle angle determined in S16.2.10.3.1.

S20.1.9.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S20.1.9.6 If adjustable, set the head restraint at the full down and full forward position.

S20.1.10 The longitudinal centerline of a bucket seat cushion is defined by a vertical plane that passes through the SgRP and is parallel to the longitudinal centerline of the vehicle.

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S20.2.1.3 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the front outboard passenger vehicle seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

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S20.3.1 Each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position, if adjustable fore and aft, at the mid-height, in the full rearward and middle positions determined in S20.1.9.4, and the forward position determined in S16.3.3.1.8.

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S20.4.1 Position the front outboard passenger vehicle seat at the mid-height in the full forward position determined in S20.1.9.4, and adjust the seat back (if adjustable independent of the seat) to the nominal design position for a 50th percentile adult male as specified in S8.1.3. Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint at the full down and most forward position. If the child restraint or dummy contacts the vehicle interior, do the following: using only the control that primarily moves the seat in the fore and aft direction, move the seat rearward to the next detent that provides clearance; or if the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

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S20.4.4 For bucket seats, ''Plane B'' refers to a vertical plane parallel to the vehicle longitudinal centerline through the longitudinal centerline of the front outboard passenger seat cushion. For bench seats, ''Plane B'' refers to a vertical plane through the front outboard passenger seat parallel to the vehicle longitudinal centerline that is the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

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S20.4.9 Deploy the front outboard passenger frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply at any stage or combination of stages or time delay between successive stages that could occur in the presence

of an infant in a rear facing child restraint and a 49 CFR Part 572, Subpart R 12-month-old CRABI dummy positioned according to S20.4, and also with the seat at the mid-height, in the middle and full rearward positions determined in S20.1.9.4, in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

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S22.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position at the mid-height, in the full rearward, middle, and the full forward positions determined in S22.1.7.4. If the dummy contacts the vehicle interior, using only the control that primarily moves the seat fore and aft, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

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S22.1.7 *Seat set-up.* Unless otherwise stated,

S22.1.7.1 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S22.1.7.2 *Other seat adjustments.* Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position.

S22.1.7.3 Set the seat and seat cushion in the position determined in S16.2.10.3.1.

S22.1.7.4 Using only the control that primarily moves the seat in the fore and aft direction, determine the full rearward, middle, and full forward positions of the SCRP. Using any part of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft, determine the SCRP mid-point height for each of the three fore-aft test positions, while maintaining, as closely as possible, the seat cushion reference line angle determined in S16.2.10.3.1.

S22.1.7.5 The seat back angle, if adjustable, is set at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S22.1.7.6 If adjustable, set the head restraint at the full down and full forward position.

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S22.2.2.1 *Sitting on seat with back against seat back.*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the torso of the dummy against the seat back. Position the dummy's thighs against the seat cushion.

(c) Allow the legs of the dummy to extend off the surface of the seat.

(d) Rotate the dummy's upper arms down until they contact the seat back.

(e) Rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

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S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy with the spine vertical so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1.0 in) and no more than 150 mm (6.0 in), as measured along the dummy's midsagittal plane at the mid-sternum level. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Position the dummy's thighs against the seat cushion.

(d) Allow the legs of the dummy to extend off the surface of the seat.

(e) Position the upper arms parallel to the spine and rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.4 *Sitting on seat edge, spine vertical, hands by the dummy's sides.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

(b) Position the dummy in the seated position forward in the seat such that the legs are vertical and the back of the legs rest against the front of the seat with the spine vertical. If the dummy's feet contact the floor pan, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the dummy spine vertical. To keep the dummy in position, a material with a maximum breaking strength of 311 N (70 lb) may be used to hold the dummy.

(c) Place the upper arms parallel to the spine.

(d) Lower the dummy's lower arms such that they contact the seat cushion.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±.4 in), as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). Position the dummy in a standing position on the right front outboard seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

(b) Rest the dummy against the seat back, with the arms parallel to the spine.

(c) If the head contacts the vehicle roof, recline the seat so that the head is no longer in contact with the vehicle roof, but allow no more than 5 mm (0.2 in) distance between the head and the roof. If the seat does not sufficiently recline to allow clearance, omit the test.

(d) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(e) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.6 *Kneeling on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) If necessary use a material with a maximum breaking strength of 311 N (70 lb) or spacer blocks to keep the dummy in position.

(d) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.7 *Kneeling on seat, facing rearward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline, within ±10 mm (±0.4 in), as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in).

(b) Position the dummy in a kneeling position in the right front outboard seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release. Place the arms parallel to the spine.

(c) Start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system, and then close all vehicle doors.

(d) Wait 10 seconds, then check whether the air bag is deactivated.

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S22.3.1 Each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position at the mid-height, in the full rearward, and middle positions determined in S22.1.7.4, and the forward position determined in S16.3.3.1.8.

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S22.4.1 Each vehicle that is certified as complying with S21.4 shall meet the following test requirements with the 49 CFR Part 572, Subpart P 3-year-old child dummy in both of the following positions: Position 1 (S22.4.2) and Position 2 (S22.4.3).

S22.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsagittal plane that is 114 mm (4.5 in) ±3 mm (±0.1 in) along the surface of the skin from the top of the skin at the neck line. This is referred to as ''Point 1.''

S22.4.1.2 Mark a point on the instrument panel that is longitudinally and transversely, as measured along the surface of the instrument panel, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the instrument panel and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag.

S22.4.1.3 Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located in S22.4.1.2. This is referred to as ''Plane D.''

S22.4.1.4 Locate the horizontal plane through the point located in S22.4.1.2. This is referred to as ''Plane C.''

S22.4.2 *Position 1 (chest on instrument panel).*

S22.4.2.1 Set the seat and seat cushion in the positions determined in S16.2.10.3.1. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest and most forward position.

S22.4.2.2 Place the dummy in the front outboard passenger seat such that:

S22.4.2.2.1 The midsagittal plane is coincident with Plane D within ±10 mm (±0.4 in).

S22.4.2.2.2 The legs are initially vertical to the floor pan. The legs and thighs shall be adjusted to the extent necessary for the head/torso to contact the instrument panel as specified in S22.4.2.3.

S22.4.2.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.2.3 Without changing the seat position and with the dummy's thorax instrument cavity rear face vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy and the angle of the thigh with respect to the torso. Once contact is made, raise the dummy vertically until Point 1 lies in Plane C within ±10 mm (±0.4 in). If the dummy's head contacts the windshield and keeps Point 1 from reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered, which may change the dummy's fore-aft position.)

S22.4.2.4 If possible, position the legs of the dummy so that the legs are vertical and the feet rest flat on the floor pan of the vehicle. If the positioning against the instrument panel does not allow the feet to be on the floor pan, the feet shall be parallel to the floor pan.

S22.4.2.5 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.3 *Position 2 (head on instrument panel).*

S22.4.3.1 Place the front outboard passenger seat at the mid-height, in full rearward seating position determined in S22.1.7.4. Place the seat back, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult

male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest and most forward position.

S22.4.3.2 Place the dummy in the front outboard passenger seat such that:

S22.4.3.2.1 The midsagittal plane is coincident with Plane D within ±10 mm (±0.4 in).

S22.4.3.2.2 The legs are vertical to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan, and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 86 to 91 mm (3.4 to 3.6 in), with the thighs and the legs of the dummy in vertical planes.

S22.4.3.2.3 The upper arms are parallel to the torso and the hands are in contact with the thighs.

S22.4.3.3 Using only the control that primarily moves the seat in the fore and aft direction, move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S22.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward until contact is made. Maintain the thorax instrument cavity rear face vertical orientation. If the dummy loses contact with the seat, from that point forward, maintain the height of the dummy. Except as provided in S22.4.3.5, maintain the angle of the thigh with respect to the horizontal.

S22.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat cushion, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point.

S22.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S22.4.4 Deploy the front outboard passenger frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

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S24.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position at the mid-height, in the full rearward seat track position, the middle seat track position, and the full forward seat track position as determined in this section. Using only the control that primarily moves the seat in the fore and aft direction, determine the full rearward, middle, and full forward positions of the SCRP. Using any seat or seat cushion adjustments other than that which primarily moves the seat fore-aft, determine the SCRP mid-point height for each of the three fore-aft test positions, while maintaining as closely as possible, the seat cushion angle determined in S16.2.10.3.1. Set the seat back angle, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

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S24.2.3 *Sitting back in the seat and leaning on the right front passenger door.*

(a) Position the dummy in the seated position and place the dummy in the right front outboard seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the seat cushion, within ±10 mm (±0.4 in). For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle, within ±10 mm (±0.4 in), as the center of the steering wheel.

(b) Place the dummy's back against the seat back and rest the dummy's thighs on the seat cushion.

(c) Allow the legs and feet of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, using only the control that primarily moves the seat fore and aft, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward, while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the part of the dummy that was in contact with the vehicle interior.

(d) Rotate the dummy's upper arms toward the seat back until they make contact.

(e) Rotate the dummy's lower arms down until they contact the seat.

(f) Close the vehicle's passenger-side door and then start the vehicle engine or place the ignition in the ''on'' position, whichever will turn on the suppression system.

(g) Push against the dummy's left shoulder to lean the dummy against the door; close all remaining doors.

(h) Wait ten seconds, then check whether the air bag is deactivated.

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S24.3.1 Each vehicle certified to this option shall comply in tests conducted with the front outboard passenger seating position at the mid-height, in the full rearward and middle positions determined in S24.1.2, and the forward position determined in S16.3.3.1.8.

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S24.4.1 Each vehicle that is certified as complying with S23.4 shall meet the following test requirements with the 49 CFR Part 572, Subpart N 6-year-old child dummy in both of the following positions: Position 1 (S24.4.2) or Position 2 (S24.4.3).

S24.4.1.1 Locate and mark a point on the front of the dummy's chest jacket on the midsagittal plane that is 139 mm (5.5 in) ±3 mm (±0.1in) along the surface of the skin from the top of the skin at the neckline. This is referred to as ''Point 1.''

S24.4.1.2 Mark a point on the instrument panel that is longitudinally

and transversely, as measured along the surface of the instrument panel, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the instrument panel and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag.

S22.4.1.3 Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located in S24.4.1.2. This is referred to as ''Plane D.''

S24.4.1.4 Locate the horizontal plane through the point located in S24.4.1.2. This is referred to as ''Plane C.''

S24.4.2 *Position 1 (chest on instrument panel).*

S24.4.2.1 Set the seat and seat cushion in the positions determined in S16.2.10.3.1. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. If adjustable, set the head restraint in the lowest and most forward position.

S24.4.2.2 Remove the legs of the dummy at the pelvic interface.

S24.4.2.3 Place the dummy in the front outboard passenger seat such that:

(a) The midsagittal plane is coincident with Plane D within ±10 mm (±0.4 in).

(b) The upper arms are parallel to the torso and the hands are next to where the thighs would be.

(c) Without changing the seat position and with the dummy's thorax instrument cavity rear face 6 degrees forward of the vertical, move the dummy forward until the dummy head/torso contacts the instrument panel. If the dummy loses contact with the seat cushion because of the forward movement, maintain the height of the dummy while moving the dummy forward. If the head contacts the windshield before head/torso contact with the instrument panel, maintain the thorax instrument cavity angle and move the dummy forward such that the head is following the angle of the windshield until there is head/torso contact with the instrument panel. Once contact is made, raise or lower the dummy vertically until Point 1 lies in Plane C within ±10 mm (±0.4 in). If the dummy's head contacts the windshield and keeps Point 1 from reaching Plane C, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield. (The dummy shall remain in contact with the instrument panel while being raised or lowered which may change the dummy's fore-aft position.)

S24.4.2.4 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.3 *Position 2 (head on instrument panel).*

S24.4.3.1 Place the front outboard passenger seat at the mid-height full rearward seating position determined in S24.1.2. Place the seat back, if adjustable independent of the seat, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest and most forward position.

S24.4.3.2 Place the dummy in the front outboard passenger seat such that:

(a) The midsagittal plane is coincident with Plane D within ±10 mm (±0.4 in).

(b) The legs are perpendicular to the floor pan, the back of the legs are in contact with the seat cushion, and the dummy's thorax instrument cavity rear face is 6 degrees forward of vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floor pan and the back of the legs are in contact with the front of the seat cushion. Set the transverse distance between the longitudinal centerlines at the front of the dummy's knees at 112 to 117 mm (4.4 to 4.6 in), with the thighs and the legs of the dummy in vertical planes.

(c) The upper arms are parallel to the torso and the hands are in contact with the thighs.

S24.4.3.3 Using only the control that primarily moves the seat in the fore and aft direction, move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S24.4.3.4 If dummy contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat until contact is made. Maintain the thorax instrument cavity rear face orientation. If the dummy loses contact with the seat, from that point forward maintain the height of the dummy. Except as provided in S24.4.3.5, maintain the angle of the thigh with respect to the horizontal.

S24.4.3.5 If head/torso contact with the instrument panel has not been made, maintain the angle of the thighs with respect to the horizontal while applying a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel or until a maximum force of 222 N (50 lb) is achieved. If the head/torso is still not in contact with the instrument panel, hold the femurs and release the 222 N (50 lb) force. While maintaining the relative angle between the torso and the femurs, roll the dummy forward on the seat, without sliding, until head/torso contact with the instrument panel is achieved. If seat contact is lost prior to or during femur rotation out of the horizontal plane, constrain the dummy to rotate about the dummy H-point.

S24.4.3.6 If necessary, material with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The material should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the material does not interfere with the air bag.

S24.4.4 Deploy the front outboard passenger frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

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S26.2.2 Mark a point on the steering wheel cover that is longitudinally and transversely, as measured along the surface of the steering wheel cover, within ±6 mm (±0.2 in) of the point that is defined by the intersection of the steering wheel cover and a line between the volumetric center of the smallest volume that can encompass the folded undeployed air bag and the volumetric center of the static fully inflated air bag. Locate the vertical plane parallel to the vehicle longitudinal centerline through the point located on the steering wheel cover. This is referred to as ''Plane E.''

S26.2.3 Place the seat and seat cushion in the position achieved in S16.2.10.3.1. If the seat or seat cushion

is adjustable in the vertical direction by adjustments other than that which primarily moves the seat or seat cushion fore-aft, determine the maximum and minimum heights of the SCRP at this position, while maintaining the seat cushion reference line angle as closely as possible. Place the SCRP in the mid-height position. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest and most forward position.

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S26.2.4.1 The midsagittal plane is coincident with Plane E within ±10 mm (±0.4 in).

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S26.3.1 Place the seat and seat cushion in the position achieved in S16.2.10.3.1. If the seat or seat cushion is adjustable in the vertical direction by adjustments other than that which primarily moves the seat or seat cushion fore-aft, determine the maximum and minimum heights of the seat reference point at this position, while maintaining the seat cushion reference line angle as closely as possible. Place the SCRP in the mid-height position. If the seat back is adjustable independent of the seat, place the seat back at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. Position any adjustable parts of the seat that provide additional support so that they are in the lowest or most open adjustment position. Position an adjustable head restraint in the lowest position.

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S26.3.4.1 The midsagittal plane is coincident with Plane E within ±10 mm (±0.4 in).

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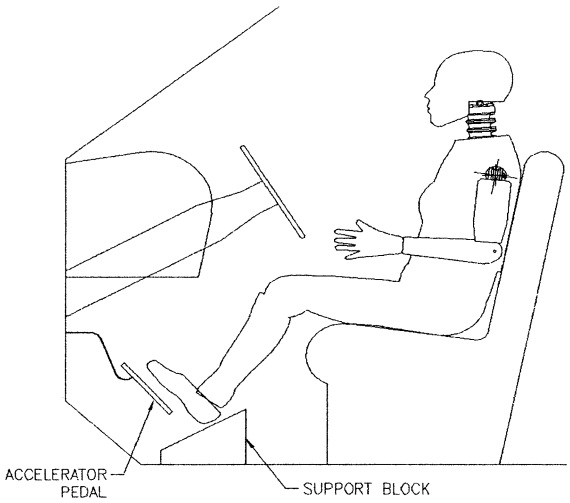
S26.3.6 While maintaining the spine angle, position the dummy so that a point on the chin 40 mm (1.6 in) ±3 mm (±0.1 in) below the center of the mouth (chin point) is, within ±10 mm (±0.4 in), in contact with a point on the steering wheel rim surface closest to the dummy that is 10 mm (0.4 in) vertically below the highest point on the rim in Plane E. If the dummy's head contacts the vehicle windshield or upper interior before the prescribed position can be obtained, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the vehicle's windshield or upper interior, as applicable.

S26.3.7 If the steering wheel can be adjusted so that the chin point can be in contact with the rim of the uppermost portion of the steering wheel, adjust the steering wheel to that position. If the steering wheel contacts the dummy's leg(s) prior to attaining this position, adjust it to the next highest detent, or if infinitely adjustable, until there is a maximum of 5 mm (0.2 in) clearance between the wheel and the dummy's leg(s). Readjust the dummy's torso such that the thorax instrument cavity rear face is 6 degrees forward of the steering wheel angle. Position the dummy so that the chin point is in contact, or if contact is not achieved, as close as possible to contact with the rim of the uppermost portion of the steering wheel.

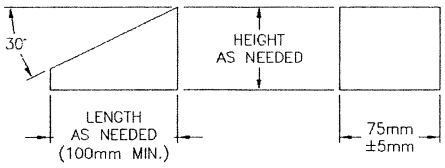
* * * * *

S26.4 Deploy the driver frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

* * * * *



5th PERCENTILE FEMALE RIGHT FOOT SUPPORT BLOCK



SUPPORT BLOCK DETAIL

Figure 13

* * * * *

Appendix A to § 571.208—Selection of Child Restraint Systems

A. The following car bed, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle manufactured on or after the effective date specified that has been certified as being in compliance with 49 CFR 571.208 S19:

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Cosco Cream Ride 02–719	Effective	Remains Effective.

B. Any of the following rear facing child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle manufactured on or after the effective date and prior to the termination date specified that has been certified as being in compliance with 49 CFR 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Handle with Care 191	Effective	Remains Effective.
Century Assura 4553	Effective	Remains Effective.
Century Avanta SE 41530	Effective	Terminated.
Century Smart Fit 4543	Effective	Remains Effective.
Cosco Arriva 02727	Effective	Remains Effective.
Cosco Opus 35 02603	Effective	Terminated.
Evenflo Discovery Adjust Right 212	Effective	Remains Effective.
Evenflo First Choice 204	Effective	Remains Effective.
Evenflo On My Way Position Right V 282	Effective	Terminated.
Graco Infant 8457	Effective	Remains Effective.

C. Any of the following forward-facing convertible child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle manufactured on or after the effective date and prior to the termination date specified that has been certified as being in compliance with 49 CFR 571.208 S19, or S21:

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Roundabout 161	Effective	Remains Effective.
Britax Expressway ISOFIX		Effective.
Century Encore 4612	Effective	Remains Effective.
Century STE 1000 4416	Effective	Remains Effective.
Cosco Olympian 02803	Effective	Remains Effective.
Cosco Touriva 02519	Effective	Remains Effective.
Evenflo Horizon V 425	Effective	Remains Effective.
Evenflo Medallion 254	Effective	Remains Effective.
Safety 1st Comfort Ride 22–400		Effective.

D. Any of the following forward-facing toddler/belt positioning booster systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle manufactured on or after the effective date and prior to the termination date specified that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

	Effective and termination dates	
	January 17, 2002	September 1, 2004
Britax Roadster 9004	Effective	Remains Effective.
Century Next Step 4920	Effective	Remains Effective.
Cosco High Back Booster 02–442	Effective	Remains Effective.
Evenflo Right Fit 245	Effective	Remains Effective.

Issued: November 7, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–28479 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 223
Wednesday, November 19, 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

Natural Resources Conservation Service

7 CFR Part 624

Emergency Watershed Protection Program

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS) proposes several changes to the implementation of the Emergency Watershed Protection (EWP) Program to improve the effectiveness of its response to natural disasters. These changes to the existing program regulations include the following:

- Modifying the cost-share rate for program assistance;
- Clarifying that EWP assistance is not available for Federal lands except in situations where safeguards are followed to avoid inappropriate augmentation of appropriations;
- Allowing a greater Federal share in areas that qualify as limited resource areas; and
- Describing the parameters under which the agency will purchase floodplain easements as a means to limit flood damages and reduce future Federal obligations.

DATES: Comments on this proposed rulemaking must be received by January 20, 2004 to be considered in the development of the final rule.

ADDRESSES: All comments concerning this proposed rule should be addressed to Director, Watersheds and Wetlands Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013–2890; or fax to (202) 720–2143. This rule may also be accessed, and comments submitted, electronically. Users can access the NRCS Watersheds and Wetlands Division Homepage at *http://www.nrcs.usda.gov/*. Comments may also be submitted via e-mail to *victor.cole@usda.gov*. All electronic comments must be submitted as Word or Word Perfect file. Files that cannot be accessed or files that contain special characters or any form of encryption that cannot be accessed will not be accepted or considered.

FOR FURTHER INFORMATION CONTACT: Victor Cole, (202) 690–4575, Watersheds and Wetlands Division, Natural Resources Conservation Service, or for information regarding floodplain easements, contact Martha Joseph (202) 720–7157, Watersheds and Wetlands Division, Natural Resources Conservation Service.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture cooperates with other Federal, State, and local agencies in the recovery from natural disasters such as hurricanes, tornadoes, fires, drought, and floods through implementation of the EWP Program (authorized by Section 216 of The Flood Control Act of 1950, Public Law 81–516, 33 U.S.C. 701b–1; Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203). EWP, through local sponsors, provides emergency measures for run-off retardation and erosion control to areas where a sudden impairment of a watershed threatens life or property. The Secretary of Agriculture has delegated authority for administration of EWP to the Chief of NRCS.

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is a ''significant action'' for the purposes of Executive Order 12866. Pursuant to § 6(a)(3) of Executive Order 12866, NRCS has conducted an economic analysis of the potential impacts associated with this proposed rule. The economic analysis concluded that NRCS is conducting the EWP program in a manner that provides significant benefits related to costs. A copy of this cost-benefit analysis is available upon request from the address listed above.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since it does not contain a major proposal requiring preparation of a regulatory analysis. These proposed regulations will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

This proposed draft rule is supported by a Programmatic Environmental Impact Statement (PEIS) that was made available in draft form for public review on December 16, 1999 (64 FR 70212). NRCS will consider both the comments received on the draft PEIS and this rule in formulation of the final regulation. Copies of the draft PEIS may be obtained from the Watersheds and Wetlands Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013–2890.

GPEA Statement

NRCS is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Paperwork Reduction Act

This draft final rule does not change the reporting or record-keeping burden previously required.

Executive Order 13132

This draft rule complies with Executive Order 13132 ''Federalism.'' In pursuing the revision of this rule, NRCS prepared a PEIS in accordance with the National Environmental Policy Act (NEPA) guidelines. Preparation of the PEIS included an extensive ''scoping process,'' which included six public meetings held in different regions of the country; contact with State agencies, primarily the emergency management and fish and wildlife divisions; and publication of the draft PEIS in the **Federal Register**. Concerns in response to the publication of the draft PEIS primarily centered on compliance with historic preservation requirements of individual States. In particular, it was recommended that NRCS coordinate all activities with the respective State historic preservation officer. Much praise was received for the program

from government officials at all levels and the public. Through the NEPA process, consultation is done on a routine basis. NRCS established policies that require ''pre-disaster planning'' be carried out with all affected State and Federal agencies to ensure everyone understands what NRCS will do in the event of a disaster.

Executive Order 12998

This draft rule has been reviewed in accordance with Executive Order 12998. The provisions of this rule are not retroactive. Furthermore, the provisions of this draft rule pre-empt State and local laws to the extent that such laws are inconsistent with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal government, or the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of the Proposed Changes to 7 CFR Part 624

Overview

The Emergency Watershed Protection (EWP) Program helps remove threats to life and property that remain in the nation's watersheds in the aftermath of natural disasters such as floods, hurricanes, tornadoes, and wildfires. The EWP Program is administered by the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), which provides technical and financial assistance to local sponsoring authorities to preserve life and property threatened by disaster for runoff retardation and soil-erosion prevention. Funding is typically provided through Congressional emergency supplemental appropriations. Threats that the EWP Program addresses are termed watershed impairments. These include, but are not limited to, debris-clogged stream channels, undermined and unstable streambanks, jeopardized water control structures and public infrastructure, wind-borne debris removal, and damaged upland sites stripped of protective vegetation by fire or drought. If these watershed impairments are not addressed, they would pose a serious threat of injury, loss of life, or devastating property damage should a subsequent event occur.

NRCS is initiating proposed rulemaking to codify existing EWP program implementation and institute programmatic changes that allow the repair of enduring conservation practices, limit repeated site repairs, allow additional easement purchases, address environmental justice issues, and limits treatments on Federal lands. To implement the proposed action, NRCS would incorporate changes in program administration and in project execution dealing with traditional watershed impairments. It would expand the program by providing for floodplain sediment deposition removal, and repair damaged structural conservation practices to the list of watershed impairments EWP currently addresses. Additionally, the proposed changes include allowing for up to 90 percent cost-share for limited resource areas, limit repair to twice in a ten year period, eliminate the single beneficiary requirement, funds will not be used on Federal lands, purchase of easements on non-agricultural lands, and establish one easement category.

The purpose and need for the NRCS proposed action are to provide administrative transparency that ensures that the public is fully informed of program operations. Program delivery improvements are designed to enable NRCS field and State office personnel to provide EWP assistance more effectively and efficiently. NRCS believes that these improvements would more fully, equitably, and consistently meet the needs of people requiring emergency assistance. Program improvements are designed to address environmental, economic, and social concerns and values.

Proposed changes were identified, discussed, and refined in an ongoing comprehensive program review that NRCS initiated. The process included extensive opportunities for public participation and identified substantive ways to improve the environmental, economic, social, and technical soundness of Program activities. NRCS is now initiating the proposed rulemaking needed to implement the changes to the codified EWP regulations. The National EWP Manual (policy), and Handbook (procedures) will also need to be revised to reflect the changes that NRCS has already instituted, and those that will be adopted if the policies proposed in this rulemaking are adopted in a final rule after the opportunity for public comment.

Section-by-Section Discussion of Proposed Rule Provisions

Section 624.1 Purpose. This proposed section would modify the existing section to clarify the purpose of the EWP Program.

Section 624.2 Objective. This proposed section would modify the existing section to state that NRCS assists sponsors in the implementation of ''emergency recovery measures.''

Section 624.3 Scope. This proposed section would revise the existing section and combine subparagraphs (a) and (b) in the current regulation.

Section 624.4 Definitions. The proposed section would rename the current section and would modify the section to provide definitions for the EWP program. The ability to provide assistance on Forest Service lands as identified in the existing § 624.4 is being eliminated from the rule to avoid inappropriate augmentation of appropriations for Forest Service restoration activities. Assistance on National Forest System lands or other Federal lands can be provided in situations where appropriate safeguards are followed to avoid such augmentation.

Section 624.5 Coordination. This proposed section would include a discussion of NRCS coordination in both presidentially declared and State conservationist-declared disasters.

Section 624.6 Program administration. This proposed section now describes the NRCS administration of the EWP Program, eligibility, and sponsor responsibilities.

Section 624.6(b)(1) Exigency. This proposed paragraph has been modified to clarify exigency situations. NRCS has encountered various cases where the term ''exigency'' (previously found in § 624.5(a)(1)(iv)) is applied too liberally and implemented for purposes for which it was not intended. Interpretations of the terms ''exigency'' and ''non-exigency'' (previously found in § 624.5(a)(1)(B)) vary widely within NRCS. In some cases, an ''exigency'' allowed certain contracting procedures to be waived inappropriately; in others, ''exigency'' was used to fund projects inappropriately; and in still others, ''exigency'' is used inappropriately to qualify for a U.S. Army Corps of Engineers (USACE) nationwide general permit.

NRCS did not intend these interpretations when the two categories (exigency and non-exigency) were established. Rather, the original intent

was to allow NRCS to respond quickly to only those situations that needed immediate attention and that could be addressed within 30 days. Current regulations tie cost-sharing to this designation, although NRCS has not applied the higher cost-sharing rate originally set for exigencies for the past 7 years. Instead, NRCS has applied a single cost-share rate of 75 percent to exigent and non-exigent situations. However, NRCS recognizes there may be unique situations that require a waiver from this cost-sharing rate. We had added *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law. Examples may include allowing up to 100 percent cost-sharing with limited resource areas or communities, or situations involving environmental justice.

Under the proposed action, the term exigency would be clarified and the term non-exigency would be eliminated since all eligible sites would be considered watershed emergencies and the purpose of the current and proposed exigency classification is to expedite EWP recovery measures where an immediate threat exists. NRCS believes this clarification would result in more uniform delivery of the EWP Program. Clarification of exigency and removal of the term non-exigency would ensure consistent interpretation, and the change should not affect program funding.

Recognizing that certain situations require immediate attention, this proposed section would modify the current regulation to add language that clarifies ''exigency'' situations that require immediate attention. Exigency situations typically exhibit an extremely high potential for loss of life or significant property damage unless immediate action is taken.

Occasionally, a site affected by a natural disaster demands immediate action to minimize potential threats of life and/or property, including when another event may occur shortly thereafter. Two examples of such a situation are (1) debris jamming into a bridge or culvert, causing water to back up and possibly endanger nearby buildings or the bridge and associated road; and (2) a streambank undercutting a building that, if not stabilized immediately, could result in the loss of the building.

This proposed clarification to the regulations still ensures immediate action when no reasonable alternative is available. The NRCS State conservationist would be authorized to carry out the needed recovery work to alleviate the exigency situation immediately when:

- A damage survey report is completed
- Procurement authority is secured
- EWP funds are available
- A sponsor is selected and local funds are available
- Necessary land rights have been acquired

The clarification proposed by this section would limit the number of situations where immediate action is taken to those that are of an extremely critical nature, which was the intent of the existing regulations. The proposed changes would save time by focusing on actions requiring immediate attention during emergency recovery efforts and allowing NRCS state offices to be more responsive to local needs.

Section 624.6(b)(2) Limitations. NRCS is proposing to add this new paragraph to describe the number of times an impacted location may be eligible for EWP assistance. This proposed paragraph also contains limitations found in the current regulations at § 624.7. Repeat disasters may strike an area and require EWP recovery assistance frequently at one location. Under this proposed rulemaking, NRCS would limit repairs under EWP to twice within a 10-year period for the same cause (*i.e.*, flooding) at the same site. If a site already has been restored twice with EWP assistance and less than 10 years has elapsed between the disaster that triggered the first repair and the disaster triggering a third repair, the only option available under EWP would be purchasing a floodplain easement on the damaged site. Under this proposed regulation, The Department of Agriculture (USDA) would review the prospective site to ascertain the frequency of EWP recovery assistance at the location.

For example, if a structure was protected from destruction twice using EWP assistance for two separate events, regardless of the practice used or the location of the protection efforts, EWP funds would not be available for a third protection effort within the 10-year period for the same cause. However, for repairs of dikes, levees, berms, and similar structures, because these structures can run contiguously for miles, a specific location on a structure is considered one EWP site to determine whether future impacts to this site on the structure are eligible for EWP funds. Thus, repairs can be made repetitively so long as the same location is not repetitively repaired more than twice within 10 years.

EWP focuses upon disaster recovery efforts while other USDA programs, as well as programs administered by other Federal and State agencies, are available to plan and implement protective practices to solve recurring problems. This proposed EWP Program change would encourage individuals and project sponsors to seek more appropriate programs to solve existing long-term and recurring resource problems.

NRCS believes the impacts of limiting the number of times EWP funds can be used to repair the same site will be minimal, but the change is necessary to avoid those cases where funds may be used for repetitive repairs.

Section 624.6(b)(2)(iv). This proposed paragraph would clarify that NRCS can only provide EWP assistance on Federal lands in situations where safeguards are followed to avoid inappropriate augmentation of appropriations.

Section 624.6(b)(3). This proposed paragraph describes those sites that will be eligible for EWP where structural/enduring/long-life conservation practices exist. This proposed change to the regulations currently found in § 624.7(d) would provide for a blanket policy exception first established by the NRCS Chief in 1996 for NRCS-assisted flood control structures. The EWP Program regulations currently prohibit providing assistance for these projects unless the NRCS Chief grants an exception. In 1996, the Chief granted a blanket exception to this requirement, and assistance has been provided as needed. This proposal section would allow repair of NRCS-assisted structural practices, such as dams and channels, constructed under the Small Watershed Protection and Flood Control Program (authorized by the Watershed Protection and Flood Prevention Act of 1954, Public Law 83–566, 16 U.S.C. 1001–1008), Flood Prevention Program (authorized by the Flood Control Act of 1944, Public Law 78–534), Resource Conservation and Development Program, and the Pilot Watershed Program.

When a disaster strikes, NRCS-assisted flood control structures may be damaged beyond the level that would normally be expected to be repaired under routine operation and maintenance activities and may be beyond the sponsor's ability to make necessary repairs. For example, when an auxiliary spillway is damaged, extensive repairs may be required to prevent catastrophic failure that could result in loss of life or property and to provide an opportunity for the dam to function properly in the future.

Under the proposed action, existing structural/enduring/long-life conservation practices that are damaged

during disaster events would be eligible for EWP Program technical and cost-share assistance. This provision would allow repair of conservation practices that may include grassed waterways, terraces, embankment ponds, diversions, and water conservation systems. Nonstructural and/or management practices such as conservation tillage would not be eligible. Additionally, natural disaster recovery practices where assistance is provided under the Emergency Conservation Program (ECP) administered by the Farm Service Agency would not be eligible for EWP assistance. EWP differs significantly from ECP because a sponsor is required for EWP recovery work, and unlike ECP, EWP recovery assistance does not provide financial assistance directly to individuals. NRCS is interested in receiving comments related to this proposed expansion of the eligibility of EWP assistance to allow repair of conservation practices.

Under this proposed paragraph, NRCS could provide EWP assistance toward upgrading damaged or undersized practices for structural/enduring/long-life conservation practices when technology advances or construction techniques warrant. All structural/enduring/long-life conservation practices for which the sponsor is required to obtain a permit issued by a Federal, State, or local entity shall be designed and installed to meet the permit requirements or NRCS standards, whichever is greater.

The benefits obtained by adopting this proposal include:

- Allowing repair work that would address conservation needs that may not be covered by other programs;
- Helping to ensure that practices will be repaired and remain functional rather than being abandoned and becoming a hazard;
- Allowing the EWP Program to assist more landowners so that a greater number of people will benefit from natural resource protection;
- Providing rapid treatment of natural resources by the EWP Program that might prevent further damage on and off site; and
- Encouraging needed repairs by sponsors by providing assistance through the EWP Program.

Section 624.6(c). This proposed provision would expand the areas now covered under the EWP Program. Currently, EWP Program work is normally confined to watercourses and areas immediately adjacent, except in case of drought or fire where work may be carried out on critical areas in upland portions of a watershed. However, agricultural productivity, public health and safety, and the environment are often threatened in the aftermath of disasters that occur outside these limits. NRCS proposes that the availability of EWP Program assistance expand to include practices needed on all privately owned lands. This provision of the proposed regulation would expand the EWP Program to include areas away from streams and would allow the removal of sediment and other debris from agricultural land (croplands, orchards, vineyards, and pastures) and windblown debris, particularly in areas considered environmentally sensitive. Environmentally sensitive areas may include lands especially vulnerable to damage from the products of erosion, points of groundwater re-charge, habitat of endangered or threatened species, or cultural resource sites. This provision of the proposed regulation also provides for EWP assistance for drought recovery activities.

Deposits of large quantities of sediments and other debris on floodplains usually occurs from major flooding. Such materials are usually coarse and infertile, and frequently destroy or smother plants and impair normal agricultural use. This is a normal occurrence in the dynamics of floodplain systems, but it can jeopardize the productivity of agricultural lands. Under this proposed regulation, NRCS would consider alternative practices to address the type of damage such as:

- Removing and disposing the sediment and other debris
- Incorporating the sediment into the underlying soil
- Offering to purchase a floodplain easement (see § 624.10)

Whether these sites qualify for EWP assistance and the most effective alternative treatment depends upon many factors: Size of the particles, depth of material deposited, lateral extent of the deposit, land use and soil type of the underlying material, and value of the land to the entire agricultural operation. Floodplain easements (see § 624.10) can provide disaster relief where there is too much debris to incorporate or haul off-site, or otherwise dispose.

Most debris that is deposited on upland areas is carried from winds of hurricanes or tornadoes. Such debris may cover portions of several watersheds and normally consists of downed trees, utility poles, and fence posts; livestock and poultry carcasses; or building materials, such as insulation, shingles, metal roofing, metal siding, and similar non-biodegradable materials. Similarly, ice storms may result in debris deposition and cause the death of livestock and poultry. Debris removal will typically be associated with the removal of debris from upstream of bridges and culverts, or in upland areas where buildup of debris in a waterway will cause flooding of homes and other structures.

The practice components adopted to address upland debris deposition could include, but not be limited to:

- Creating access when needed to move trucks and heavy equipment to a debris site
- Using chain saws, other power tools, winches, and other machinery and heavy equipment to gather and process the debris for onsite disposal or removal
- Disposing of debris in accordance with local rules and regulations on-site by burial, chipping, or burning
- Loading on trucks for removal and disposal off-site in approved sites or landfills based upon the composition of the material
- Obtaining special technical assistance and personnel to handle hazardous materials such as asbestos, petroleum products, propane, or other compressed gas containers, or other potentially hazardous or toxic compounds or materials
- Grading, shaping, and revegetating, by seeding or planting, any portion of the area affected by the debris removal operation

Drought recovery practices are generally temporary in nature and are intended to reduce the consequences of a drought. EWP assistance typically includes providing temporary water for livestock to reduce the use of drought impacted water sources, or prescribed grazing and/or purchasing and transporting hay, which allows rangeland to recover more rapidly. Planting vegetation may be used to reduce soil erosion. EWP assistance will not be used during drought situations to install permanent practices or structures, including water wells, irrigation systems, or purchase of portable equipment (*i.e.*, water pumps). EWP practices during drought situations will not be conducted at the expense of another natural resource, such as pumping or releasing water from a water body to an extent that is environmentally detrimental.

Section 624.6(d) Documentation. This proposed paragraph would rename the existing section 624.6(d). The information found in this paragraph clarifies the language found in the existing regulation at § 624.6(b).

Section 624.6(e) Implementation. This proposed paragraph would rename the existing section 624.7(e) and would

contain language previously found in the existing regulation at § 624.6(c).

Section 624.7 Cost share assistance. This proposed section would rename the existing section and establish a cost-share rate of up to 75 percent for implementation of EWP measures and up to 90 percent for limited-resource areas.

Under current EWP program regulations at § 624.5(c)(1)(ii) and § 624.5(C)(2)(i), impairments determined to be non-exigencies receive up to 80 percent Federal funding, and exigencies receive up to 100 percent Federal funding. The proposal to eliminate the exigency and non-exigency categories would also eliminate the differential cost-share rate. A single category of emergency would allow for a single cost-share rate. In addition, NRCS would reduce the general cost-share ceiling to align it with the 75 percent rate used in related Federal programs. However, some increase in the Federal cost-share rate may be warranted for sponsors within limited-resource areas. Without such assistance, NRCS believes that the needs of such areas will not be met if only 75 percent cost-share rate is available. Therefore, NRCS proposes in section 624.7(b) to allow sponsors of limited-resource areas to be eligible to receive up to 90 percent Federal funding.

The proposed definition of a limited-resource area (see proposed definition in 624.4(d)) is a county where average housing values are less than 75 percent of the State average, per capita income is less than 75 percent of the national per capita income, *and* unemployment during the preceding 3 years is twice the available U.S. average. All three criteria would have to be met to qualify. NRCS would use the most recent U.S. census and unemployment data to make this determination. Local data may be used for small communities.

If a natural disaster strikes a limited-resource community in a non-designated limited-resource area, the NRCS State conservationist would have the authority to document the limited-resource status using State census data for the three factors mentioned above and approve the 90 percent cost-share rate for that community. In no case would this procedure be used for a unit smaller than a ''community,'' as defined in proposed section 624.4(d).

Section 624.8(b). This proposed paragraph would clarify and replace language previously found in the current regulation § 624.10.

Section 624.8(c)(3) Funding Priorities. This proposed paragraph is being added to provide guidelines for establishing funding priorities to allow the most effective and efficient use of limited EWP funding. When a State conservationist declares a local disaster, he or she would typically follow these proposed priorities to determine the order in which sites would be recovered. In some cases, the State conservationist may deviate from the list of priorities due to the damage situation (*e.g.*, a building may not be in immediate jeopardy but giving its repair a higher priority may avoid adverse impacts to a cultural resource) or based upon the sponsor's priorities and ability to undertake the project. NRCS priorities are listed in the following table.

NRCS PRIORITY ORDER OF EWP FUNDING

Priority	Damage situation
1	Exigency.
2	Sites where there is a serious, but not immediate, threat to human life.
3	Sites where property, structures, utilities, or other important infrastructure components are threatened.
4	Sites with federally protected resources, including: Sites inhabited by federally listed threatened and endangered (T&E) species or containing the species designated critical habitat where the individuals of the species or the critical habitat would be in jeopardy without the EWP practice; Sites that contain or are in proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed; Sites where prime farmland supporting high value crops is threatened; Sites containing wetlands that would be damaged or destroyed without the EWP practice; and Sites that have a major effect on water quality.
5	Sites containing unique habitat—supporting State-listed T&E species or species of concern, recreation, or State- identified sensitive habitats other than wetlands.
6	Other lands not listed above.

Currently, in a presidentially declared disaster, NRCS coordinates with the Federal Emergency Management Agency (or the State agency with emergency recovery responsibilities). NRCS would continue to do so after the implementation of this proposed change and follow the priorities set by those agencies.

Section 624.9 Time limits. This proposed section has been renamed, and it would simplify time limits associated with the obligation of funds and certain limits for completion of work. NRCS proposes a single time frame (220 days after the date when the funds are committed to the State conservationist by the national office) to complete the work.

Section 624.10 Floodplain easement. This proposed section is being added to address administration of EWP floodplain easements.

Section 382 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, amended the EWP authority to provide for the purchase floodplain easements as an emergency measure. Since 1996, NRCS has purchased floodplain easements on agricultural lands that qualify for EWP assistance. Floodplain easements restore, protect, maintain, and enhance the functions of wetlands and riparian areas; conserve natural values including fish and wildlife habitat, water quality, flood water retention, ground water recharge, and open space; and safeguard lives and property from floods, drought, and the products of erosion.

NRCS may purchase EWP easements on any floodplain lands that have been impaired within a 12-month period or that have a history of repeated flooding (*i.e.*, flooded at least two times during the past 10 years). Since offers into the program may exceed funding, NRCS maintains a list of easement offers that meet basic eligibility criteria at the time of application, and these offers continue to be eligible pending availability of funding.

Under the floodplain easement option, a landowner offers to sell to NRCS a permanent easement that provides NRCS with the full rights to restore and enhance the floodplain's functions and values. In exchange, a landowner receives an easement payment in an amount calculated as the least of one of the three following values:

(i) A geographic rate established by the NRCS State conservationist;

(ii) a value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or

(iii) the landowner's offer, if one has been made.

NRCS may pay up to 100 percent of the restoration costs of the easement. Restoration efforts include both structural and non-structural practices. To the extent practicable, NRCS may actively restore the natural features and characteristics of the floodplain through

re-creating the topographic diversity, increasing the duration of inundation and saturation, and providing for the re-establishment of native vegetation. The landowner is provided the opportunity to participate in the restoration efforts.

Landowners retain several rights to the property, including the right of quiet enjoyment, the right to control public access, and the right to undeveloped recreational use such as hunting and fishing. At any time, a landowner may obtain authorization from NRCS to engage in other activities if NRCS determines it will be compatible with the protection and enhancement of the easement's floodplain functions and values. These compatible uses may include managed timber harvest, periodic haying, or grazing. NRCS determines the amount, method, timing, intensity, and duration of any compatible use that might be authorized. While a landowner can realize economic returns from an activity allowed for on the easement area, a landowner will not be assured of any specific level or frequency of such use, and the authorization does not vest any right of any kind to the landowner. Cropping would not be authorized as a compatible use, and haying or grazing would not be authorized as a compatible use on lands that are being returned to woody vegetation.

While NRCS currently only purchases floodplain easements on agricultural lands, NRCS is proposing purchasing floodplain easements on non-agricultural lands. NRCS plans to expand the availability of floodplain easements to low population density, non-agricultural lands. Structures within the floodplain easement may be demolished or relocated outside the 100-year floodplain, whichever costs less.

This element of the proposed rule would tend to increase program costs in the short-term, but reduce costs to the Federal government in the long-term, as people and structures in non-agricultural areas are relocated out of the floodplain. In addition, as more acreage is returned to open space, the floodplain would function in a more natural state with increased long-term public benefits.

Section 624.11 Waivers. This section is being proposed to provide NRCS with the opportunity to waive those provisions of the proposed rule that are not prohibited by the law. Situations may arise that could be addressed through the EWP Program but proposed provisions in this proposed regulation may restrict or not allow NRCS to provide EWP assistance. This section is being proposed to avoid these situations and to allow NRCS to provide assistance for disaster recovery.

List of Subjects in 7 CFR Part 624

Disaster assistance, Floodplain easement, Flooding, Imminent threat, Natural disaster, and Watershed impairment.

Accordingly, for the reasons stated in the preamble, it is proposed that Title 7 of the Code of Federal Regulations be amended by revising Part 624 to read as follows:

PART 624—EMERGENCY WATERSHED PROTECTION

Sec.

624.1 Purpose.
624.2 Objective.
624.3 Scope.
624.4 Definitions.
624.5 Coordination.
624.6 Program administration.
624.7 Cost-sharing.
624.8 Assistance.
624.9 Time limits.
624.10 Floodplain easements.
624.11 Waivers.

Authority: Sec. 216, Pub. L. 81–516, 33 U.S.C. 701b–1; Sec. 403, Pub. L. 95–334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

§ 624.1 Purpose.

The Natural Resources Conservation Service (NRCS) is responsible for administering the Emergency Watershed Protection (EWP) Program. This part sets forth the requirements and procedures for Federal assistance, administered by NRCS, under Section 216, Public Law 81–516, 33 U.S.C. 701b–1; and Section 403 of the Agricultural Credit Act of 1978, Public Law 95–334, as amended by Section 382, of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 16 U.S.C. 2203.

§ 624.2 Objective.

The objective of the EWP Program is to assist sponsors, landowners, and operators in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster that causes a sudden impairment of a watershed.

§ 624.3 Scope.

EWP technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State conservationist. This program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

§ 624.4 Definitions.

(a) *Defensibility* means the extent to which an alternative action is:

(1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;

(2) In compliance with Federal, State, and local laws;

(3) Acceptable to affected individuals and communities;

(4) Effective in restoring or protecting the natural resources;

(5) Complete with all necessary components included; and

(6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could cause significant damage to property or threaten human life.

(e) *Limited resource area or community* is defined as a unit of government or a group of people within a bounded geographical area who interact within shared institutions, and who possess a common sense of interdependence and belonging where:

(1) Housing values are less than 75 percent of the State housing value average;

(2) Per capita income is 75 percent or less than the National per capita income; and

(3) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

NRCS will use the most recent National census information available when determining (1) and (2) above.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms,

hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a legal subdivision of a State government or a State agency, other government entities, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

§ 624.5 Coordination.

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated through the Federal Emergency Management Agency (FEMA) or its designee.

(b) When an NRCS State conservationist determines that a watershed impairment exists but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will provide assistance, assume the lead, and coordinate work with the State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

§ 624.6 Program administration.

(a) *Sponsors.* (1) When the State conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor who must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities may not receive assistance except through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash,

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits; and

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures.

(3) The sponsor is responsible for 100 percent of the costs associated with meeting the requirements found in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations (exigency is defined in § 624.4(b)). Sponsors must complete practices deemed necessary under an exigency situation within 5 days of the site becoming accessible. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.*

(i) In cases where the same type of natural event occurs within a 10-year period and the site has been repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance shall not be used to perform operation or maintenance such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance shall not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance shall not be provided on any Federal lands, unless adequate safeguards are followed to avoid inappropriate augmentation of appropriations for other Federal agencies.

(3) Repair of structural/enduring/long-life conservation practices.

(i) Sponsors may receive EWP assistance for long-life conservation practices including, but not limited to, grassed waterways, terraces, embankment ponds, diversions, and water conservation systems, except where assistance is provided under the Emergency Conservation Program administered by the Farm Service Agency.

(ii) EWP assistance may be available for the repair of certain structural practices (*i.e.*, dams and channels) originally constructed under Public Law 83–566, Public Law 78–534, Subtitle H of Title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 *et seq.*), commonly known as the Resource Conservation and Development Program, and the Pilot Watershed Program of the Department of Agriculture Appropriation Act of 1954 (Public Law 83–156; 67 Stat. 214). EWP assistance may not be used to perform operation and maintenance activities specified in the agreement for the covered structure project entered into with the eligible local organization responsible for the works of improvement.

(iii) NRCS may authorize EWP assistance for modifying damaged practices when technology advances or construction techniques warrant modifications.

(iv) EWP assistance is not available for repair or rehabilitation of nonstructural management practices such as conservation tillage.

(4) Increased level of protection. In cases other than those described in paragraph (b)(3)(iii) of this section, if the sponsor desires to increase the level of protection that would be provided by the EWP practice, the sponsor shall pay 100 percent of the upgrade or additional work unless the upgrade is the result of permit requirements necessary to implement the recovery.

(c) *Eligible practices.* NRCS will only provide assistance for measures that:

(1) Provide protection from additional flooding or soil erosion;

(2) Reduce threats to life or property from a watershed impairment, including sediment and debris removal in floodplains and uplands;

(3) Restore the hydraulic capacity to the natural environment to the maximum extent practical;

(4) Provide temporary water for livestock to reduce the use of drought impacted water sources, prescribed grazing or purchasing and transporting hay to allow rangeland to recover; and

(5) Are economically and environmentally defensible and technically sound.

(d) *Documentation.* NRCS shall document the economic rationale of proposed practices in appropriate detail before the allocation of emergency funding, including projects under consideration for floodplain easements in § 624.10. Generally, the expected value of the property restored should exceed the cost of emergency measures, including taking into consideration environmental benefits. Documentation shall include, but is not limited to:

(1) Number of locations and extent of damage, including environmental and cultural resources at risk, because of the watershed impairment;

(2) Estimated damages to the values at risk if the threat is imminent but not yet realized;

(3) Events that must occur for any imminent threat to be realized and the estimated probability of their occurrence both individually and collectively;

(4) Estimates of the nature, extent, and costs of the emergency practices to be constructed to recover from an actual threat or relieve an imminent threat;

(5) Thorough description of the beneficial and adverse effects on environmental resources, including fish and wildlife habitat;

(6) Description of water quality and water conservation impacts, as appropriate;

(7) Analysis of effects on downstream water rights; and

(8) Other information deemed appropriate by NRCS to describe adequately the environmental impacts to comply with the National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and related requirements.

(e) *Implementation.* When planning emergency recovery practices, NRCS shall place emphasis on measures that are the most economical and are to be accomplished by using the least damaging practical construction techniques and equipment that retain as much of the existing characteristics of the landscape and habitat as possible. Construction of emergency practices may include, but are not limited to, timing of the construction to avoid impacting fish spawning, clearing of right-of-ways, reshaping spoil, debris removal, use of bioengineering techniques, and revegetation of disturbed areas. Mitigation actions needed to offset potential adverse impacts of the EWP practices should be planned for installation before, or concurrent with, the installation of the EWP practices. In rare occurrences where mitigation cannot be installed concurrently, plans shall require mitigation be accomplished as soon as practical.

(f) NRCS may determine that a measure is not eligible for assistance for any reason, including economic and environmental factors or technical feasibility.

§ 624.7 Cost sharing.

(a) Except as provided in paragraph (b) of this section, the Federal contribution toward the implementation of emergency measures shall not exceed 75 percent of the construction cost of such emergency measures, including work done to offset or mitigate adverse impacts as a result of the emergency measures.

(b) If NRCS determines that an area qualifies as a limited resource area, the Federal contribution toward the implementation of emergency measures shall not exceed 90 percent of the construction cost of such emergency measures.

(c) If a natural disaster strikes a limited resource community in a non-designated limited-resource area, the NRCS State conservationist has the authority to document the limited resource status using census data for the three factors listed in § 624.4(g)(1) through (3) of this part, and approve the 90 percent cost-share rate for that community. In no case would this procedure be used for a unit smaller than a community.

§ 624.8 Assistance.

(a) Sponsors must submit a formal request to the State conservationist for assistance within 60 days of the natural disaster occurrence, or 60 days from the date when access to the sites becomes available. Requests shall include a statement that the sponsors understand their responsibilities and are willing to pay its cost-shared percentage and information pertaining to the natural disaster, including the nature, location, and scope of the problems and the assistance needed.

(b) On receipt of a formal request for EWP assistance, the State conservationist shall immediately investigate the emergency situation to determine whether EWP is applicable. The State conservationist will take into account the funding priorities identified in paragraph (c)(3) of this section. The State conservationist will forward the damage survey report, which provides the information pertaining to proposed EWP practice(s) and indicates the amount of funds necessary to undertake the Federal portion, to the NRCS Chief or designee. This information will be submitted no later that 60 days from receipt of the formal request from the sponsor. NRCS may not commit funds until notified by the Chief, or his designee, of the availability of funds.

(c) Before the release of financial assistance, NRCS will enter into an agreement with a sponsor that specifies the responsibilities of the sponsor under this part, including any required operation and maintenance responsibilities.

(1) NRCS will only provide funding for work that is necessary to reduce applicable threats.

(2) Efforts must be made to avoid or minimize adverse environmental impacts associated with the implementation of emergency measures, to the extent practicable, giving special attention to protecting cultural resources and fish and wildlife habitat.

(3) Funding priorities. NRCS shall provide EWP assistance based on the following criteria:

(i) Exigency situations;

(ii) Sites where there is a serious, but not immediate threat to human life;

(iii) Sites where buildings, utilities, or other important infrastructure components are threatened;

(iv) Sites with federally protected resources, including, but not limited to:

(A) Sites inhabited by federally listed threatened and endangered species or containing the species designated critical habitat where the individuals of the species or critical habitat would be in jeopardy without the EWP practice;

(B) Sites that contain or are in the proximity to cultural sites listed on the National Register of Historic Places where the listed resource would be jeopardized if the EWP practice were not installed;

(C) Sites where prime farmland supporting high value crops is threatened;

(D) Sites containing wetlands that would be damaged or destroyed without the EWP practice; and,

(E) Sites that have a major affect on water quality.

(v) Sites containing unique habitat, including but not limited to, State-listed threatened and endangered species, fish and wildlife management areas, or State-identified sensitive habitats; and,

(vi) Other lands not listed above.

§ 624.9 Time limits.

Funds must be obligated by the State conservationist and construction completed within 220 calendar days after the date funds are committed to the State conservationist.

§ 624.10 Floodplain easements.

(a) *General*. Notwithstanding any limitations found in this part, NRCS may purchase floodplain easements as an emergency measure. NRCS will only purchase easements from landowners on a voluntary basis.

(b) *Floodplain easements*. (1) Floodplain easements established under this part shall be:

(i) Held by the United States, through the Secretary of Agriculture;

(ii) Administered by NRCS or its designee; and

(iii) Perpetual in duration;

(2) *Eligible land*. NRCS may determine that land is eligible under this section if:

(i) The floodplain lands were damaged by flooding within the last 12 months or have been subject to flood damage at least twice within the previous 10 years; or

(ii) Other lands within the floodplain that would contribute to the restoration of the flood storage and flow, erosion control, or that would improve the practical management of the easement; or,

(iii) Lands that would be inundated or adversely impacted as a result of a dam breach.

(3) *Ineligible land*. NRCS may determine that land is ineligible under this section if:

(i) Implementation of restoration practices would be futile due to on-site or off-site conditions;

(ii) The land is subject to an existing easement or deed restriction that provides sufficient protection or restoration of the floodplain's functions and values; or

(iii) The purchase of an easement would not meet the purposes of this part.

(4) *Compensation for easements*. A landowner will receive the lesser of the three following values as an easement payment:

(i) A geographic rate established by the NRCS State conservationist, if one has been established;

(ii) A value based on a market appraisal analysis for agricultural uses or assessment for agricultural land; or

(iii) The landowner's offer, if one has been made.

(5) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment that is offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participation in the program, a landowner waives any claim to additional compensation under EWP based on fair market value.

(6) NRCS may provide up to 100 percent of the restoration and enhancement costs of the easement. NRCS may enter into an agreement to ensure that identified practices are implemented. NRCS, the landowner, or other designee may implement identified practices. Restoration and enhancement efforts may include both structural and non-structural practices. An easement acquired under this part shall provide NRCS with the full authority to restore, protect, manage, maintain, and enhance the functions and values of the floodplain.

(7) The landowner shall:

(i) Comply with the terms of the easement;

(ii) Comply with all terms and conditions of any associated agreement; and,

(iii) Convey title to the easement that is acceptable to NRCS and warrant that the easement is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by NRCS.

(8) Structures, including buildings, within the floodplain easement may be demolished and removed, or relocated outside the 100-year floodplain.

(c) *Easement modifications*. (1) After an easement has been recorded, no modification will be made in the easement except by mutual agreement with the Chief and the landowner.

(2) Approved modifications will be made only in an amended easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(3) The Chief may approve modifications to facilitate the practical administration and management of the easement area or the program so long as the modification will not adversely affect the functions and values for which the easement was acquired.

(4) Modifications must result in equal or greater environmental and economic values to the United States.

(d) *Enforcement*. (1) In the event of a violation of an easement, the violator shall be given reasonable notice and an opportunity to correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) Notwithstanding paragraph (c)(1) of this section, NRCS reserves the right to enter upon the easement area at any time to remedy deficiencies or easement violations. Such entry may be made at the discretion of NRCS when such actions are deemed necessary to protect important floodplain functions and values or other rights of the United States under the easement. The landowner shall be liable for any costs incurred by the United States as a result of the landowner's negligence or failure to comply with easement or agreement obligations.

(3) In addition to any and all legal and equitable remedies as may be available to the United States under applicable law, NRCS may withhold any easement and cost-share payments owing to landowners at any time there is a material breach of the easement covenants or any associated agreements. Such withheld funds may be used to offset costs incurred by the United States, in any remedial actions, or retained as damages pursuant to court order or settlement agreement.

(4) NRCS shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

(5) On the violation of the terms or conditions of the easement or related agreement, the easement shall remain in force, and NRCS may require the landowner to refund all or part of any payments received by the landowner under this Part, together with interest thereon as determined appropriate by NRCS.

(6) All the general penal statutes relating to crimes and offenses against the United States shall apply in the administration of floodplain easements acquired under this part.

§ 624.11 Waivers.

To the extent allowed by law, the NRCS Deputy Chief for Programs may waive any provision of these regulations.

Signed in Washington, DC on October 29, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–28793 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA80

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes several changes to the fee schedule for official inspection and weighing services performed under the authority of the United States Grain Standards Act (USGSA), as amended. The USGSA provides the authority to charge and collect reasonable fees to cover the cost of performing official services. These fees also cover the costs associated with administrative and supervisory activities related to official services.

After a review of the financial status of GIPSA, including a comparison of the costs and revenues associated with official services, and administrative and supervisory activities; GIPSA is proposing changes to the fee schedule. These proposed changes include eliminating provisions for the 3-month and 6-month contracts; increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; increasing unit fees for additional tests provided by GIPSA; eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

These proposed changes are needed to replenish the retained earnings accounts and to maintain a 3-month operating reserve. Further, maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

DATES: Written comments must be submitted on or before January 20, 2004.

ADDRESSES: Interested persons are encouraged to submit comments via electronic mail or Internet to *comments.gipsa@usda.gov.* Hardcopy written comments may be sent to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

Commentors should also send a copy of any comments that concern information collection and recordkeeping requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, e-mail address: *David.M.Orr@usda.gov,* telephone (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Background

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases.

This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the **Federal Register** on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA has completed a review of the grain inspection and weighing programs and has determined it is necessary to amend the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. The proposed changes are targeted to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of a fee increase, GIPSA has decided to propose fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. These proposed fees are designed to collect sufficient annual revenue through FY 2007, to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 MMT per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their **Federal Register** publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate the financial status of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary. While GIPSA may not fully replenish its 3-month reserve until FY 2010, it is critical that action is taken to start to replenish it. GIPSA proposes to

gradually replenish a reserve rather than sharply increase fees in the short term to immediately replenish it. GIPSA welcomes all comments regarding the proposed action and encourages the public to submit comments regarding alternatives to the fee structure that would accelerate the replenishment of the retained earnings account and the 3-month operating reserve.

Proposed Action

GIPSA is proposing changes to the fee schedule to collect fees to recover the cost of services and to recover the administrative and supervisory costs related to these services. The proposed changes include (1) eliminating provisions for the 3-month and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

Contract and Hourly Rates. GIPSA has determined the hourly rates for services performed at export facilities by GIPSA employees do not cover total salary and benefits costs. Despite implementing changes to correspond to annual Federal pay increases totaling 30 percent over the years; salary and benefit costs have increased 36 percent due to increased employee benefit costs, longevity pay and locality pay. Increased employee cost (salaries and benefits) is not the only reason the hourly fees are not covering the costs of services at the export market.

When GIPSA established the hourly rates in 1996, certain assumptions were made to establish those rates. Those assumptions included the historic volume of grain moving through the export facilities, the number of hours needed to load that volume of grain, and the anticipated non-revenue producing time experienced by our employees. Hourly fees, both contract rate and non-contract rate, were established based on these assumptions. These assumptions, however, have not held true over the years due to the changes in grain marketing.

Grain marketing strategies and shortfalls in expected export volume have also had a negative effect on GIPSA's revenue. Since 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where grain is loaded.

Since grain marketing strategies have shifted the movement of grain at the export market, GIPSA needs to re-evaluate the hourly rates charged at these facilities.

GIPSA established a 3-month and 6-month contract rate for facilities that had fluctuating workloads; however, GIPSA had only one 3-month contract and one 6-month contract during FY 2002 and had none of these contracts in FY 2003. GIPSA has learned through the years of contracting that it is extremely difficult to accurately project an employees non-revenue producing time when utilizing 3-month and 6-month contracts. Therefore, GIPSA has decided it is best to provide service with either a one-year contract or with the non-contract rate. Therefore, GIPSA plans to abolish provisions for the 3-month and 6-month contracts.

GIPSA conducted a detailed, port-by-port evaluation of its costs and revenue streams for both contract and non-contract employees. GIPSA found that payroll increases caused by grade increases, longevity pay, and locality pay have exceeded the cost-of-living increases that GIPSA has charged annually. Further, GIPSA found that changes in grain distribution have increased non-revenue periods for certain workers. The evaluation showed the actual level of revenue-producing time likely to be expected from contract and non-contract workers. Based on its evaluation, GIPSA has determined that to adequately cover service costs and start to replenish its reserves, it is necessary to increase the annual contract rate by approximately 20 percent and to increase the non-contract hourly rate by approximately 47 percent in order to recover the costs of the pool.

GIPSA also charges hourly fees for services performed at other than export facilities. These fees are designed to recover GIPSA employee salary and benefits costs along with a portion of administrative and supervisory costs. Again, despite fee increases to accommodate the annual Federal pay increases, the current fees do not sufficiently cover costs. Like the employee costs at export, employee service costs and employee administrative costs have increased due to increased employee benefit costs, increases in payroll caused by longevity pay, and increases in payroll due to locality pay. Costs not related to employees have also increased. These local and national administrative costs include rent, communications, utilities, and other administrative support services. Based on its evaluation, GIPSA identified the costs and determined these hourly rates need to increase by approximately 11.5 percent to recover the additional costs.

Unit Fees. In addition to hourly fees, GIPSA also charges unit fees for additional services. These unit fees are charged in addition to the hourly rate when the services are provided at an applicant's facility in an onsite laboratory. These unit fees are based on the cost of equipment and supplies needed to conduct the test. GIPSA also charges unit fees for services performed at other than an applicant's facility in a GIPSA laboratory and for some miscellaneous services. These unit fees are designed to recover the direct costs of the services (salary, equipment, and supplies) along with administrative and supervisory costs. GIPSA has not made any adjustments to the unit fees for services provided at an applicant's facility in an onsite laboratory since the fees were first promulgated in 1996. Due to the increased costs for providing services, GIPSA proposes to adjust the unit fees in section 800.71 to reflect these costs.

As GIPSA updates these unit fees, it also provides GIPSA a chance to remove obsolete services from the list. At one time, GIPSA offered aflatoxin tests using the thin-layer chromatography (TLC) method. GIPSA discontinued the use of this test in 1998 because of the hazardous chemical materials required to conduct the test and rapid test kits were available for field use which were safer and less expensive. GIPSA is removing the method from the fee schedule since this test is no longer available. The unit fee for aflatoxin will recover the costs of the quick test kits currently used at field offices.

Administrative Tonnage Fee. GIPSA also utilizes a 6-level tonnage fee designed to recover the local and national administrative and supervisory costs which are not covered by unit fees and hourly fees assessed at other than export facilities. This fee is only charged to facilities in the United States that have export grain inspected by GIPSA.

The 6-level administrative tonnage fee is designed to reduce fees as the inspection volume increases. These fees have also been adjusted through the years to reflect the annual Federal pay

raises. The following table illustrates how the fee levels are structured and indicates what was originally implemented in 1996 and what is current for the same levels.

ADMINISTRATIVE TONNAGE FEES

Metric ton ranges	1996 fees ($ per metric ton)	Current fees ($ per metric ton)
1–1,000,000	0.090	0.1199
1,000,001–1,500,000	0.082	0.1094
1,500,001–2,000,000	0.042	0.0591
2,000,001–5,000,000	0.032	0.0437
5,000,001–7,000,000	0.017	0.0239
7,000,001 +	0.002	0.0109

When GIPSA introduced the 6-level tonnage fee in 1996, the World Agricultural Outlook Board projected grain exports to increase 2.5 percent annually, and reach 131 MMT by 2001. With this in mind, GIPSA decided to use 85 MMT as the target level for setting fees. This would be the breakeven point. GIPSA could expect to recover costs if billable tonnage were 85 MMT or more. Conversely, costs would exceed the revenues if billable tonnage were less than 85 MMT. Since 1996, GIPSA had only one year where the billable tonnage reached the 85 MMT mark at 85.2 MMT. Although GIPSA recovered the costs that year, the other years had losses between $1 million and $1.7 million. The decision to use 85 MMT as the breakeven basis for the administrative tonnage fee has contributed to the revenue shortfall.

Other changes in market practices further reduced revenue collected. Exports handled by the New Orleans Field Office facilities increased from 72 percent of the total tons serviced by GIPSA in FY 1996 to 78.6 percent in FY 2002. During the same period, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. In addition, the Baltimore Field Office was closed due to no volume in FY 2002. These market shifts resulted in less revenue being collected per metric ton than originally predicted since the shift in New Orleans resulted in more tons loaded at a lower per-ton cost due to the 6-level fee structure. Export volume increased and the revenue per ton decreased.

GIPSA's analysis of the financial information for the 6-level administrative tonnage fee shows the revenues from it are not recovering the costs. To better recover field office administrative and supervisory costs in today's export grain marketing environment, GIPSA analyzed three potential changes to the current administrative tonnage fee: Alternative 1: Specific field office tonnage fees; Alternative 2: A flat rate national administrative tonnage fee; and Alternative 3: Increasing the current 6-level tonnage fee by 27 percent. The analysis used actual FY 2002 costs, revenue, and volume of export grain inspected by GIPSA.

The specific field office tonnage fee (Alternative 1) was designed to recover local overhead costs and a part of the national administrative costs. Local administrative costs were divided by the tonnage observed by that field office to determine the cost per ton needed by the field office to cover expenses. National administrative costs were divided by the total export tons serviced by GIPSA at all field offices to determine the cost per ton needed to recover administrative costs at headquarters. The sum of the two per ton costs (local and national) was used to establish a specific field office tonnage fee. GIPSA determined the use of specific field office tonnage fees resulted in each field office collecting sufficient revenue to cover local administrative costs as well as headquarters administrative costs.

A flat rate national administrative tonnage fee (Alternative 2) was designed to recover total administrative costs but not necessarily each field office collecting revenues to recover the local costs. This tonnage fee was calculated by dividing GIPSA's total administrative costs (field offices and headquarters) by the total tons of U.S. export grain serviced by GIPSA. GIPSA determined the flat rate national administrative tonnage fee would collect the revenues to recover the total administrative costs but only the New Orleans Field Office received revenue to recover the field office administrative costs. All other field offices did not recover their local administrative costs.

GIPSA determined if increasing the current 6-level tonnage fee was to become a viable option, those fees would have to be increased by 27 percent (Alternative 3). Although all the field offices collected revenues to recover the total administrative costs of GIPSA; not all field offices collected revenue to offset their individual office costs. GIPSA is also concerned that shifting market trends may make the 6-level tonnage fee unreliable since the revenues are dependent on the volume of grain handled by each facility.

After considering these alternatives, GIPSA proposes adopting the specific field office administrative tonnage fee structure (Alternative 1). Under this fee structure, local export facilities financially support their field office administrative costs and every ton of grain exported from field office service areas is assessed an identical fee to cover headquarters costs. This will ensure that headquarters costs are collected regardless of where the grain is exported. This proposed tonnage fee also puts each field office in an independent financial position and encourages customers to work directly with each field office to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs. This action should foster the further development and implementation of grain handling efficiencies by grain companies to reduce the cost of GIPSA services. Also, this process makes administrative and supervisory costs more transparent to the industry.

GIPSA developed the new administrative tonnage fees by projecting GIPSA costs to the FY 2007 level and assuming GIPSA billable tonnage will be 80 MMT. GIPSA determined the field office tonnage rates would be $0.167 per ton for elevators serviced by the League City Field Office, $0.067 per ton for elevators serviced by the New Orleans Field Office, $0.136 per ton for elevators serviced by the Portland Field Office, and $0.184 for elevators serviced by the Toledo Field Office.

When GIPSA implemented the administrative tonnage fees, it also provided for a monthly payment of administrative fees to level out the payments over the year based on the expected tonnage handled by a facility. This provision, located in section 800.73 (e) of the regulations, was used to level out the tonnage rates over a year instead of paying in incremental levels. GIPSA reviewed the need to preserve this regulation and determined it was no longer needed. Proposing specific field office tonnage rates that will not change due to increased volume does not require a monthly payment program to level the costs. Further, the provision for the monthly payment process has not been used by industry. Therefore, GIPSA is proposing to remove this provision from the regulations.

Delegated State Ship Fees. GIPSA also oversees the activities of delegated States and designated agencies that provide official services on behalf of GIPSA. To support this activity, GIPSA also charges a supervision fee to the agencies to recover this cost. The current fees for the supervision of inspection and weighing services performed by the agencies were published in the **Federal Register** on September 23, 1985, (50 FR 28303), and became effective on October 1, 1985. GIPSA currently assesses a $49.20 fee for every ship inspected by a delegated State. This fee is then passed on to the exporter by the delegated State.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in a need to collect $0.016 per metric ton.

In FY 2002, delegated States inspected 37,586,754 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00086 per metric ton. This is short of the $0.016 per metric ton GIPSA calculated as needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the delegation and designation program, GIPSA plans to change this fee from a unit fee to a tonnage fee. The tonnage fee would be set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

GIPSA proposes to change the fees shown in 7 CFR 800.71, Schedule C-Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States by removing the $49.20 unit fee for ships and replacing it with the $0.016 per ton fee which GIPSA determined is needed to help recover the cost of administration and supervision of the official agency program.

Special Weighing Services. GIPSA also provides special weighing services to the grain industry and other industries requiring accurate weights. These services include scale testing and certification, evaluations of weighing and material handling systems used to automate weighing functions, National Type Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters.

Scale specialists are highly specialized individuals who are trained in scale operation and the operation of test equipment. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

GIPSA also owns and operates five railroad test cars that are used to test and calibrate railroad master scales and commercial track scales. The National Bureau of Standards (NBS) master scale testing program transferred to GIPSA in 1980 under an agreement between NBS, the Association of American Railroads (AAR), and then, the Federal Grain Inspection Service. Under this agreement, GIPSA is responsible for maintaining the master scale in Chicago and annual testing and calibration of other railroad master scales located throughout the United States.

GIPSA's railroad track scale testing program is funded by the service agreement with AAR and by revenues collected from non-AAR customers. The railroad track scale testing program costs have exceeded revenue for the last several years by approximately $25,000 per year. This is due to hourly fees not fully recovering the cost of the service representative and an increase in the cost of maintaining the aging test cars and other equipment used in the program. Consequently, the total funding and revenue are not meeting the cost of the program.

Although the test cars GIPSA uses in this program are properly maintained to provide an accurate service, more frequent repair services are needed due to the age of the test cars. This is increasing the cost of the program. Eventually, GIPSA will need to replace test cars in order to continue providing this valuable service to the railroad industry. GIPSA had solicited bids to build a new car; however, the initial bid cost was in excess of $200,000 and GIPSA did not have the funds to cover that cost. To collect the funds needed to maintain and replace test cars, GIPSA proposes to implement a user fee of $500 per facility when the test car is used to test commercial track scales. Implementing a specific fee for the use of the test cars will assure that only those companies that use the test cars are contributing towards the expenses directly related to the test cars. These expenses include both the maintenance of the test cars and costs associated with the replacement of the test cars.

GIPSA has determined that applying a $500 service fee to the 50 locations serviced by GIPSA for using the GIPSA test car, in addition to the hourly fee for the service representative, should raise sufficient funds to recover the annual loses of $25,000. GIPSA, by recovering this annual financial loss, will be able to maintain the test cars in good repair and initiate retained earnings to contribute towards the purchase of new test cars in the future. GIPSA will not apply the $500 usage fee to the AAR scales tested under the agreement since AAR's costs are covered through the service agreement.

In summary, GIPSA is authorized by the USGSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs. GIPSA has determined the current fees are not recovering these costs despite efforts to reduce these costs over the years.

Accordingly, GIPSA is proposing changes to the fee schedule. These proposed changes include (1) eliminating provisions for the 3-month

and 6-month contracts; (2) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent; (3) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (4) increasing unit fees for additional tests provided by GIPSA; (5) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (6) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (7) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (8) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

These proposed changes should generate additional average annual revenues as noted in the following table.

Changes to fee schedule	FY02 revenue	Projected annual revenue	Projected annual revenue increase
Eliminating 3-month and 6-month contracts	$31,063	$0	$(31,063)
Increasing 1-year contract and non-contract hourly rates	16,220,331	18,515,129	2,294,798
Increasing hourly rates not at facility	13,886	16,928	3,042
Increasing unit fees for testing services	677,854	930,110	252,256
Substituting regional tonnage fee for 6-level administrative fee	4,845,464	6,905,679	2,060,215
Substituting tonnage fee for unit fees on delegated State ship inspections	32,226	601,388	569,162
Increasing hourly fees for special weighing services	426,195	519,552	93,357
Establishing test car usage fee	0	25,000	25,000
Totals	22,247,019	27,513,786	5,266,767

These proposed changes are needed to restore the retained earnings accounts and to maintain a 3-month operating reserve. GIPSA has projected that the proposed changes to the fee schedule should gradually replenish the retained earnings account and the 3-month operating reserve. The following table illustrates how gradually restoring the fund is projected over time.

PROJECTED FINANCIAL POSITION FOR GIPSA

	FY 03	FY 04	FY 05	FY 06	FY 07
Shortfall in Retained Earnings	$1,945,000	$1,573,000	$−926,000	$−2,705,000	$−3,740,000
3-Month Operating Reserve	6,475,000	6,680,000	6,853,000	7,034,000	7,219,000
Total Need	8,420,000	8,253,000	5,927,000	4,329,000	3,479,000

GIPSA will evaluate the financial status of the grain inspection and weighing program every six months to determine if it is meeting the goal of obtaining a 3-month operating reserve by fiscal year 2010. Using the projected information in the above table, GIPSA will assess if the revenue collection trend is comparable to the financial objectives of the table. GIPSA would consider further adjusting the fees if it becomes apparent that GIPSA's goal to restore the retained earnings accounts and to obtain a 3-month operating reserve is not achievable by fiscal year 2010.

Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

Executive Orders 12866 and 12988

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). GIPSA has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Proposed Action. The USGSA requires GIPSA to charge and collect reasonable fees for performing official inspection and weighing services. The fees are to cover, as nearly as practicable, GIPSA's costs for performing inspection and weighing services, including related administrative and supervisory costs.

GIPSA changed the inspection and weighing fees in 1996 (61 FR 43301) from using predominately hourly fees to the current method of using a mixture of hourly fees, unit fees, and tonnage fees. Hourly fees are designed to recover the salary and benefit costs for those employees (pool) that perform work at an export grain elevator. Unit fees are designed to recover the costs of tests along with administrative and supervisory costs. Tonnage fees are designed to recover local and national administrative and supervisory costs.

GIPSA implemented the new fees expecting exports to increase. Export volume is a critical condition since GIPSA determined a minimum of 85 million metric tons (MMT) of billable tonnage was needed to break even. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. That year the billable tonnage reached 85 MMT. The other years had billable tonnage below the 85 MMT target and costs exceeded the revenues in those years due to the changes in grain marketing. Annual losses have been between $1 million to $1.7 million since 1996; except for the one positive year GIPSA revenue exceeded the costs by $88,000.

The continued financial deficits prompted GIPSA to initiate a detailed analysis of the user fees and operating costs to determine why revenues were not supporting the costs and to determine what action was needed. At the same time, it must be recognized that the U.S. grain market is very dynamic and constantly changing which makes it difficult to precisely predict and project long-term market trends. Transportation costs, grain handling costs, global pricing, environmental conditions, crop quality conditions, phytosanitary issues, and crop

production are some of the issues that influence the changing grain market.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. Although these fee adjustments were made through the years, GIPSA costs continue to exceed its revenues.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA's financial review detected where the program losses were occurring. GIPSA has determined the hourly fees for services performed at the export elevator are not recovering the full cost of the pool. The base salary and benefits for the pool have increased beyond the annual Federal pay increase adjustments. Locality pay was not factored into the yearly cost-of-living increases nor was longevity pay increases. When the current fee was first established in 1996, the base contract hourly fee was based on a GS–9, step 5 pay level which was the average pay level for the pool. Today the average pool pay level is a GS–9, step 8. This equates to an average additional annual salary cost of $3,500 per GS–9 inspector. Locality pay may also increase this cost by an additional 9 percent to 18 percent depending on the geographic location of the employee.

Benefits paid to employees have also increased. In FY 1996, employee benefit costs averaged 19 percent. Since that time, overall benefit costs have increased 6 percent and now average 25 percent. Many factors have led to this increase. Health and life insurance premiums have increased along with Office of Worker's Compensation Program (OWCP) costs. GIPSA pays all OWCP costs since the government is self insured. Since FY 1996, some employees have converted to the new Federal Employees Retirement System (FERS) and all new employees are in FERS. The FERS is patterned after a typical retirement system used by non-Federal companies in that the employer must pay into social security and matches contributions into a 401(k) plan.

Grain marketing strategies and export volume have also had a negative effect on GIPSA's revenue. Since FY 1996, some grain exporting facilities have automated their material handling systems which requires fewer inspection and weighing personnel to provide service and makes the elevator more efficient. This improved efficiency has triggered a shift in locations where export grain is loaded. For example, the New Orleans Field Office facilities increased their export capacity from 72 percent of the total tons serviced by GIPSA in FY 1996 to 78.6 percent in FY 2002. During the same timeframe, the League City Field Office export tonnage decreased from 13 to 12 percent and the Portland Field Office volume declined from 10 to 7 percent. These market shifts resulted in less revenue being collected per metric ton than originally planned because of the 6-level administrative tonnage fee. The New Orleans Field Office exports average revenue was $0.048 per ton in 2002 while League City average revenue was $0.090 per ton and Portland's average revenue was $0.098 per ton. GIPSA estimates this shift in grain movements resulted in a revenue loss of approximately $660,000. Further, billable tonnage is not reaching the 85 MMT targeted in the 1996 fee schedules as the break even point. Therefore, revenue predictions based on billable tonnage were higher than what was actually billed.

GIPSA has evaluated the administrative tonnage fee and determined it is not recovering its share of local and national administrative and supervisory costs because of increased employee costs not related to annual pay increases, shifting grain exports to lower revenue per ton markets, and exports not reaching the 85 MMT mark to break even. Local and national costs such as rent, communications, utilities, and other administrative support services have also increased since 1996. Adjustments to the fees during the years have not compensated for these cost increases.

As GIPSA reviewed its financial status, it also concluded that unit fees are not recovering the cost of providing the service, supervision fees charged to delegated States for ships are not sufficient compared to the quantity of grain that is inspected and weighed, and the track scale testing program is not producing the revenue needed to maintain the testing program.

GIPSA charges unit fees for additional services provided at an applicant's facility in an onsite GIPSA laboratory. These unit fees are charged in addition to the hourly rate. These unit fees are designed to recover the costs of the equipment and supplies needed to provide the service. GIPSA has not made any adjustments to these unit fees since they were first promulgated in 1996.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is collected to recover administrative and supervision costs of the official agencies. GIPSA has determined the delegated States should be contributing $0.016 per ton towards administrative and supervisory costs. However, the $49.20 per ship fee is only recovering an amount equivalent to $0.00086 per ton.

GIPSA also provides special weighing services to the industry. These services include scale testing and certification, evaluations of weighing and material handling systems, National Type Evaluation Program scale evaluations, mass standards calibration and reverification services, and special weighing projects. GIPSA provides these services through scale specialists located at certain field offices and in headquarters. Scale specialists are in a different job classification and grade level than inspectors or weighers because of their unique responsibility. Consequently, they are classified at a higher grade level. On average, scale specialist costs are 30 percent higher than the cost of agricultural commodity graders. Therefore, GIPSA needs to set the hourly fee for special weighing services at a level approximately 30 percent higher than the fee established for non-contract services.

The track scale testing program also uses special weighing equipment (test cars) to test track scales. These cars require maintenance and need to be replaced in the future. To assist in recovering the costs associated with these railcars, GIPSA would charge a $500 unit fee each time the car is used at a facility.

GIPSA has concluded that despite efforts to reduce the cost of services, including administrative and supervisory activities, the revenues collected from the current user fees are less than the costs associated with these services. Consequently, GIPSA must re-evaluate the design and application of user fees to recover the costs of

providing service in order to place the agency in a sound financial status. GIPSA is statutorily required to charge fees to cover the cost of service. To do this, GIPSA has projected the potential costs out to FY 2007 and plans to replenish the operating reserve fund back to its 3-month level by FY 2010. The cost of living projections used in calculating future salary and benefits were supplied by OMB as published in the **Federal Register** (68 FR 12388) on March 14, 2003. Additionally, GIPSA is also adjusting the projected billable tonnage to set full cost recovery from 85 MMT to 80 MMT. GIPSA believes that this revised projection is necessary because annual billable tonnage has averaged near 80 MMT from 1996 to 2002. The 80 MMT does not include export grain shipments serviced by delegated States, land carrier exports to Mexico and Canada serviced by designated agencies, small shipments exported under the 15,000 metric ton exemption program, or other export shipments not requiring Federal services.

GIPSA has determined that this action is needed to recover the costs of providing services and to maintain a professional workforce to inspect and weigh grain for the grain industry. In doing so, GIPSA will continue to facilitate the orderly marketing of grain in the domestic and export markets.

Alternatives. Various methods were considered by which the objectives of the rule could be accomplished. GIPSA thoroughly evaluated the method of structuring fees prior to the implementation of the last major fee schedule revision in 1996. GIPSA determined at that time that the combination of hourly fees and unit fees provided customers with the information they need to determine the costs of specific inspection and weighing services because the fees are more specific.

The design and implementation of the administrative tonnage fee to recover local and national administrative and supervisory costs is another important component of this proposal. GIPSA evaluated and compared three different alternatives for charging administrative tonnage fees: Alternative 1: Establishing an administrative tonnage fee specific to each field office, Alternative 2: Establishing a fixed rate national administrative tonnage fee, or Alternative 3: Increasing the current 6-level administrative tonnage rates by 27 percent.

GIPSA analyzed the various alternatives in relation to each field office area because each field office is unique when considering the number of employees, the number and types of elevators serviced, and the volume of grain exported from that area. Fiscal Year 2002 information for each field office was used to analyze and compare the expected revenues for the various alternatives because the information is the most current and is indicative of recent marketing trends. This information was used to detail the cost recovery by each field office.

Table 1 indicates the 5 GIPSA export field offices (the Baltimore office was closed in November 2002), the number of elevators in each field office area, the number of metric tons inspected, the amount of revenue collected from the tonnage fee for each field office, the field office administrative cost related to tonnage revenue, the headquarters administrative cost related to tonnage revenue, the amount of both the field office and headquarters administrative cost, and the amount each field office was deficient. Table 1 demonstrates that some offices did not cover their individual administrative and supervisory costs *i.e.*, Baltimore, Portland, and Toledo) and all failed to cover the total administrative and supervisory costs of the combined field office and headquarters cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 1.—ACTUAL ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2002 DATA)

Field office	No. elev.	FY2002 tons inspected	FY 2002 ton revenue	Field office admin. cost	F/O portion of H.Q. admin. cost [1]	Total F/O & H.Q. admin. cost	Amt. short for cost recovery
Baltimore	3	876,586	$110,952	$120,717	$38,394	$159,112	$(48,160)
League City	7	10,071,370	905,972	880,749	441,126	1,321,875	(415,904)
New Orleans	13	64,622,607	3,126,212	778,759	2,830,470	3,609,229	(483,017)
Portland	3	4,142,092	406,895	416,166	181,424	597,589	(190,695)
Toledo	6	2,555,750	295,433	353,006	111,942	464,948	(169,514)
Total	32	82,268,405	4,845,464	2,549,397	3,603,356	6,152,753	(1,307,290)

[1] Headquarters cost portion per field office calculated by dividing the total amount of headquarters cost by the total number of metric tons inspected. That amount ($0.0438 per ton) was then multiplied by the number of tons inspected by each field office.

Table 2 indicates the average revenue per ton collected by each office, the component amounts of administrative and supervisory revenues per ton needed to meet field office and headquarters costs, and the estimated cost per metric ton calculated for each alternative. There are differences in the actual average revenue collected per ton in each office for FY 2002. This ranges from $0.048 per ton in New Orleans to $0.127 per ton in Baltimore. These differences are due to the 6-level administrative tonnage fee which decreases the amount per ton collected as the total tonnage increases. Under Alternative 3, these differences in revenue collected from each field office would continue because the current 6-level administrative tonnage fee would remain in effect.

TABLE 2.—ADMINISTRATIVE TONNAGE FEE COMPARISON (FY 2002 DATA)

Field office	Actual FY02 revenue per ton	Dollars per ton needed to recover F/O & H.Q. costs per ton		Dollars per ton needed to recover total overhead		
		F/O	H.Q. [1]	Alternative 1 regional per ton total overhead	Alternative 2 one admin. fee per ton	Alternative 3 increase ranges fee ton by 27%
Baltimore	$0.127	$0.138	$0.044	$0.182	$0.075	$0.162
League City	0.090	0.087	0.044	0.131	0.075	0.115

TABLE 2.—ADMINISTRATIVE TONNAGE FEE COMPARISON (FY 2002 DATA)—Continued

Field office	Actual FY02 revenue per ton	Dollars per ton needed to recover F/O & H.Q. costs per ton		Dollars per ton needed to recover total overhead		
		F/O	H.Q. [1]	Alternative 1 regional per ton total overhead	Alternative 2 one admin. fee per ton	Alternative 3 increase ranges fee ton by 27%
New Orleans	0.048	0.012	0.044	0.056	0.075	0.062
Portland	0.098	0.100	0.044	0.144	0.075	0.126
Toledo	0.116	0.139	0.044	0.183	0.075	0.149

[1] $0.0438 rounded to $0.044.

The administrative and supervisory cost attributed to headquarters in Table 2 is $0.044 (rounded from $0.0438) per metric ton inspected. This amount is determined by dividing the amount of headquarters cost ($3,603,356 from Table 1) by the number of total metric tons inspected (82,268,405 tons from Table 1). The administrative cost of each office is determined by dividing the offices administrative cost (from Table 1) by the number of metric tons inspected by each office (from Table 1).

In Table 2, establishing an administrative tonnage fee specific to each field office (Alternative 1) is arrived at by combining the calculated field office tonnage rate with the headquarters tonnage rate. This results in the unique field office tonnage rate required to cover the entire field office administrative costs and the field office portion of the national administrative cost. Establishing a fixed rate national administrative tonnage fee (Alternative 2) tonnage rates is arrived at by taking the total administrative costs (all field office costs plus headquarters costs) divided by the total billable tonnage. This results in a single tonnage fee that is applicable to all GIPSA customers. Increasing the current 6-level administrative tonnage fee (Alternative 3) is arrived at by taking the current tonnage rate tables and increasing them by 27 percent. The 27 percent increase is what GIPSA determined the shortage was in the revenue to the costs.

Table 3 shows the projected administrative tonnage revenues based on the tonnage fees from Table 2. The projected information shows all offices collect sufficient revenues to cover the local administrative and supervisory costs as well as the headquarters cost when the regional tonnage fees are used (Alternative 1). The other alternatives cover the total cost of administration and supervision; however, some offices do not collect the revenues needed to support the field office costs and some do not cover the total of the field office cost combined with a portion of the headquarters administrative cost as a result of the employee cost increases and the changes in grain marketing.

TABLE 3.—ADMINISTRATIVE TONNAGE FEE REVENUE COMPARISON (FY 2002 DATA)

Field office	FY02 ton	Total needed F/O & H.Q. administrative cost	Alternative 1 regional per ton revenue	Alternative 2 one admin. fee per ton revenue	Alternative 3 increase ranges ton fee by 27% revenue
Baltimore	876,586	$159,112	$159,112	$65,569	$142,019
League City	10,071,370	1,321,875	1,321,875	753,339	1,159,644
New Orleans	64,622,607	3,609,229	3,610,173	4,833,775	4,006,405
Portland	4,142,092	597,589	597,589	309,829	520,826
Toledo	2,555,750	464,948	467,039	191,170	380,394
Total	82,268,405	6,152,753	6,155,789	6,153,682	6,209,288

All alternatives collect the targeted amount needed to fully fund both field and headquarters overhead in total. GIPSA believes each field office should collect sufficient revenue from customers to support the local field office administrative and supervisory costs in addition to their share of the national administrative and supervisory costs. This would put each field office in an independent financial position and would encourage customers to work directly with each field office and headquarters to continue the implementation of grain handling efficiencies while raising the awareness of local administrative and supervisory costs.

The national administrative fee approach (Alternative 2) relies heavily on the New Orleans Field Office to support the administrative and supervisory costs of the other offices. The alternative to increase the current 6-level tonnage fee structure by 27 percent (Alternative 3) results in the same situation. After a complete evaluation, GIPSA believes the regional tonnage method (Alternative 1) is the best approach to collect revenues for these costs. Under Alternative 1, users of the service would be paying their share of the local costs of operating and maintaining a field office in their port area. GIPSA proposes to establish new administrative tonnage fees based on the concept of Alternative 1. These tonnage fees are calculated to recover the projected increases in administrative and supervisory costs related to employee costs as determined by the OMB estimates and based on a minimum 80 MMT of billable tonnage.

Table 4 lists the expected tonnage and the expected administrative and supervisory costs for field offices and headquarters projected out to FY 2007. This information was then used to determine the specific field office tonnage rate needed to recover field office costs and the tonnage rate needed to recover the headquarters cost. The field office tonnage rate in Table 4 was arrived at by dividing the projected field office cost by the projected tonnage.

TABLE 4.—PROJECTED ADMINISTRATIVE METRIC TONNAGE FEES AND COSTS (FY 2007 PROJECTION)

Field office	No. elev.	Projected tons inspected	Projected F/O admin. cost	Projected admin. tonnage fee for field offices [1]	Projected total F/O & H.Q. admin. cost
Baltimore	Field office was closed and elevators and costs redistributed to other field offices.				
League City	7	9,130,000	1,048,000	$0.115	$1,522,760
New Orleans	14	63,330,000	946,000	0.015	4,239,160
Portland	3	5,335,000	447,000	0.084	724,420
Toledo	8	2,253,000	296,000	0.131	413,156
Total	32	80,048,000	2,737,000	([2])	

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

[2] The projected fee needed to recover the headquarters cost ($0.052) was calculated by dividing the total amount of headquarters cost ($4,154,000) by the total number of metric tons inspected.

Table 5 combines the field office tonnage rates with the headquarters tonnage rates to calculate the specific field office tonnage rate that would be proposed. The projected tonnage rate was used to calculate the projected revenue for each field office by multiplying the projected tons for each field office by the specific field office rate. The projected revenue for each office was compared to the projected total costs (field office and headquarters) for each field office (from Table 4) to determine if each field office collected sufficient revenues to cover their costs.

TABLE 5.—PROJECTED COSTS AND REVENUES COLLECTED BY FIELD OFFICE (FY 2007 PROJECTION)

Field office	Projected tons inspected	Projected administrative tonnage fee		Projected fees and revenue		
		F/O	H.Q.	Projected tonnage fee ($/ton) [1]	Projected revenue ($)	Projected cost/revenue balance ($)
League City	9,130,000	0.115	0.052	0.167	1,524,710	1,950
New Orleans	63,330,000	0.015	0.052	0.067	4,243,110	3,950
Portland	5,335,000	0.084	0.052	0.136	725,560	1,140
Toledo	2,253,000	0.131	0.052	0.183	412,299	(857)
Total	80,048,000				6,905,679	

[1] The projected fees for some locations are lower than or equal to those of FY 2002. This is due to changes in expected export volumes, redistribution of workload and costs due to the closing of the Baltimore Field Office, and certain one-time costs.

Table 5 demonstrates that the projected tonnage fees produce revenues to cover, as nearly as practicable, overall costs for each field office. The Toledo Field Office calculated tonnage rate, however, does not cover their costs. Therefore, GIPSA increased their rate by one-tenth of a cent per ton to fully recover their costs.

As GIPSA evaluated the administrative and supervisory fees needed to cover field office and national administrative and supervisory costs, GIPSA also considered the contribution of revenue collected from official agencies to cover the costs of administration and supervision of their programs. GIPSA initiated this review by determining the total administrative and supervisory costs of overseeing the official agencies ($2,330,343) and the total number of metric tons inspected by official agencies in both the domestic and export markets (150,650,608 metric tons) to determine the overall cost per ton needed to cover these administrative and supervisory costs. This resulted in $0.016 per metric ton to cover administration and supervision of official agencies.

Currently, GIPSA assesses $49.20 per ship to delegated States for providing official inspection and weighing services. This fee is then passed on to the exporter by the delegated State. In FY 2002, delegated States exported 37,586,754 metric tons of grain (655 ships) and GIPSA collected $32,226 in revenues from the $49.20 per ship fee. This makes the current ship fee equivalent to $0.00086 per metric ton. This is far less than the $0.016 per metric ton GIPSA calculated was needed to recover costs. Since the current ship fee is contributing very little to recover the costs of administration and supervision of the delegation and designation program, GIPSA plans to change this fee from a unit fee to a tonnage fee. The tonnage fee would be set at $0.016 per ton since this is what GIPSA calculated as the amount needed to recover costs.

Summary of Benefits. This proposal would allow GIPSA to collect revenues from our customers to support direct service costs along with the administrative and supervisory costs of providing these services. The revenues collected from this proposal would provide GIPSA the resources needed to replenish the retained earnings account to a 3-month operating reserve. This proposed increase in fees is needed to recover the costs of providing service and to provide the financial foundation for GIPSA to maintain a highly skilled and professional work force to inspect and weigh grain. The proposed action would also foster further development of grain handling efficiencies implemented by grain companies. This would further reduce the cost of GIPSA services by reducing the number of employees needed to provide service.

These combined actions would assist GIPSA in fulfilling its mission to

facilitate the marketing of grain in domestic and export markets by assuring continued inspection and weighing services to the grain industry.

User fees promote the internalization of the real cost of providing inspection and weighing services in consumer transaction decisions. User fees also achieve savings in Government expenditures, and, therefore, reduce the tax support necessary for the system to operate at a given level. These tax funds can then be used in other programs or to reduce taxes overall and, thus, diminish the efficiency losses associated with the generation of taxes (deadweight loss plus collection costs). The revision of user fees helps ensure that the user fees adequately reflect the cost of performing the services over time.

Summary of Costs. GIPSA has determined that the total cost to the grain industry to implement the proposed changes will be approximately $5,266,767 per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee. GIPSA would collect this additional revenue by (1) increasing the 1-year contract hourly rate by approximately 20 percent and the non-contract hourly rate by 47 percent and eliminating provisions for the 3-month and 6-month contracts; (2) increasing hourly rates for services not performed at an applicant's facility by approximately 11.5 percent; (3) increasing unit fees for additional tests provided by GIPSA; (4) eliminating the 6-level administrative tonnage fee and replacing it with regional administrative tonnage fees; (5) eliminating the unit fee charged to delegated States for export ships and replacing it with a tonnage fee; (6) increasing hourly fees for special weighing services by approximately 30 percent above the non-contract hourly rate; and (7) establishing a $500 usage fee per facility when the GIPSA test car is used to test track scales.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Sec. 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503. Please state that your comments refer to GIPSA Fees for Official Inspection and Official Weighing Services. Please send a copy of your comments to: (1) Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The proposed rule would require applicants to complete Form FGIS–4, Application and Agreement for Contract Services, if they intend to enter into a one-year contract service agreement with GIPSA.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this action is estimated to average 0.33 hours per response.

Respondents: Export grain companies.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 4.00.

Estimated annual number of responses: 72.

Estimated total annual burden on respondents: 23.76 hours.

Copies of this information collection can be obtained from Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Review

In promulgating this regulation, GIPSA considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age disability, or marital or family status. GIPSA has considered potential civil rights implications of this proposed rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The proposed rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. Information indicates that the proposal will have no effect on protected populations.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs

GIPSA adopted its current fee structure (61 FR 43301) effective October 1, 1996, for services provided by GIPSA employees. This fee structure

change was needed because advances in technology had allowed exporters to improve operational efficiencies, which, in turn, had reduced the number of GIPSA personnel required to service certain facilities. The fee structure was changed from primarily using hourly fees to recover costs to a method that uses a mix of hourly and unit fees for its inspection and weighing services. Direct service costs are recovered through hourly fees charged for employees providing the inspection and weighing services. Administrative costs are recovered by a tonnage fee applied to grain inspected and weighed as shipments from an export facility. Export grain companies are paying for direct labor costs and pay a share of the local and national administrative costs.

Since implementing the fees in 1996, GIPSA has adjusted hourly fees to correspond with annual Federal pay increases. This action is necessary since employee payroll costs account for approximately 84 percent of GIPSA's total operating budget. The current USGSA fees were published in the **Federal Register** on June 2, 2003, (68 FR 32623) and became effective on July 2, 2003.

GIPSA regularly reviews its programs to determine if the fees are adequate. Since implementing the fees in 1996, GIPSA has only experienced one year where the revenues exceeded the costs. Annual losses have been between $1 million to $1.7 million since 1996 except for the one positive year GIPSA revenue exceeded the costs by $88,000.

GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees. Therefore, GIPSA has taken action through the years to minimize payroll costs. These actions include utilizing employee buyouts to remove high-salaried, senior employees from the active employment list; taking advantage of employee attrition to reduce total staff by not hiring to fill vacant positions; hiring and scheduling more part-time and intermittent employees to better manage staff costs during fluctuating work periods; and reducing the amount of paid overtime via creative scheduling processes. Although GIPSA has observed a 14 percent reduction in paid hours and has reduced overtime pay by 2 percent, this is not enough to avoid continued financial losses.

GIPSA has completed a review of the grain inspection and weighing programs and has determined it is necessary to amend the fees in order to replenish the retained earnings accounts and to maintain a 3-month operating reserve. The proposed changes are targeted to recover employee costs directly related to services provided and to recover the costs associated with administering and supervising the grain inspection and weighing programs. Maintaining GIPSA's financial stability will assure continued inspection and weighing services to the grain industry which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

To minimize the impact of a fee increase, GIPSA has decided to propose fee rates that collect sufficient revenue to immediately cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. These proposed fees are designed to collect sufficient annual revenue through FY 2007, to achieve an average estimated positive $1,000,000 balance annually based on an inspection volume of 80 MMT per year. The cost of living projections used in calculating future salary and benefits out to FY 2007 were supplied by OMB as set forth in their Federal Register publication (68 FR 12388) on March 14, 2003. GIPSA will evaluate the financial status of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010 and to determine if other adjustments are necessary.

Under the provisions of the United States Grain Standards Act, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 32 export facilities and by delegated States at 19 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Further, the regulations are applied equally to all entities.

The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 90 registrants registered to export grain. While most of the 90 registrants are large businesses, we assume that some may be small.

GIPSA also provides nonmandatory inspection and weighing services at other than export locations. Approximately 75 different applicants receive nonmandatory inspection services each year and approximately 50 different locations receive track scale tests as a miscellaneous service each year. While most of these applicants are large businesses, we assume that the proposed increases should not significantly affect many small businesses requesting these official services. Furthermore, any of these applicants that wish to avoid the fee increase may do so by using an alternative source for these services. Such a decision should not prevent the business from marketing its product or conducting business as usual.

GIPSA has determined that the total cost to the grain industry to implement the proposed changes will be approximately $5,266,767 per year. This represents an approximate 21 percent increase in revenues or an average increase of 6.5 cents per ton. These calculations are based on the assumptions that the projected OMB employee costs for continued annual Federal pay increases will increase a total of 17.38 percent from FY 2002 to FY 2007 and GIPSA will collect revenue from a minimum of 80 MMT per year which was used to establish the tonnage fee.

Most users of the official inspection and weighing services do not meet the requirements for small entities. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. Additionally, GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule. Therefore, Donna Reifschneider, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising paragraph (a), Schedule A and

Tables 1 and 2 in Schedule C to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative):				
1-year contract ($ per hour)	36.00	37.60	43.00	64.00
Noncontract ($ per hour)	64.00	64.00	64.00	64.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (rapid test kit method)	$10.00
(ii) Corn oil, protein, and starch (one or any combination)	2.25
(iii) Soybean protein and oil (one or both)	2.25
(iv) Wheat protein (per test)	2.25
(v) Sunflower oil (per test)	2.25
(vi) Vomitoxin (qualitative)	12.50
(vii) Vomitoxin (quantitative)	18.50
(viii) Waxy corn (per test)	2.25
(ix) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(x) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers serviced by the specific field office (per-metric ton).	
(a) League City	$0.167
(b) New Orleans	$0.067
(c) Portland	$0.136
(d) Toledo	$0.184

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY. [1 2]

(1) Original Inspection and Weighing (Class X) Services: [1 2]	
(i) Sampling only (use hourly rates from Table 1).	
(ii) Stationary lots (sampling, grade/factor, & checkloading):	
(a) Truck/trailer/container (per carrier)	$20.00
(b) Railcar (per carrier)	29.70
(c) Barge (per carrier)	187.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	12.00
(b) Railcar (per carrier)	25.00
(c) Barge (per carrier)	128.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.04
(iv) Other services:	
(a) Submitted sample (per sample—grade and factor)	12.00
(b) Warehouseman inspection (per sample)	21.00
(c) Factor only (per factor—maximum 2 factors)	5.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed)(CWT)	0.04
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	13.00
(f) Class X Weighing (per hour per service representative)	64.00
(v) Additional tests (excludes sampling):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	10.00
(c) Soybean protein and oil (one or both)	10.00
(d) Wheat protein (per test)	10.00
(e) Sunflower oil (per test)	10.00
(f) Vomitoxin (qualitative)	31.00
(g) Vomitoxin (quantitative)	38.50
(h) Waxy corn (per test)	10.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY.[1 2]—Continued

(i) Canola (per test—00 dip test)	10.00
(j) Pesticide Residue Testing:[3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	115.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(2) Appeal inspection and review of weighing service:[4]	
(i) Board Appeals and Appeals (grade and factor)	82.00
(a) Factor only (per factor—max 2 factors)	43.00
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees):	
(a) Aflatoxin (rapid test kit method)	30.00
(b) Corn oil, protein, and starch (one or any combination)	17.70
(c) Soybean protein and oil (one or both)	17.70
(d) Wheat protein (per test)	17.70
(e) Sunflower oil (per test)	17.70
(f) Vomitoxin (per test—qualitative)	41.00
(g) Vomitoxin (per test—quantitative)	47.00
(h) Vomitoxin (per test—HPLC Board Appeal)	141.00
(i) Pesticide Residue Testing:[3]	
(1) Routine Compounds (per sample)	216.00
(2) Special Compounds (per service representative)	115.00
(j) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	82.60
(3) Stowage examination (service-on-request):[3]	
(i) Ship (per stowage space) (minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (minimum $153.00 per ship)..	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of $2.65 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES[1]

(1) Grain grading seminars (per hour per service representative)[2]	$64.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	64.00
(3) Special weighing services (per hour per service representative)[2]	
(i) Scale testing and certification	83.20
(ii) Scale testing and certification of railroad track scales	83.20
(iii) Evaluation of weighing and material handling systems	83.20
(iv) NTEP Prototype evaluation (other than Railroad Track Scales)	83.20
(v) NTEP Prototype evaluation of Railroad Track Scale	83.20
(vi) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	500.00
(vii) Mass standards calibration and reverification	83.20
(viii) Special projects	83.20
(4) Foreign travel (per day per service representative)	510.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	3.00
(7) Divided-lot certificates (per certificate)	1.75
(8) Extra copies of certificates (per certificate)	1.75
(9) Faxing (per page)	1.75
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $64.00 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Schedule C—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States[1]

TABLE 1

Inspection services (bulk or sacked grain)	Official inspection or reinspection services
(1) Official sample-lot inspection service (white certificate):	
(i) For official grade and official factor determinations:	
(a) Truck or trailer (per inspection) [2]	$0.30
(b) Boxcar or hopper car (per inspection) [2]	0.95
(c) Barge (per inspection) [2]	6.15
(d) Ship (per metric ton) [3]	0.016
All other lots (per inspection) [2 4]	0.30
(ii) For official factor or official criteria determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(2) Stowage examination certificates:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate):	
(i) For official grade and official factor determination (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(a) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(b) Official criteria [2 6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria [2 6]	0.20

Note: The footnotes for table 1 are shown at the end of table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(Class X)	(Class Y)
Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20
(ii) Boxcar or hopper car (per carrier)	.95	.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship [3 7]	0.016/metric ton	12.30/ship
(v) All other lots (per lot or part lot) [4]	.30	.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.
[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.
[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.
[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans, and inhouse bin transfers.
[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.
[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.
[7] A Class Y ship fee shall be assessed for shipments destined for domestic markets only.

* * * * *

§ 800.73 [Amended]

3. Section 800.73, paragraph (e) is removed; paragraph (f) is redesignated as (e); paragraph (g) is redesignated as (f).

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–28831 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16342; Airspace Docket No. 03–AAL–15]

Proposed Establishment of Class E Airspace; Southeast, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace over Southeast, AK in support of a lower altitude Instrument Flight Rules (IFR) route structure. The FAA, under the Capstone program, is using technology developed to take advantage of the benefits of the Global Positioning System (GPS) and the Wide Area Augmentation System (WAAS) to enhance safety for aircraft utilizing IFR and Visual Flight Rules (VFR) operations. With the support of the Alaska Aviation Industry Council, the Capstone demonstration program that has utilized GPS/WAAS technology successfully in the Yukon-Kuskokwim Delta area is being extended into

Southeast Alaska. The Capstone initiative will establish Special GPS/WAAS enroute IFR airways that permit flight at significantly lower altitudes than those available on airways constructed from land based Navigational Aids (NAVAIDS). In addition, both Special and Public Standard Instrument Approach and Departure Procedures will be developed to/from airports throughout the region. The Special IFR enroute and arrival/departure procedures will be authorized for specific operators who have FAA approved equipment and training.

Additional Class E airspace is needed to enable operations under IFR to support the Capstone initiative. Specifically, this action proposes to establish controlled airspace extending from 1,200 feet above ground level (AGL) upwards, to the base of the Class E airspace extending upward from 14,500 feet above the ground, within an area beginning at lat. 58°54′25.2″ N., long. 137°31′55.3″ W. to lat. 58°38′33.2″ N., long. 138°12′21.25″ W., thence southeast along the offshore airspace 12 nautical miles west of and parallel to the shoreline to the point of intersection with the Alaska/Canada Border, thence along the Alaska/Canada Border to the point of beginning excluding that airspace designated for federal airways.

DATES: Comments must be received on or before January 5, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16342/Airspace Docket No. 03–AAL–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16342/Airspace Docket No. 03–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) to establish additional Class E airspace over Southeast Alaska. The intended effect of this proposal is to: (1) Provide adequate controlled airspace for commercial air carriers and others conducting Instrument Flight Rules (IFR) operations in Southeast Alaska, (2) Validate new operational procedures and equipment in the IFR environment, (3) Provide an enroute IFR structure for operations that can be flown safely at significantly lower altitudes than those permitted on airways based on land based NAVAIDS, and (4) Provide IFR access via Public and Special approach and departure procedures to airports not otherwise able to connect to the IFR infrastructure. The Flight Standards Division within the Alaskan Region will authorize the use of specific Special procedures for properly equipped aircraft where the flight crews have received the appropriate training.

Satellite-based navigation and positioning is a core element of our National Airspace System (NAS) modernization plans, and is critical to achieving a seamless, efficient global aviation system. Over the period of the past few years, the Federal Aviation Administration (FAA) has been working with commercial, military, and general aviation (GA) users to develop a global satellite-based navigation system independent of conventional ground based navigation aids. Alaska was selected to expand this program through a Research & Development demonstration program called Capstone.

The selection of Alaska for the demonstration project was recommended by the National Transportation Safety Board (NTSB) in their 1995 ''Safety Study of Aviation Safety in Alaska.'' In part this study concludes:

> To the Federal Aviation Administration—
>
> Implement * * * a model program in the Arctic and southeast regions of Alaska to demonstrate a low altitude instrument flight rules (IFR) system that better fulfills the needs of Alaska's air transportation system. The model program should include the following components:
>
> (1) The use of the global positioning system (GPS) as a sole source of navigational information for en route navigation and for nonprecision instrument approaches at a representative number of airports where

instrument approaches do not currently exist * * * (2) The use of satellite-based voice communications and satellite-based, Mode S, or VHF data link (for aircraft position and altitude) between aircraft in flight and air traffic controllers * * * (4) The use of currently uncontrolled airspace for IFR departures, en route flight, and instrument approaches in the demonstration program region * * *

From the time of its conception, the FAA Alaskan Region's Capstone Program has been an accelerated effort to improve aviation safety and efficiency. Capstone will further the program through installation of GPS based avionics and data link communications suites in most commercial aircraft serving Southeast Alaska. Up to 200 aircraft will be equipped. Compatible ground systems, equipment, and services will also be provided. The name ''Capstone'' is derived from the program's effect of drawing and holding together concepts and recommendations contained in reports from the Radio Telecommunications Conference of America (RTCA), the National Transportation Safety Board (NTSB), the MITRE Corporation's Center for Advanced Aviation System Development (CAASD), and Alaskan aviation industry representatives. In addition to the avionics suites, Capstone will deploy a ground infrastructure for weather observation, data link communications, surveillance, and Flight Information Services (FIS) to improve safety and enable implementation of new procedures.

Under the Capstone program, the FAA will develop Area Navigation (RNAV) GPS-based instrument approach and departure procedures to remote communities, including those serviced by seaplanes, such as Angoon. In addition, the FAA will develop an enroute IFR structure in Southeast Alaska that will be available to suitably equipped and trained IFR commercial and private operators. This enroute structure will provide GPS low altitude routes that access existing public and Special instrument approach and departure procedures at Ketchikan, Klawock, Wrangell, Petersburg, Kake, Sitka, and Juneau. The minimum enroute altitudes available on the segments of the Capstone enroute routes will be significantly lower than those available on the public Federal Airway system. In the future, additional IAPs will be considered for development for additional airports and waterlanes in Southeast Alaska.

The purpose of this proposal is to create controlled airspace within Southeast Alaska that is sufficient to contain the new IFR enroute and terminal procedures being developed by the Capstone program. This controlled airspace is needed to provide air traffic control services for the new enroute and terminal public and special instrument procedures. If this action is adopted, it will enhance flight safety by reducing the potential for midair collisions, provide more accurate aircraft navigation, enable flight tracking for ATC and commercial operators, provide better communications, enable transfer of weather and flight information between pilots and ATC, enable surveillance and the use of radar separation standards for ATC IFR separation and tracking, and will improve access to airports in Southeast Alaska.

The proposed new Class E airspace in areas that are currently Class G airspace will have an impact on pilot's flight visibility and cloud avoidance requirements when flying under Visual Flight Rules (VFR), during the day above 1,200 feet AGL. The flight visibility requirement for VFR operations in the new Class E airspace below 10,000 feet MSL will increase to three (3) statute miles. VFR weather minimums are shown in the following table extracted from 14 CFR 91.155 Basic VFR weather minimums:

BASIC VFR WEATHER MINIMUMS

	Flight visibility	Distance from clouds
Class G (Uncontrolled)		
1,200 feet or less AGL, day	1 statute mile	Clear of Clouds.
1,200 feet or less AGL, night	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, day	1 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, night	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
More than 1,200 feet AGL and at or above 10,000 feet MSL.	5 statute miles	1,000 feet below, 1,000 feet above, 1 statute mile horizontal.
Class E (Controlled)		
Less than 10,000 feet MSL	3 statute miles	500 feet below, 1,000 feet above, 2,000 feet horizontal.
At or above 10,000 feet MSL	5 statute miles	1,000 feet below, 1,000 feet above, 1 statute mile horizontal.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is to be amended as follows:

* * * * *

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AAL AK E6 Southeast, AK [New]

That airspace extending upward from 1,200 feet AGL to the base of overlaying Class E airspace above 14,500 feet MSL, within an area beginning at lat. 58°54′25.2″ N., long. 137°31′55.3″ W. to lat. 58°38′33.2″ N., long. 138°12′21.25″ W., thence southeast along the offshore airspace 12 nautical miles west of and parallel to the shoreline to the point of intersection with the Alaska, United States/Canada Border, thence along the Alaska, United States/Canada Border to the point of beginning excluding that airspace designated for federal airways and excluding that airspace within the Ketchikan, AK Class E5, the Klawock, AK Class E5, the Wrangell, AK Class E5, the Petersburg, AK Class E5, the Kake, AK Class E5, the Sitka, AK Class E5, and the Juneau, AK Class E5 airspace areas.

* * * * *

Issued in Anchorage, AK, on October 27, 2003.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–28824 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–147]

RIN 1625–AA11

Regulated Navigation Area: Savannah River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulated navigation area to improve vessel traffic flow on the Savannah River during Liquid Natural Gas (LNG) tankship transits. Under the current regulation, vessels greater than 1600 gross tons are not permitted within the regulated area during LNG tankship transits without the express permission of the Captain of the Port. This proposed rule would allow all vessels greater than 1600 gross tons to transit the area during LNG tankship transits provided they come no closer than 2 nautical miles from the LNG vessel without specific authorization from the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before February 17, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Savannah, Juliette Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401. Coast Guard Marine Safety Office Savannah maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–03–147], will become part of this docket and will be available for inspection or copying at Marine Safety Office Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Lawrence Greene, at the Marine Safety Office Savannah; phone (912) 652–4353 extension 205.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–147], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Savannah (see **ADDRESSES**) explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at the time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The port of Savannah is currently receiving Liquid Natural Gas (LNG) tankships, ranging from two to eight vessels per month, at the Southern LNG Elba Island facility. The Coast Guard currently has a regulated navigation area (RNA) in effect for LNG tankship transits which restricts vessel movement from Fort Jackson, which is upriver from the Elba Island LNG facility, and continues down the length of the Savannah River and extends offshore to the Savannah River Channel Entrance Sea Buoy. After nearly two years of experience with LNG tankship transits on the Savannah River, the Coast Guard is proposing to change the current RNA to allow vessels of 1600 gross tons or greater to enter the RNA during LNG tankship transits, provided they come no closer than 2 nautical miles to the LNG tankship. Vessels less than 1600 gross tons will still be permitted to transit the RNA during LNG tankship transits provided they maintain a safe distance from transiting LNG tankships. This proposed rule would potentially reduce port congestion during LNG transits and decrease delays to vessels, facilities and terminals on the Savannah River. A safe distance of two nautical miles for vessels 1600 gross tons and greater is necessary to protect the safety of life and property on the navigable waters from hazards associated with LNG activities.

Discussion of Proposed Rule

During the movement of an LNG tankship, other vessels of 1600 gross tons or greater would be required to maintain a safe distance of two nautical miles ahead of, or astern of, the

transiting LNG tankship. All other requirements in the existing RNA remain unchanged. Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater could approach within two nautical miles of a Liquid Natural Gas (LNG) tankship that is underway within the RNA without the permission of the Captain of the Port (COTP). This proposed change would improve traffic flow on the Savannah River by limiting delays caused by the current requirement, which restricts vessels of 1600 gross tons or greater from entering any part of the RNA during the transit of an LNG tankship. The four nautical mile zone (two miles upriver and downriver) centered on a transiting LNG tankship will maintain public and maritime safety by minimizing the risk of collision, allision or grounding and the possible release of LNG.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Delays for inbound and outbound traffic due to LNG transits will be minimized through this change and through pre-transit conferences between the pilots and the Coast Guard Captain of the Port. The RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposal so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.756, paragraph (d)(1)(i) is revised to read as follows:

§ 165.756 Regulated Navigation Area; Savanah River, Georgia.

* * * * *

(d) * * *

(1) * * *

(i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater may approach within two nautical miles of an LNG tankship that is underway within the RNA without the permission of the Captain of the Port (COTP).

* * * * *

Dated: October 28, 2003.

H.E. Johnson,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–28813 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0005, MT–001–0006; FRL–7588–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Thompson Falls PM_{10} Nonattainment Area Control Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. (Portions of the June 26, 1997, submittal were withdrawn by the Governor of Montana on February 8, 1999.) These revisions contain an inventory of emissions for Thompson Falls and establish and require continuation of all control measures adopted and implemented for reductions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in order to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) in Thompson Falls. Using the PM_{10} clean data areas approach, we propose to approve the control measures and the emissions inventory that were submitted as part of the PM_{10} nonattainment area SIP for Thompson Falls. Also, we will be taking action on other portions of the June 26, 1997, and June 13, 2000, submittals at a later time. We are acting under section 110 of the Clean Air Act (CAA or Act) for this proposed approval.

DATES: Written comments must be received on or before December 19, 2003.

ADDRESSES: Written comments may be submitted by mail to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, 999 18th Street, Suite 300, MS 8P–AR, Denver, CO 80202, 303–312–6144, e-mail *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under MT–001–0005, MT–001–0006. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air and Radiation Program, EPA Region 8, 999 18th Street, Suite 300, Denver, CO. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the public rulemaking file at the Regional Office Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

2. Copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency. Copies of the State documents relevant to this action are also available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

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

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

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking MT–001–0005, Mt–001–0006'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail). Please send any comments simultaneously to *long.richard@epa.gov* and *dygowski.laurel@epa.gov* and include the text ''Public comment on proposed rulemaking MT–001–0005, MT–001–0006'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through ''Regulations.gov'' (see below), EPA's e-mail system will automatically capture your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

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

2. *By Mail.* Send your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Please include the text ''Public comment on proposed rulemaking MT–001–0005, MT–001–0006'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Summary of SIP Revision

A. Background

The Thompson Falls area was designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the Clean Air Act on December 21, 1993.[1] See 57 FR 43846 (September 22, 1992), 58 FR 67334 (December 21, 1993) and 40 CFR 81.327 (Sanders County (part)). The Thompson Falls designation became effective on January 20, 1994. The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of title I of the Act. Subpart 1 applies to nonattainment areas generally and subpart 4 applies to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. We have attempted to clarify the relationship among these provisions in guidance entitled the ''General Preamble'' (see 57 FR 13498, April 16, 1992, and 57 FR 18070, April 28, 1992) and, as appropriate, in today's notice.

B. What Requirements Do States Need To Follow in Developing PM_{10} Nonattainment Area SIPs?

Our ''General Preamble'' describes our preliminary views on how we will review SIPs and SIP revisions submitted under title I of the Act, including State-submitted SIPs for moderate PM_{10} nonattainment areas (see generally 57 FR 13498, April 16, 1992, and 57 FR 18070, April 28, 1992). In this document, we are applying our interpretations considering the specific factual issues presented.

A State containing a moderate PM_{10} nonattainment area designated after the 1990 Amendments is normally required to submit several provisions within 18 months of the effective date of the designation. These provisions were due for the Thompson Falls area by July 20, 1995. They include an emissions inventory, control measures, an attainment demonstration, quantitative

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

milestones for reasonable further progress (RFP), and contingency measures. Requirements for the control measures include: Provisions to assure that reasonably available control measures (RACM), including reasonably available control technologies (RACT), shall be implemented no later than four years after designation, which was January 20, 1998, for Thompson Falls. However, under the PM_{10} clean data areas approach that we are proposing to use here, we are only proposing to require the control measures (including the provisions for enforcing those measures) and the emissions inventory for Thompson Falls.

1. Clean Data Areas Approach

The clean data areas approach applies EPA's clean data policy concept, already in place for ozone nonattainment areas [2], to selected PM_{10} nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to PM_{10} areas with simple PM_{10} source problems, such as residential wood combustion and fugitive dust problems. If an area meets the following requirements, the state will no longer be required to develop an attainment demonstration, contingency measures or a RFP demonstration. The area must meet the following requirements:

(a) The area must be attaining the PM_{10} NAAQS with the three most recent years of quality-assured air quality data.

(b) The state must continue to operate an appropriate PM_{10} air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) A PM_{10} emissions inventory must be completed for the area.

III. Analysis of Requirements To Use Clean Data Areas Approach

A. Attainment of the PM_{10} NAAQS

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. See 40 CFR part 50 and 40 CFR 50, appendix K. On November 1, 2001 (66 FR 55102), we published a final rulemaking action declaring that the Thompson Falls PM_{10} nonattainment area was in attainment of the PM_{10} standard based on 1998–2000 monitoring data and that the area had attained the standard by its attainment date. The applicable attainment date as required by the CAA for Thompson Falls was December 31, 2000. If you wish to obtain more information regarding our attainment determination, please see our November 1, 2001, **Federal Register** document.

To use the PM_{10} clean data areas approach, an area must be attaining with the three most recent years of quality assured data at the time of the proposed notice. In this case, the three most recent years are 2000–2002. During the 2000–2002 period, data was collected at the Thompson Falls High School station (AQS identification #30–089–0007). The regulatory requirement for data capture in 40 CFR part 50, Appendix K, is 75 percent on a quarterly basis. The 2000–2002 monitoring data shows no exceedances of either the 24-hour or annual PM_{10} NAAQS during this period, and data capture met the 75 percent criterion with the exception of two quarters. Data capture was 73 percent during the third quarter of 2000 and 71 percent during the fourth quarter of 2001. According to the ''Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards'' (see EPA document #405–/4–87–005, April 1987), when data capture is at least 50 percent but less than 75 percent, data may be substituted for the missing data. Per the above-referenced guideline, monitoring data from the same quarter in any one of the years use to determine attainment may be substituted for missing PM_{10} data. The maximum PM_{10} value that was observed in that quarter over the last three years is substituted for missing scheduled sampling days. When we apply data substitution per the above-referenced guideline, we find no exceedances of the 24-hour or annual PM_{10} NAAQS for the 2000–2002 period.

B. Continued Operation of PM_{10} Monitoring Network

The Montana Department of Environmental Quality (MDEQ) will continue to operate its PM_{10} air quality monitoring network in accordance with 40 CFR part 58, in order to verify the attainment status of the area. We approved Montana's state-wide air quality monitoring program on March 9, 1981 (see 46 FR 15686). This approval established the state and local air monitoring station (SLAMS) network, the maintenance requirements for the monitoring stations, and the method of data reporting and annual review for the stations. The stations are to monitor ambient levels of criteria pollutants (for which NAAQS have been established). All SLAMS are to be operated in accordance with the criteria established in 40 CFR 58, subpart B, and are to be sited according to 40 CFR 58, appendix E. Reference or equivalent monitors are to be used as defined in 40 CFR 50.1 and the quality assurance procedures are to be followed as outlined in 40 CFR 58, appendix A. On December 21, 1993 (see 58 FR 67324), we approved revisions to the state-wide monitoring SIP to update the existing monitoring SIP.

Monitoring in Thompson Falls for PM_{10} is currently performed at the Thompson Falls High School station (AQS identification #30–089–0007). EPA Region VIII conducts periodic reviews of Montana's ambient air network, which includes the Thompson Falls site. Based on these reviews, our monitoring staff has approved this monitoring station.

C. Control Measure Requirements

The moderate PM_{10} nonattainment areas, designated after the 1990 Amendments, must submit provisions to ensure that RACM is implemented no later than 4 years after designation, which was January 20, 1998 for Thompson Falls (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of our interpretation of the RACM requirements (see 57 FR 13539–13545 and 13560–13561).

The State should identify available control measures to make sure they are reasonable and that they meet the area's attainment needs, (see 57 FR 13540–13544). A State may reject an available control measure if it is technologically infeasible or unreasonably expensive. In addition, RACM doesn't require controls on emissions from sources that are insignificant (*de minimis*) and doesn't require an area to use all available control measures if it demonstrates timely attainment and if using additional controls wouldn't expedite attainment.

Thompson Falls Control Measures

Montana's SIP revisions for Thompson Falls contain control measures for sources of re-entrained fugitive dust that were adopted on June 24, 1997, and are part of a maintenance agreement between the city of Thompson Falls, the Montana Department of Transportation (MDT) and the MDEQ. The maintenance agreement is applicable inside the

[2] See memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to Regional Division Directors entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995.

Thompson Falls PM_{10} nonattainment area, which encompasses the majority of the city. Per the maintenance agreement, street sweeping is the primary PM_{10} control strategy, as Thompson Falls experiences high concentrations of PM_{10} during the late winter and early spring. The maintenance agreement also specifies the type of sanding or chip seal material that may be used by the MDT and the city of Thompson Falls on paved roads and parking lots, and includes provisions for the paving of parking lots, alleys and unpaved roads within the Thompson Falls central business dustrict.

Street Sweeping Requirements. The MDT is responsible for approximately 4.83 km of street sweeping on Highway 200 from the western limits of the PM_{10} nonattainment area boundary through the city to the Harvest Food store east of town. The city of Thompson Falls is responsible for street sweeping 5.8 km of local priority routes as listed below.

CITY STREET SWEEPING PRIORITY ROUTES

Route	Approximate length (in miles)
Golf from City Shop to Haley.	.20
Haley from Golf to Ferry	.85
Bus Loop at Jr. High	.20
Ferry from Jr. High to Preston.	.25
Preston from Ferry to East Crossing and East Crossing from Preston to Main.	.15
Preston from East Crossing to Clay.	.20
Clay from Preston to 5th	.40
West Crossing from Main to Gallatin.	.15
Washington from Preston to 4th.	.35
Spruce from Preston to 3rd.	.35
Gallatin from Preston to 3rd.	.25
Jefferson from Preston to 3rd.	.25
Total	3.6 miles = 5.8 km

During winter months, the MDT is required to commence street sweeping on Highway 200 on the first business day that the highway becomes temporarily or permanently ice-free and the temperatures are expected to remain above 35° F for a 24-hour period. Unless interrupted by additional snowfall or temperatures below 35° F, the MDT is required to have Highway 200 swept clean within two business days. During winter months, the city of Thompson Falls is required to commence street sweeping on priority routes on the first business day that the highway becomes temporarily or permanently ice-free and the temperatures are expected to remain above 35° F for a 24-hour period. Unless interrupted by additional snowfall or temperatures below 35° F, the city of Thompson Falls is required to have priority routes swept clean within four business days. During summer months, priority routes and Highway 200 will be swept on an as needed basis. In the event that a PM_{10} exceedance occurs within the Thompson Falls nonattainment area, the maintenance agreement includes contingency measures that will remain in effect until such time as the SIP control measures are revised and approved by EPA. In the event of a PM_{10} exceedance, the city of Thompson Falls shall increase its frequency of street sweeping on priority routes from four business days to two business days and the MDT shall increase its street sweeping frequency on Highway 200 from two business days to one business day.

Both the city of Thompson Falls and the MDT will only apply sanding or chip seal material on paved roads and parking lots that has a durability of greater than or equal to 9 as defined by the Montana Modified L.A. Abrasion test. The sanding or chip seal material will have a material content smaller than 200 mesh that does not exceed 4.0 percent oven dry weight as determined by a standard wet sieving method.

Other Requirements. The maintenance agreement also includes provisions for the paving of streets and parking lots. Within the central business district of Thompson Falls, the city of Thompson Falls may not construct any new street or road unless it is paved or construct any new parking lot with a capacity greater than 15 vehicles or more than 50 vehicles/day turnover unless the parking lot is paved.

The Thompson Falls nonattainment area does include significant emissions from point sources; however, the MDEQ chose not to implement any RACT measures at these sources and to focus on reducing emissions from area sources. This approach is allowed under the Clean Air Act due to the fact that Montana has demonstrated that Thompson Falls did not need to implement RACT for point sources in order to attain the 24-hour PM_{10} standard; the implemented control measures (RACM) were enough to bring the area into attainment. See 57 FR 13541 of the General Preamble.

We have reviewed the State's documentation and have concluded that it adequately justifies the control measures that are being used. The implementation of Montana's PM_{10} nonattainment plan for Thompson Falls resulted in the attainment of the PM_{10} NAAQS. The Thompson Falls control plan was adopted on June 24, 1997, and implemented by the applicable implementation date of January 20, 1998, specified by the CAA. We are approving the Thompson Falls PM_{10} plan control strategies as satisfying the RACM requirement.

As required under the CAA, all measures in the SIP must be enforceable by EPA and the State (see sections 172(c)(6) and 110(a)(2)(A) of the Act and 57 FR 13556). Our criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, *et al.* (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C) of the Act). When a State relies on a local government for the implementation of any SIP provision, the State is responsible for ensuring adequate implementation of the provision. See section 110(a)(2)(E) of the Act.

The maintenance agreement between the city of Thompson Falls, the MDT and the MDEQ provides new requirements for street sweeping, determines the type of sanding or chip seal material that can be used on paved roads and parking lots and specifies requirements for the paving of new streets, roads or parking lots within the Thompson Falls central business district. In order to make these requirements an enforceable part of the Thompson Falls PM_{10} SIP, the State adopted and incorporated the maintenance agreement requirements in a Board Order to be approved as part of the *State of Montana Air Quality Control Implementation Plan.* We have reviewed the maintenance agreement for enforceability and determined that it meets all the criteria included in the September 23, 1987, Potter Memorandum.

The MDEQ has the authority to implement and enforce the maintenance agreement adopted by the Montana Board of Environmental Review (MBER). Any failure by the city or the Montana Department of Transportation to perform their specific obligations under this agreement would warrant enforcement by MDEQ.

The State also submitted a State Attorney General's opinion interpreting the authority of MDEQ to enforce any State and local air quality provisions if a local air quality program fails to do so. In practice, MBER issues a board order

when it approves a local program or amendments to a program. Since the Montana Clean Air Act (MCAA) authorizes MDEQ to enforce board orders issued by MBER, MDEQ has the authority to assume jurisdiction over, and implement, an approved local program. However, the MCAA also requires a hearing before MBER before such an assumption of jurisdiction and authority can be taken.

D. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. MDEQ submitted an emissions inventory for Thompson Falls on June 26, 1997, withdrew that inventory on February 28, 1999, and resubmitted it with revisions on June 13, 2000.

MDEQ chose July 1990 through June 1991 as the Thompson Falls base year inventory of PM_{10} emissions. The results of the emissions inventory indicate that area sources contribute approximately 77 percent of the total emissions for the area, of which re-entrained road dust (from paved roads) contributes approximately 59 percent and woodburning contributes approximately 14.4 percent. Stationary sources accounted for 23 percent of the emissions inventory (this figure includes 2.8 percent for industrial road dust).[3]

EPA is proposing to approve the emission inventory for Thompson Falls because it is accurate and comprehensive, and consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[4]

In addition to the above requirements for the use of the clean data areas approach, any requirements that are dependent solely on designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. New source review requirements have been approved as part of the Administrative Rules of Montana, title 17, chapter 8, subchapters 8 and 9 and were approved as part of the SIP on August 13, 2001 (see 66 FR 42427). New source review requirements that were approved into the SIP will continue to be in effect. However, the requirements under CAA section 172(c) for developing attainment demonstrations, RFP demonstrations, and contingency measures are waived due to the fact that the areas which are eligible under this approach have already attained the PM_{10} NAAQS and have met RFP. Any sanctions clocks that may be running for an area due to failure to submit, or disapproval of, any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity using the build/no-build test, or the no-greater-than-1990 test. The emissions budget test would not be required, because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. The applicable tests for general conformity still apply. The use of the clean data areas approach doesn't act as a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.

IV. Proposed Action

We are proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. The June 26, 1997, submittal revises the SIP by adding the Thompson Falls Air Pollution Control Plan and an emissions inventory for the Thompson Falls PM_{10} nonattainment area. On February 28, 1999, the Governor of Montana withdrew all chapters of the Thompson Falls Air Pollution Control Plan submitted on June 26, 1997, except chapters 45.2, 45.10.10 and 45.10.12 and the emissions inventory. The June 13, 2000 submittal contains corrections to chapter 45.10.10 of the Thompson Falls Air Pollution Control Plan and the emissions inventory submitted on June 26, 1997. Chapters 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan include the PM_{10} control measures, control demonstration and enforceability sections of the plan. We are proposing to approve the emissions inventory for Thompson Falls and chapters 45.2, 45.10.10 and 45.10.12 of the Thompson Falls Air Pollution Control Plan using the PM_{10} clean areas data approach.

We are soliciting public comments on the issues discussed in this document, or on other relevant matters. If you submit comments, they will be considered before we take final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

[3] Emissions from Conoco Inc. were not included in the Thompson Falls emissions inventory even though Conoco is inside the emissions inventory boundary. Conoco operates an unloading facility in Thompson Falls; this is a minor source (emissions are less than 100 tons per year for any one pollutant) with a state-issued permit. Actual PM_{10} emissions from this source are very low as most of the emissions are volatile organic compounds (VOCs).

[4] EPA issued guidance on PM_{10} emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline.* The guidance provided in this document is consistent with the revised Act.

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

List of Subjects in 40 CFR Part 52

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

Dated: November 12, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–28910 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 210–4302; FRL–7588–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions To Update the 1-Hour Ozone Maintenance Plan for the Reading Area (Berks County)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision amends Pennsylvania's ten-year plan to maintain the 1-hour ozone national ambient air quality standard (NAAQS) in the Reading area (Berks County). The maintenance plan is being amended to revise the attainment year inventories and motor vehicle emission budgets using MOBILE6. The contingency measures portion of the plan is also being amended. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before December 19, 2003.

ADDRESSES: Written comments may be mailed to Robert Kramer, Chief, Energy, Radiation and Indoor Environment, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; andthe Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Martin T. Kotsch, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Mail Code 3AP23, Philadelphia, Pennsylvania 19103–20209, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 1997 (62 FR 24826), EPA approved Pennsylvania's redesignation request and ten year plan for continued maintenance of the 1-hour ozone NAAQS in the Reading area as a revision to the Pennsylvania SIP. This maintenance plan included, among other things, MOBILE5-based motor vehicle emissions budgets (MVEBs).

On October 14, 2003, the Pennsylvania Department of Environmental Protection (DEP) submitted a request that EPA parallel process revisions to the Pennsylvania SIP's 1-hour ozone maintenance plan for the Reading area.

The maintenance plan identifies and establishes the applicable MVEBs for the Reading area to which the area's transportation improvement program and long range transportation plan must conform. Conformity to MVEBs in a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The Reading area maintenance plan identifies and establishes the applicable MVEBs for the Reading area for both volatile organic compounds (VOC) and nitrogen oxides (NO_X), which are precursors of ground level ozone, for the years 1992, 2004, and 2007.

The MOBILE model is an EPA emissions factor model for estimating pollution from on-road motor vehicles. The MOBILE model calculates emissions of VOCs, NO_X and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. The MOBILE model is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, State and national level. MOBILE-based inventories are also used to meet the Federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. EPA released MOBILE6, a new version of the motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Although some minor updates were made in 1996 with the release of MOBILE5b, MOBILE6 is the first major revision to MOBILE since MOBILE5a was released in 1993. Beginning in January of 2004, all conformity determinations for new Transportation Improvement Programs and/or Transportation Plans will be required to use the MOBILE6 emissions model to demonstrate conformity.

II. Summary of the Proposed SIP Revisions to the Reading Area Maintenance Plan

A. Revisions to the Motor Vehicle Emission Budgets (MVEBs)

In the original maintenance plan approved for the Reading area on May 7, 1997 (62 FR 24826), emissions growth was projected for all source categories (point, area, and highway mobile) starting with the year that the area attained the NAAQS (1992). Those original mobile emissions budgets were projected based on the MOBILE5 emissions model. The October 14, 2003, proposed SIP revision amends the mobile inventories for the attainment year (1992) and the MVEBs for 2004 and 2007 using MOBILE6.

B. Revisions to the Contingency Measures

In the original maintenance plan for the Reading area, the Commonwealth's motor vehicle inspection and

maintenance (I&M) program was identified as a contingency measure. The October 14, 2003, proposed SIP revision moves the I&M program from the contingency measures portion of the plan and makes it part of the maintenance strategy. Improved rule effectiveness will remain as a contingency measure in the maintenance plan.

III. EPA's Evaluation of the Proposed Revisions to the Reading Area Maintenance Plan

A. The Revised Attainment Year (1992) Emission Inventories

The DEP's October 14, 2003, proposed revisions revise the 1992 attainment year motor vehicle emissions inventories and the 2004 and 2007 MVEBs using the MOBILE6 model. EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' [1]. EPA's review of the DEP's October 14, 2003, submittal indicates that it has appropriately applied this policy. EPA policy guidance also requires the Commonwealth to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the October 14, 2003, proposed revision was developed. Pennsylvania has reassessed the growth and control strategy assumptions for non-motor vehicle sources, and concluded that these assumptions continue to be valid for the 1-hour ozone maintenance demonstration for the Reading area.

Table 1 summarizes the MOBILE6-based motor vehicle emissions inventories in tons per summer day (tpd) for the 1992 attainment year in the Reading area.

TABLE 1.—MOBILE6-BASED MOTOR VEHICLE EMISSIONS INVENTORIES FOR THE READING AREA

Maintenance area	1992 Attainment year	
	VOC (tpd)	NO_X (tpd)
Reading	27.25	35.57

B. The Revised Motor Vehicle Emissions Budgets (MVEBs)

For the Reading area maintenance plan, the MVEBs are the projected on-road mobile source components of the 2004 and 2007 maintenance inventories. Table 2 below summarizes Pennsylvania's proposed revised MOBILE6-based budgets. These budgets were developed using the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled, speeds, fleet mix, and SIP control measures. Because DEP's October 14, 2003, submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support maintenance of the 1-hour ozone NAAQS, EPA is proposing to approve these budgets.

TABLE 2.—MOBILE6-BASED MVEBS IN THE MAINTENANCE PLAN FOR THE READING AREA

Maintenance Area	2004		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Reading Area (Berks County)	17.02	28.99	13.81	23.06

The October 14, 2003, submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support the demonstration of maintenance of the 1-hour ozone NAAQS for the Reading area. This is evidenced by the fact that the 2004 and 2007 MVEBs shown in Table 2 continue to be well below the 1992 MOBILE6 based MVEBs for their attainment year.

IV. EPA's Proposed Action

EPA is proposing to approve the Commonwealth of Pennsylvania's proposed revisions to the maintenance plan for the Reading area which were submitted on October 14, 2003. Long term maintenance of the NAAQS is deemed to be demonstrated when total projected growth in emissions in all categories remains below the level of emissions that occurred in the attainment year. EPA's review of the DEP's October 14, 2003, submittal indicates that the proposed revisions to the maintenance plan continue to demonstrate long term maintenance of the 1-hour ozone standard for the Reading area. These revisions are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the Commonwealth's procedures for amending its SIP. If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA 210–4302 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs

[1] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *Kramer.Robert@EPA.gov,* attention PA 210–4302. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

2. By Mail. Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve Commonwealth law as meeting Federal requirements and imposes no additional requirements beyond those imposed by Commonwealth law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

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

This rule proposing to approve Pennsylvania's proposed revisions to the Reading area's maintenance plan for the 1-hour ozone NAAQS, submitted to EPA on October 14, 2003, for parallel-processing, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 10, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–28909 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 223

Wednesday, November 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of ''Advisory Guidelines Implementing Executive Order 13287, 'Preserve America,' Section 3: Improving Federal Agency Planning and Accountability'' Authority: E.O. 13287

AGENCY: Advisory Council on Historic Preservation.

Notice of availability of advisory guidelines.

SUMMARY: The Advisory Council on Historic Preservation (ACHP) is notifying Federal agencies of the availability of advisory guidelines, prepared in October 2003, to assist Federal agencies with real property management responsibilities in preparing the assessments and reports outlined in Executive Order 13287. Agencies are encouraged to use the advisory guidelines as a template to ensure that adequate, complete, and useful information is submitted to the ACHP. The ACHP will use the agency's information to prepare its report for the President on the state of the Federal Government's historic properties and their contribution to local economic development.

DATES: Federal agencies with real property management responsibilities must submit the initial Executive Order 13287, Section 3, Report to the ACHP and the Secretary of the Interior on or before September 30, 2004. Federal agencies with real property manageament responsibilities must submit the subsequent Executive Order 13287, Section 3, progress reports to the ACHP and the Secretary of the Interior on or before September 30, 2005, and every third year thereafter.

ADDRESSES: Mail all reports to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Suite 809, Washington, DC 20004. Also submit the reports electronically to *achp@achp.gov*, and include ''E.O. 13287 Report'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Charlene Vaughn, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. (202) 606–8505.

SUPPLEMENTARY INFORMATION: A copy of the guidelines may be obtained through the Internet at *http:\www.achp.gov\PA–EOguidelines.html.* A hard copy may also be obtained by contacting Charlene Vaughn (see **FOR FURTHER INFORMATION CONTACT**, above).

Dated: November 13, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–28882 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 2004

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On November 12, 2003, the President, Commodity Credit Corporation (CCC), who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 100,000 metric tons of nonfat dry milk in CCC inventory will be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 2004.

FOR FURTHER INFORMATION CONTACT: William Hawkins, Director, Program Administration Division, FAS, USDA, (202) 720–3241, *William.Hawkins@fas.usda.gov.*

Dated: November 12, 2003.

A. Ellen Terpstra,

Vice President, Commodity Credit Corporation.

[FR Doc. 03–28830 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on October 21, 2003, by the Georgia Shrimp Association, Darien, Georgia. Shrimpers in Georgia are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in Georgia by 26.0 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers certified as eligible for TAA may apply to the Farm Service Agency for benefits through February 9, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Georgia.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 7, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–28829 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on September 30, 2003, by the South Carolina Shrimpers' Association, McClellanville, South Carolina. Shrimpers and shrimp farmers in South Carolina are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in South Carolina by 29.0 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers and shrimp farmers certified as eligible for TAA may apply to the Farm Service Agency for benefits through February 9, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in South Carolina.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 7, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–28827 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on October 21, 2003, by the Texas Shrimp Association, Arkansas, Texas. Shrimp producers in Texas are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in Texas by 27.8 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers certified as eligible for TAA may apply to the Farm Service Agency for benefits through February 9, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Texas.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: November 7, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–28828 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Understanding Relationships Between People and Local Land Use at the Francis Marion National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations regarding the new information collection entitled, ''Understanding Relationships Between People and Local Land Use at the Francis Marion National Forest.''

DATES: Comments must be received in writing on or before January 20, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Cassandra Johnson, Forestry Sciences Laboratory, Southern Research Station, Forest Service, USDA, 320 Green St., Athens, GA 30602–2044.

Comments also may be submitted to Cassandra Johnson via facsimile to (706) 559–4266 or by e-mail to *cjohnson09@fs.fed.us.*

The public may inspect comments received at the Forestry Sciences Laboratory, Southern Research Station, Forest Service, USDA, 320 Green St., Athens, Georgia, during normal business hours. Visitors are encouraged to call ahead to (706) 559–4222 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cassandra Johnson, Forestry Sciences Laboratory, at (706) 559–4270. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Understanding Relationships Between People and Local Land Use at the Francis Marion National Forest.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: There has been a considerable amount of controversy surrounding land use in rural, coastal regions of South Carolina. Press reports and anecdotal information indicate that some residents support initiatives that would encourage commercial and residential development in the region, while other residents strongly oppose such initiatives. The first objective of this information collection is to examine rural residents' knowledge and opinions regarding commercial and residential development in rural, upper Charleston County, South Carolina (Seewee to Santee region). The second objective is to learn more about the kinds of recreational activities in which local residents participate while visiting the Francis Marion National Forest, which is located in this region.

The National Forest-Dependent Rural Communities Economic Diversification Act of 1990 provides the authority for this information collection. This Act gives the Forest Service an opportunity to help rural communities, located in or

near national forests, organize, plan, and implement rural development efforts. This proposed information collection seeks residents' opinions regarding use and management of non-Federal lands, as well as use and management of Federal lands that include the Francis Marion National Forest.

The Seewee to Santee region encompasses about 308 square miles with a population of approximately 4,500. The area includes two towns, Awendaw and McClellanville, and several unincorporated communities adjacent to these towns. Sections of the area are either within the boundary of the Francis Marion National Forest or are directly adjacent to the Forest.

Residents will be asked to respond to questions or statements in the following five categories: (1) Commercial and residential use of non-Federal land; (2) quality of drinking water and septic systems at respondent's primary residence; (3) resident involvement and connection to the local community; (4) national forest recreation visitation; and (5) demographic information.

Five hundred thirty respondents will be selected using a stratified random sample based on an estimate of individuals in the Seewee to Santee region at or below the poverty level, as defined by the U.S. Census. The U.S. Census Bureau uses income before taxes to compute the poverty rate. Such income includes earnings, unemployment compensation, social security, rents, and child support payments. Survey Sampling International (SSI), located in Fairfield, Connecticut, specializes in sample design and will provide addresses and phone numbers for potential respondents.

Undergraduate students at the College of Charleston in Charleston, South Carolina will collect data via face-to-face interviews with respondents. Dr. Angela C. Halfacre, with the Environmental Studies Program at the College of Charleston, will supervise the students. Students will send letters to potential respondents requesting an interview, follow-up with a telephone call to schedule the interview, and arrange a convenient time for the interview.

Forest Service research scientists with the Southern Research Station Forestry Sciences Lab in Athens, Georgia, will work with faculty in the Environmental Studies Program at the College of Charleston to analyze and evaluate the collected information, which will be published and available from the Southern Research Station in Asheville, South Carolina.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Rural residents in upper Charleston County, South Carolina.

Estimated Annual Number of Respondents: 530.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 132.5.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use Of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: November 10, 2003.

Robert Lewis,

Deputy Chief for Research & Development.

[FR Doc. 03–28860 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Diamond Lake Restoration Project, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On April 25, 2003, the USDA Forest Service, published a Notice of Intent in the **Federal Register** (68 FR 20367) to prepare an environmental impact statement (EIS) for the Diamond Lake Restoration Project. The original NOI identified the Forest Service as the sole preparer of the EIS. The Forest Service is revising the NOI to indicate that the Forest Service will serve as the Lead Agency (40 CFR 1501.5) and the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality will serve as Cooperating Agencies (40 CFR 1501.6) in the preparation of the EIS.

FOR FURTHER INFORMATION CONTACT: Sherri L. Chambers, Team Leader, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443, or (541) 496–3532.

Dated: November 12, 2003.

James A. Caplan,

Forest Supervisor.

[FR Doc. 03–28864 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on December 2, 2003 at 6 p.m. until 7:30 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: December 2, 2003.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Lolo National Forest, at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include a discussion of the Blacktail Weed Spread and Erosion project (funded in 02); review of Pub. L. 106–393; and discussion about new project proposals, as authorized under Title II of Pub. L. 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: November 13, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03–28862 Filed 11–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Services Survey.

Form Number(s): QSS–1(A), QSS–1(E), QSS–2(A), QSS–2(E), QSS–3(A), QSS–3(E).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 5,000 hours.

Number of Respondents: 5,000.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau seeks approval for a new quarterly survey of service industry activity called the Quarterly Services Survey (QSS). The QSS will begin a new economic indicator series that will provide, for selected service industries, quarterly estimates of total operating revenue and the percentage of revenue by class of customer. In addition, we will collect total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. For 2004, we will include information; professional, scientific and technical services; and administrative and support and waste management and remediation services industries for employer businesses. In 2005, we plan to expand the QSS to include coverage of hospitals and nursing and residential care facilities from employer businesses.

The Census Bureau presently conducts 13 principal economic indicator surveys. Monthly series cover manufacturing, wholesale and retail trade, and merchandise trade; quarterly series include corporate profits and housing vacancies. These indicator series track current economic activity, are closely followed and widely used by policy makers in the public and private sectors, and move financial markets. No principal economic indicator currently exists, however, for the service sector despite the service industries' importance and increasing share of total U.S. economic activity. Measures of service industry output are available only quinquennially in the Economic Census and on an annual basis in the Service Annual Survey (SAS).

Service data are far less available in terms of industry and geographic detail, and frequency of collection than are those for the goods-producing sector of the economy. This imbalance has its origins from a period when goods production was the larger and more rapidly growing part of the non-farm economy.

The last fifty years, however, have witnessed profound changes in the U.S. economy. Following World War II, manufacturing accounted for about 27 percent of Gross Domestic Product (GDP). Today that number is about 16 percent. Services, including retail and wholesale trade, were approximately 40 percent of GDP and are now about 66 percent. Financial, business, scientific, and professional services have more than doubled in the last 50 years while computer related services nearly doubled between 1994 and 2000. When one adds Government services to the total, almost 80 percent of GDP and employment are in services.

Reliable measures of economic activity are essential to an objective assessment of the need for, and impact of, a wide range of public policy decisions. More up-to-date estimates of service industry output will improve these measures. The new QSS will provide timely data on the services industries that will allow the Bureau of Economic Analysis (BEA) to make significant improvements in the national accounts. In the National Income and Product Accounts (NIPA), the quarterly data will allow more accurate estimates of both Personal Consumption Expenditures (PCE) and private fixed investment. For example, recently published revisions to the quarterly NIPA estimates resulted from the incorporation of new source data from our SAS. These data affected both services PCE and software investment. GDP for 2000 was revised downward by nearly $60 billion as a result of overstating equipment and software, with the bulk of the revision resulting from a faster than estimated deceleration in sales of custom and packaged software. Revenue will also be used to produce estimates of gross output by industry that will allow BEA to produce a much earlier version of its gross domestic product by industry estimates. Also, the Federal Reserve Board (FRB) and the Council of Economic Advisors (CEA) will use the QSS information to better assess current economic performance.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28934 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Trade Survey.

Form Number(s): SA–42, SA–42A, SA–42 (MSBO), SA–42A (MSBO).

Agency Approval Number: 0607–0195.

Type of Request: Revision of a currently approved collection.

Burden: 3,260 hours.

Number of Respondents: 8,100.

Avg. Hours Per Response: 24 minutes.

Needs and Uses: The U.S. Census Bureau is requesting a revision to the current Office of Management and Budget (OMB) clearance for the Annual Trade Survey (ATS). The ATS currently covers only merchant wholesale establishments, and will be expanded to include manufacturers' sales branches and offices (MSBOs). The survey is an official source of annual sales, inventory, and value added measures for wholesale establishments located in the United States. The ATS provides annual data needed to improve the accuracy of the sales estimates and inventory adjustments in the Gross Domestic Product (GDP) and for benchmarking results of the Monthly Wholesale Trade Survey (MWTS) [OMB No. 0607–0190]. Data on MSBOs will address a longstanding Bureau of

Economic Analysis (BEA) priority to obtain annual measures of MSBO inventories to improve BEA's estimates of business inventory change, a key component of the GDP estimate. The estimates compiled from this survey provide valuable information for economic policy decisions by the government and will be widely used by private businesses, trade organizations, professional associations, and other business research and analysis organizations.

This request is for the clearance of two existing report forms, the SA–42 and SA–42A, and two new forms, SA–42 (MSBO) and SA–42A (MSBO), which will be used to collect data for MSBOs. The forms request similar but unique sets of data items to accommodate both merchant wholesalers and manufacturers sales branches and offices as well as both large and small firms. The survey report forms are used to collect total sales, e-commerce sales, year-end inventory, and inventory valuation methods. In addition purchases are collected for merchant wholesalers and operating expenses for MSBOs. Cognitive research on the proposed MSBO forms is being conducted and will continue in October and November 2003. Results will be used to suggest revisions to clarify questions and instructions that convey definitions, in order to ensure data quality and reduce respondent burden. Revisions to the basic content of the form are not expected.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28935 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

State and Local Construction Coverage Study

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 20, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Thuy Trang Nguyen, U.S. Census Bureau, Room 2136–4, Washington, DC 20233–6900 (or via telephone at (301) 763–4640).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau collects monthly Value in Place (VIP) data on State and local government construction in the Construction Progress Reporting Surveys (CPRS) (OMB # 0607–0153). We also collect fiscal year data on similar construction in the Annual Survey of Government Finance (ASGF) (OMB # 0607–0585). It is expected that these estimates should be comparable on a fiscal basis; nevertheless, they have continued to differ significantly during the past decades. One major source of the differences is the undercoverage of the desired universe by the sampling frame used in the CPRS. The F.W. Dodge Division of McGraw-Hill Information Systems Company identifies and lists projects started by State and local governments nationwide. We select a sample of projects from this list for the VIP survey. Due to the differences in the level of coverage by value and geographical area, various projects have no chance of being selected for the VIP survey.

The most recent evaluation of this coverage was done in 1988, producing an undercoverage estimate of 18 percent. The continuing difference on the fiscal year basis between the CPRS and the ASGF indicates the need for a reevaluation of the sampling frame coverage.

We will conduct this study on a one time basis. The Census Bureau will use the information collected for evaluation purposes and survey improvement through the correction of the State and local construction VIP estimate by the estimated coverage rate. The consequence for not conducting an undercoverage evaluation will be that the Census Bureau will produce less accurate estimates for the State and local government construction VIP. The Bureau of Economic Analysis uses the Construction Progress Reporting Survey estimates to develop the construction components for input to the Gross Domestic Product (GDP) accounts. Other government agencies such as the Council of Economics Advisers, the Federal Reserve Bank Board, and the Department of Treasury use these estimates in making policy decisions.

II. Method of Collection

We selected our respondents from the sample of State and local governments in the ASGF. We sampled 4,026 agencies from the sample of 16,986 agencies with construction expenditures.

We will utilize a mailout/mailback strategy to collect the data. Questionnaires will be mailed out in two waves (wave 1 to half of the sampled agencies and wave 2 to the other half) three months apart. Nonresponse followup will be conducted by telephone beginning 30 days after the initial mailout.

III. Data

OMB Number: None.

Form Number: SLUE–007(SS).

Type of Review: New collection.

Affected Public: State or local governments.

Estimated Number of Respondents: 4,026.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 4,026.

Estimated Total Annual Cost: $67,000.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 161 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28936 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 2 of the 2004 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 20, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about household relationships, education and training, children, marriage, migration, and history of work-related disabilities. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 panel is currently scheduled for 4 years and will include 12 waves of interviewing beginning February 2004. Approximately 62,000 households will be selected for the 2004 panel, of which, 46,000 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 96,600 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Two waves of interviewing will occur in the 2004 SIPP Panel during FY 2004. The total annual burden for 2004 Panel SIPP interviews would be 96,600 hours in FY 2004.

The topical modules for the 2004 Panel Wave 2 collect information about:

- Work Disability History.
- Education and Training History.
- Marital History.
- Fertility History.
- Migration History.
- Household Relationships.

Wave 2 interviews will be conducted from June 2004 through September 2004.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,035 burden hours in FY 2004.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: Not Available.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 96,600 people per wave.

Estimated Time Per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 97,635.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: November 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28937 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, February 2004 Cell Phone Use Supplement.

Form Number(s): CPS–263(L), BC–1428.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 630 hours.

Number of Respondents: 37,800.

Average Hours Per Response: 1 minute.

Needs and Uses: The U.S. Census Bureau requests OMB approval of the collection of information pertaining cell phone usage to be conducted as a supplement to the February 2004 Current Population Survey (CPS). The CPS is collected monthly by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS).

Federal statistical agencies conduct telephone surveys more often than in the past. This trend is a result of the rising costs of in-person surveys as well as improvements in telephone sampling methodology (list-assisted designs). Government agencies, however, must pay particular attention to coverage issues that could affect the samples' representation of the universe. One of the coverage issues in telephone surveys, as they are currently done, is the failure to include households that only have cell phone service. While this is a small population at this point, we know it is growing. Furthermore, the majority of households have both regular landline telephones plugged into the wall and cell phone service, but we do not know how they use their phones. It is possible they get most of their calls on a cell phone and only use the landline telephone to take messages or connect computers and fax machines. For these reasons we need good estimates of the size of the population with different types of telephone service. The data obtained on the demographic characteristics of those households will allow us to evaluate the level of undercoverage and its possible effect on estimates.

The information will be used by survey methodologists in both the public and private sector to further evaluate telephone survey designs and to develop better methods of sampling.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182 and Title 29 U.S.C., Sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 14, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–28938 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 59–2003]

Foreign-Trade Zone 44—Trenton, New Jersey, Expansion of Manufacturing Authority and Removal of Restrictions, Subzones 44B, 44C and 44D, International Flavors & Fragrances, Inc. (Flavor and Fragrance Products), Hazlet, Union Beach and Dayton, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the NJ Commerce & Economic Growth Commission, grantee of FTZ 44, requesting authority to expand the scope of manufacturing authority under zone procedures within Subzones 44B, 44C and 44D at the International Flavors & Fragrances, Inc. (IFF), facilities, located in Hazlet, Union Beach and Dayton, New Jersey. It was formally filed on November 4, 2003.

Subzones 44B, 44C and 44D were approved on 10/14/87 (FTZ Board Order #366). The FTZ Board approved the subzones subject to a time limit and reporting requirements. The Board extended the time limit for two additional time periods in 1992 and 1997. In April 2003, IFF was granted an 18-month temporary time extension to June 30, 2004, subject to the conditions of Board Order 366.

The present application for expansion of the scope of manufacturing authority seeks authority to update and expand the scope of IFF's manufacturing under zone procedures to encompass a wider range of products and requests that the time limit and reporting requirements be removed. The applicant also seeks to reorganize FTZ designation for the three subzones into one subzone to be designated as Subzone 44B. The applicant further requests that the acreage at the Union Beach site (Subzone 44C) be reduced from the original 200 acres to 155 acres, with the total acreage for IFF's subzone decreasing to 327 acres.

The application would expand the scope of authority to include a broader range of flavor and fragrance compounds, which are used by other manufacturers to impart flavor and fragrance to their finished products, including the following: fragrances and toiletries, soaps, detergents, household products, and beverages and food products. The application also requests that the scope of authority for sourcing of foreign components be extended to include the following items: vanilla beans, sunflower seed and other oils, petroleum oils from bituminous minerals, other than crude, hydrogen

and hydrogen chloride, sulfuric acid, nitric acid, diphosphorus pentaoxide, ammonia, sodium hydroxide, artificial corundum, titanium oxides, chlorides, sulfides and sulfates, phosphinates, phosphonates and phosphates, carbonates, silicates, hydrogen peroxide, acyclic and cyclic hydrocarbons, halogenated derivatives of hydrocarbons, acyclic and cyclic alcohols, phenols, ethers, epoxides, aldehydes, ketones and quinones, saturated and unsaturated acyclic monocarboxylic acids, polycarboxylic and carboxylic acids, esters, amine-function compounds, oxygen-function amino-compounds, amino-alcohol-phenols, quaternary ammonium salts, carboxyimide-function compounds, nitrile-function compounds, organo-sulfur compounds, heterocyclic compounds, nucleic acids and their salts, provitamins and vitamins, glycosides, vegetable alkaloids, sugars, chemically pure (HTS 2940), other than sucrose, tanning extracts, essential oils, mixtures of odoriferous substances, beauty or make-up preparations, organic surface agents, artificial wares and prepared waxes, casein, albumins, peptones and their derivatives, enzymes, gum, wood or sulfate turpentine, rosin and resin acids, reaction initiators, industrial monocarboxylic fatty acids, polymers of ethylene, polymers of vinyl acetate, cellulose and its derivatives, natural polymers, fuel wood, and granules and powders of pig iron (2003 duty rate range: duty-free to 10%). The list represents an expanded scope of IFF's existing scope of sourcing authority.

FTZ procedures would continue to exempt IFF from Customs duty payments on the foreign components used in production for export. On its domestic sales and exports to NAFTA countries, the company can choose the lower duty rate that applies to finished products (duty-free to 10%) for the foreign inputs noted above. In accordance with Section 400.32(b)(1) of the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 20, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 2004).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zone Board's Executive Secretary at address No. 1 listed above.

Dated: November 4, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28804 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 60–2003]

Foreign-Trade Zone 44—Morris County, NJ, Application for Subzone, L'Oreal USA, Inc. (Cosmetic and Beauty Products), Middlesex, Somerset and Union Counties

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Commerce & Economic Growth Commission, grantee of FTZ 44, requesting special-purpose subzone status for the manufacturing and warehousing facilities of L'Oreal USA, Inc. (L'Oreal USA), located in Middlesex, Somerset and Union Counties. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 5, 2003.

The proposed L'Oreal USA subzone has four sites with 2000 employees in New Jersey:

Site 1 (Clark Complex, 3 Parcels, 22.5 acres total) as follows:

—4.6 acres at 175–195 Terminal Avenue, Clark, Union County

—8.8 acres at 200–222 Terminal Avenue, Clark, Union County

—9 acres at 60, 70 Leonard Street, Metuchen, Middlesex County

Site 2 (Piscataway Complex, 3 Parcels, 32.8 acres total) as follows:

—16.5 acres at 81 New England Avenue, Piscataway, Middlesex County

—5.2 acres at 60 New England Avenue, Piscataway, Middlesex County

—11.1 acres at 80 Schoolhouse Road, Somerset, Somerset County

Site 3 (Franklin Complex, 2 Parcels, 42.2 acres total) as follows:

—34.7 acres at 100 Commerce Drive, Somerset, Somerset County

—7.5 acres at 10 Van Dyke Avenue, New Brunswick, Middlesex County

Site 4 (Brunswick Complex, 2 Parcels, 78.5 acres total) as follows:

—56.5 acres at 77 Deans Rhode Hall Road, Monmouth Junction, Middlesex County

—22 acres at 2400 U.S. Route 1, North Brunswick, Middlesex County

The L'Oreal USA facilities will be used for the manufacturing and warehousing of cosmetic and beauty products including hair care, cosmetic, treatment products and fragrance products (HTS 3302.90, 3303.00, 3304.10, 3304.20, 3304.30, 3304.91, 3304.99, 3305.10, 3305.20, 3305.30, 3305.90, 3307.10, 3307.20 and 3307.30). Components and materials sourced from abroad represent some 27% of all parts consumed in manufacturing. The primary inverted tariff savings will come from the following components: plastic, glass, base metal and aluminum packaging components, pads for cosmetic application, carboxylic with additional O2 function, paraphenylenediamine, O2 function amino compounds, quaternary ammonium salts, acyclic amide, fatty substances, animal or vegetable polyethers, polyether nonionic surfactant, mixtures of amino acids, chemical preparations, mixtures of proteins and preservatives, polymers of vinyl esters, vinyl acetate polymers, polyamide, petroleum resins and thermosetting polymers (HTS 2918.90, 2921.51, 2922.50, 2923.90, 2924.19, 3402.13, 3824.90, 3905.19, 3908.10, 3911.90, 3923.10, 3923.30, 3923.50, 3923.90, 3926.90, 7010.90, 7010.94, 7020.00, 7117.19, 7612.10, 7612.90 and 9616.20, duty rate ranges from 2.4 to 11%). The application also indicates that the company may import under FTZ procedures other materials used in the production of cosmetic and beauty products falling under the following HTS, as further described in the application: HTS 0408, 0409, 1108, 1301, 1302, 1504, 1505, 1511, 1515, 1516, 1521, 1525, 1603, 1702.90.90, 2009, 2106, 2507, 2520, 2525, 2526, 2710, 2712, 2811, 2815, 2817, 2818, 2821, 2823, 2827, 2835, 2836, 2901, 2904, 2906, 2907, 2909, 2914, 2915, 2916, 2918, 2919, 2922, 2923, 2925, 2930, 2932, 2933, 2934, 2936, 2938, 3301, 3302, 3304, 3402, 3404, 3501, 3504, 3507, 3806, 3808, 3823, 3824, 3901, 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3910, 3912, 3913, 3923,

4701, 4819, 4821, 8214, 8424, 9616 (duty rate ranges from duty-free to 7.4%). In addition, the application indicates that they may import coloring matter, but that any products imported under Chapter 32 of the HTS would be admitted in privileged-foreign status.

FTZ procedures would exempt L'Oreal USA from Customs duty payments on the foreign components used in export production. Some 5 percent of the plant's shipments are exported. On its domestic sales, L'Oreal USA would be able to choose the duty rates during Customs entry procedures that apply to cosmetic and beauty products (duty-free to 5.8%) for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is January 20, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 744 Broad Street, Suite 1505, Newark, NJ 07102.

Dated: November 6, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28805 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 46–2003]

Pepsi-Cola Manufacturing International, Ltd.—Subzone 61J; Application for Expansion of Scope of Manufacturing Authority, Extension of Comment Period

The comment period for the application submitted by the Puerto Rico Exports Development Corporation (68 FR 54888, 9–19–2003), grantee of FTZ 61, on behalf of Pepsi-Cola Manufacturing International, Ltd. (PCMIL), operator of FTZ 61J, requesting an expansion of the scope of manufacturing authority to include additional finished products and manufacturing capacity under FTZ procedures at the PCMIL soft drink and juice beverage concentrate manufacturing plant in Cidra, Puerto Rico, has been extended to December 19, 2003, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

Material submitted will be available for inspection at address No. 1 noted above.

Dated: November 7, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28807 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 61–2003]

Foreign-Trade Zone 77—Memphis, TN; Expansion of Manufacturing Authority—Subzone 77A, Sharp Manufacturing Company of America (Consumer and Business Electronics) Shelby County, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 77A, at the Sharp Manufacturing Company of America facilities in Shelby County, Tennessee. It was formally filed on November 6, 2003.

Subzone 77A was approved by the Board in 1984 at 2 sites (107 acres) in the Memphis area (Shelby County), Tennessee, with authority originally granted for the manufacture of television and microwave ovens (Board Order 265, 49 FR 28589, 07/13/84), and later expanded to include personal computers, printers, and printed circuit boards (Board Order 653, 58 FR 47859, 09/13/93).

Subzone 77A (600 employees, with projections to 730 by 2005) is currently requesting to expand the scope of authority for manufacturing activity conducted under FTZ procedures to include the assembly of multifunction office machines and accessories (HTSUS 8471.60, 8471.70, 8471.80, 8472.90 and 8473.50, all duty-free) and photovoltaic cells and modules (HTSUS 8541.40, duty-free), using foreign and domestic materials. Foreign-sourced components used in the assembly of multifunction office machines include printer engines, controller boards, and printer parts and accessories (HTSUS 8472.90.80000, 8473.40.1000, 8473.40.8000), and would account for some 95 percent of finished product value. Foreign-sourced components used in the assembly of photovoltaic modules include photovoltaic cells, module frames and interconnectors, terminal boxes, PET sheets, gaskets, tape and resins (HTSUS 8541.40.6030, 8541.90.0000, 8536, 3920.62.0000, 4016.92, 3919, 3909), and would account for approximately 20 percent of finished product value. Photovoltaic module components having an inverted tariff would comprise some 5 percent of the value of the finished product.

Zone procedures would exempt Sharp from Customs duty payments on foreign materials used in production for export.

On domestic sales, the company would be able to defer Customs duty payments on foreign materials. On domestic shipments of photovoltaic modules, the company would be able to choose the duty rate that applies to finished products (duty-free) instead of the rate otherwise applicable to the foreign components (duty-free to 6.5%). In addition, Sharp may realize logistical/procedural and other benefits from subzone status. The application indicates that the savings from zone procedures would help improve Sharp's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is January 20, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 4, 2003).

A copy of the request will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Buckman Hall, Suite 328, 650 East Parkway South, Memphis, TN 38104.

Dated: November 6, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28806 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand.

SUMMARY: On June 27, 2003, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers seven producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2001, through June 30, 2002. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section. Consistent with the preliminary results, we are rescinding the review with respect to Prachuab Fruit Canning Company (Praft) based on our determination that this company had no shipments of subject merchandise to the United States during the POR.

EFFECTIVE DATE: November 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2336 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on CPF from Thailand: Vita Food Factory (1989) Co., Ltd. (Vita), Kuiburi Fruit Canning Co., Ltd. (Kuiburi), Malee Sampran Public Co., Ltd. (Malee), The Thai Pineapple Public Co., Ltd. (TIPCO), Thai Pineapple Canning Industry Corp., Ltd. (TPC), Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole), and Siam Fruit Canning (1988) Co., Ltd. (SIFCO).

On June 27, 2003, the Department published the preliminary results of this review and invited interested parties to comment on those results. *See Notice of Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Determination to Not Revoke Order in Part: Canned Pineapple Fruit From Thailand*, 68 FR 38291 (*Preliminary Results*). On July 28, 2003, we received case briefs from Dole, Malee, TPC, and the petitioners.[1] On July 28, 2003, SIFCO submitted what it claimed was a case brief, but it was rejected by the Department for being comprised strictly of new factual information.[2] On August 4, 2003, we received rebuttal briefs from Dole, Malee, and the petitioners. We received rebuttal comments from Kuiburi on August 8, 2003.[3]

On July 28, 2003, Malee and the petitioners requested a public hearing, and Dole asked to participate if one was held. A public hearing[4] was held September 5, 2003, and was attended by Dole, Malee, and the petitioners.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive.

Rescission

On October 4, 2002, in response to the Department's questionnaire, Praft stated that it made no shipments of subject merchandise to the United States during the POR. We ran a customs query and found that Praft had no shipments of subject merchandise during the POR. We received no comments regarding our preliminary decision to rescind the review with respect to Praft and, consistent with the preliminary results, we are rescinding the review with respect to Praft.

[1] The petitioners in the case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

[2] *See* Letter to Mr. Prayut Visutvatanasak from Gary Taverman, Director, Office 5, Import Administration (July 30, 2003).

[3] Kuiburi was granted permission to submit rebuttal comments on August 8, 2003, due to a delay in its receipt of the petitioners' case brief. *See* Letter to Mr. Wichian Boonmapajorn from Charles Riggle, Program Manager, Office 5 (August 18, 2003).

[4] The petitioners' request for an *in camera* hearing was rejected because they failed to satisfy the criteria outlined in section 351.310(f) of the Department's regulations. *See* Letter to the petitioners from Gary Taverman (August 4, 2003).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit from Thailand'' from Holly Kuga, Acting Deputy Assistant Secretary for Group II, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated October 27, 2003 (Decision Memorandum), 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 addressed 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 Records Unit (CRU), room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

Except for the calculations for Dole, TIPCO, and Malee, we calculated export price (EP) and normal value (NV) based on the same methodology used in the preliminary results. Changes to the U.S.-dollar denominated credit expense for TIPCO and Canadian credit expense and quantity weight field used in the margin calculation for Dole are detailed in their respective analysis memoranda and/or the Decision Memorandum. For Malee, the Department discovered that one sale should be treated as constructed export price during the POR, rather than as EP. The changes made to account for this are detailed in Malee's Analysis Memorandum.

Cost of Production

Except for Dole, TIPCO, and Kuiburi, we calculated the cost of production (COP) for the merchandise based on the same methodology used in the preliminary results. Changes to the general and administrative (G&A) expense ratio for TIPCO, tinplate costs for Dole, and pineapple weight volume, G&A and interest expense, and net realizable value for Kuiburi are detailed in the these companies' respective analysis memoranda and the Decision Memorandum.

No Revocation in Part

On July 31, 2002, Dole requested that the Department revoke the antidumping duty order in part as regards Dole based on the absence of dumping pursuant to section 351.222(b)(2) of the Department's regulations. Dole submitted, along with its revocation request, a certification stating that: (1) the company did not sell subject merchandise at less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* section 351.222 (e)(1)(i)) of the Department's regulations; (2) the company has sold subject merchandise to the United States in commercial quantities during each of the past three years (*see* section 351.222(e)(1)(ii)) of the Department's regulations; and (3) the company agreed to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV. See sections 351.222(b)(2)(i)(B) and 351.222(e)(1)(iii) of the Department's regulations.

Based on a recent redetermination pursuant to a court remand and affirmed in *Maui Pineapple Company, Ltd. v. United States*, Slip Op. 03–120 (Court of International Trade September 15, 2003), Court No. 01–03–01017, Dole's margin for the fifth POR (July 1, 1999 to June 30, 2000) of this proceeding is now above *de minimis*. See Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order *Maui Pineapple Company, Ltd. v. United States*, Slip Op. 03–42 (April 17, 2003) Court No. 01–03–01017 filed with the court on June 16, 2003. We preliminarily determined that Dole had failed to demonstrate that it has not made sales at less than NV over the past three years. No comments were placed on the record to dispute this and our remand results have been affirmed. Therefore, for the final results, we will not revoke the order with respect to merchandise produced/exported by Dole.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 2001, through June 30, 2002:

Manufacturer/Exporter	Margin (percent)
Dole Food Company, Inc. (Dole)	0.49
The Thai Pineapple Public Company, Ltd. (TIPCO)	0.22
Kuiburi Fruit Canning Co. Ltd. (Kuiburi)	0.46
Thai Pineapple Canning Industry (TPC)	51.16
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	8.39
Vita Food Factory (1989) Co. Ltd. (Vita)	1.93
Malee Sampran Public Co., Ltd. (Malee)	7.61

The Department shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise with the exception of TPC. Where the importer-specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. In the case of TPC, which, due the application of adverse facts available (AFA), we have not calculated importer-specific assessment rates. Therefore, we will instruct CBP to assess antidumping duties on all the subject merchandise at the AFA rate. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of these final results of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended, (the Act): (1) for the companies named above, the cash deposit rate will be the rate listed above, except where the margins are zero or *de minimis* no cash deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the

most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments in the Issues and Decision Memorandum

I. ISSUES SPECIFIC TO DOLE

Comment 1: Comparison Market
Comment 2: Third-Party Verification
Comment 3: Use of Facts Available
Comment 4: Affiliation
Comment 5: General and Administrative (G&A) Expense Ratio
Comment 6: Tinplate
Comment 7: Credit Expenses
Comment 8: Quantity Weighting Factors
Comment 9: Calculation of the Constructed Export Price (CEP) and Commission Offsets

II. ISSUES SPECIFIC TO KUIBURI

Comment 10: Volume of Pineapple Input for Product Specific Fruit Costs
Comment 11: Costs Outside the POR
Comment 12: G&A and Interest Expenses
Comment 13: Net Realizable Value (NRV)

III. ISSUES SPECIFIC TO MALEE

Comment 14: NRV

IV. ISSUES SPECIFIC TO TIPCO

Comment 15: Proposed Interest Income Offset
Comment 16: G&A Expenses
Comment 17: Direct Materials Cost
Comment 18: Credit Expenses

V. ISSUES SPECIFIC TO TPC

Comment 19: Appropriate Basis for Determining Normal Value
Comment 20: Application of Adverse Facts Available
Comment 21: Appropriateness of Margin Selected for Adverse Facts Available
Comment 22: Control of TPC by MC

VI. GENERAL ISSUE

Comment 23: Assessment Rates

[FR Doc. 03–28802 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–882]

Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on refined brown aluminum oxide (otherwise Known as refined brown artificial corundum or brown fused alumina) From the People's Republic of China.

EFFECTIVE DATE: November 19, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Jim Mathews or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136, (202) 482–2778 or (202) 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise covered by this investigation is ground, pulverized or refined brown artificial corundum, also known as refined brown aluminum oxide or brown fused alumina, in grit size of ⅜ inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than ⅜ inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than ⅜ inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On November 10, 2003, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing refined brown aluminum oxide (RBAO) is materially injured by reason of less-than-fair-value imports of subject merchandise from the People's Republic of China (PRC). In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of subject merchandise from the PRC that are subject to the Department's affirmative critical circumstances finding.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of RBAO from the PRC. These antidumping duties will be assessed on all unliquidated entries of RBAO from the PRC entered, or withdrawn from the warehouse, for consumption on or after May 6, 2003, the date on which the Department published the *Notice of Preliminary Determination of Sales Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the*

People's Republic of China, 68 FR 23966.

With regard to the ITC negative critical circumstances determination, we will instruct CBP to lift suspension and to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after February 5, 2003, but before May 6, 2003. February 5, 2003 is 90 days prior to May 6, 2003, the date of publication of the Department's preliminary determination in the **Federal Register**.

CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''PRC-wide Rate'' applies to all exporters of RBAO not specifically listed below.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Zibo Jinyu Abrasive Co., Ltd. ...	135.18
PRC-wide	135.18

This notice constitutes the antidumping duty order with respect to RBAO from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 12, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–28803 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 03–00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to NYVZ Import & Export, Inc. (''NYVZ''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (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. The regulations implementing title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to: patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to government relations; State and Federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

NYVZ may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, NYVZ will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that are not already generally available to the trade or public.

2. NYVZ will comply with requests made by the Secretary of Commerce on

behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definition

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects NYVZ and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits NYVZ from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to NYVZ by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of NYVZ or (b) the legality of such business plans of NYVZ under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificate of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: November 10, 2003.

Dated: November 14, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–28988 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 13, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, 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 Web site at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at http://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 import restraint limits and Guaranteed Access Levels (GALS) for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish limits and guaranteed access levels for 2004.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	2,530,610 dozen.
347/348	3,030,113 dozen.
351/651	533,818 dozen.
443	79,224 numbers.
448	49,639 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2004, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2004 through December 31, 2004:

Category	Guaranteed access level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 03–28905 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 13, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, 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 Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://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 import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the availability of the 2004 Correlation will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	491,013 dozen.
410	1,041,727 square meters.
433	19,755 dozen.
434	16,762 dozen.
435	28,973 dozen.
443	185,578 numbers.
444	59,865 numbers.
448	25,605 dozen.
604	2,430,242 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to 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. 03–28906 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 13, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

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 these limits, 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 Web site at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://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 import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

Carryforward applied to 2003 is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	27,509,794 square meters.
219	116,542,206 square meters.
313	73,606,023 square meters.
314	13,874,072 square meters.
315	23,302,882 square meters.
317	58,634,081 square meters.
326	13,325,930 square meters.
334/634	234,590 dozen.
335/635	1,104,045 dozen.
336/636	1,531,558 dozen.
338/339	5,451,865 dozen.
340/640	3,030,094 dozen.
341	5,851,667 dozen of which not more than 3,510,998 dozen shall be in Category 341–Y [1].
342/642	2,235,695 dozen.
345	367,770 dozen.
347/348	1,120,348 dozen.
351/651	447,048 dozen.
363	81,400,382 numbers.
369–S [2]	1,261,765 kilograms.
641	2,462,284 dozen.
647/648	1,447,969 dozen.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	172,642,741 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 03–28907 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 13, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

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 these limits, 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 Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://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 import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

Carryforward applied to 2003 is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

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). Information regarding the 2004 Correlation will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to 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 Uruguay Round Agreement on Textiles and Clothing (ATC); a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	1,477,649 kilograms.
219	16,414,326 square meters.
225	11,494,286 square meters.
300/301	7,024,287 kilograms.
313–O [1]	29,783,618 square meters.
314–O [2]	103,996,948 square meters.
315–O [3]	47,254,277 square meters.
317–O [4]/617/326–O [5]	45,640,819 square meters of which not more than 6,743,928 square meters shall be in Category 326–O.
331pt./631pt. [6]	1,850,392 dozen pairs.
334/335	384,072 dozen.
336/636	1,014,842 dozen.
338/339	1,962,017 dozen.
340/640	2,416,276 dozen.
341	1,453,274 dozen.
342/642	604,069 dozen.
345	742,775 dozen.
347/348	2,657,905 dozen.
351/651	830,141 dozen.
359–C/659–C [7]	2,426,572 kilograms.
359–S/659–S [8]	2,554,284 kilograms.
360	2,273,304 numbers.
361	2,273,304 numbers.
369–S [9]	1,567,932 kilograms.
433	11,931 dozen.
443	88,517 numbers.
445/446	63,028 dozen.

Category	Twelve-month restraint limit
447	17,705 dozen.
448	23,165 dozen.
604–A [10]	1,219,495 kilograms.
611–O [11]	7,647,547 square meters.
613/614/615	43,295,136 square meters.
618–O [12]	10,217,143 square meters.
619/620	15,836,570 square meters.
625/626/627/628/629–O [13]	48,320,991 square meters.
634/635	510,856 dozen.
638/639	2,512,931 dozen.
641	3,894,526 dozen.
643	568,329 numbers.
644	752,666 numbers.
645/646	1,344,245 dozen.
647/648	5,569,021 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [14], 332, 333, 352, 359–O [15], 362, 363, 369–O [16], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [17], 469pt. [18], 603, 604–O [19], 624, 633, 652, 659–O [20], 666pt. [21], 845, 846 and 852, as a group	163,930,335 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,319,772 square meters equivalent.
In Group II subgroup	
435	52,120 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 369–S: only HTS number 6307.10.2005.

[10] Category 604–A: only HTS number 5509.32.0000.

[11] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[12] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[13] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[14] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[15] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[16] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[17] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[18] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[19] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000. 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[21] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 03–28908 Filed 11–18–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition Under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

November 14, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Request for public comments concerning a petition for a determination that certain printed, 100 percent rayon, herringbone fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On November 13, 2003, the Chairman of CITA received a petition on behalf of Alarmex Holdings Group, Inc. alleging that printed, 100 percent rayon, herringbone fabric, classified in subheading 5516.14.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 220 g/m2 fabric weight, of 20's singles spun rayon yarn, of 100 x 64 construction, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel articles of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by December 4, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On November 13, 2003, the Chairman of CITA received a petition from Sandler, Travis, & Rosenberg, P.A., on behalf of Alarmex Holdings Group, Inc., alleging that printed, 100 percent rayon, herringbone fabric, classified in HTSUS subheading 5516.14.00 of 220 g/m2 fabric weight, of 20's singles spun rayon yarn, of 100 x 64 construction, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than December 4, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–29015 Filed 11–17–03; 1:10 pm]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 5, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–29039 Filed 11–17–03; 1:59 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 12, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 03–29040 Filed 11–17–03; 1:59 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURE TRADING COMMISSION

Sunshine Act Meetings

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 19, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–29041 Filed 11–17–03; 1:59 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–091]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 7, 2003.

Take notice that on October 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval one new negotiated rate service agreement and amendments to eight existing negotiated rate service agreements between ANR and Wisconsin Gas Company, and amendments to two existing negotiated rate service agreements between ANR and Wisconsin Electric Power Company. ANR also included in its filing an Amended and Restated Delivery Pressure Agreement, which relates to the tendered service agreements.

ANR requests that the Commission accept and approve the subject negotiated rate agreement and amendments to be effective November 1, 2003.

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 Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00296 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–011]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate Filing

November 7, 2003.

Take notice that on October 31, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing and approval a negotiated rate agreement between CEGT and Laclede Energy Resources, Inc. MRT requests that the Commission accept and approve the transaction to be effective November 1, 2003.

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 section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00310 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–7–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 30, 2003.

Tenth Revised Sheet No. 230A
Seventh Revised Sheet No. 230B
First Revised Sheet No. 230C

CIG states that these tariff sheets are filed to establish a recovery methodology for electricity commodity expenses related to new electric air compression facilities on the CIG system in compliance with the Commission's February 28, 2003 Order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00298 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–053]

Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

November 7, 2003.

Take notice that on October 31, 2003, Dominion Transmission Inc. (DTI) submitted the following revised tariff sheet, for inclusion in its FERC Gas Tariff, Third Revised Volume No. 1, disclosing a recently negotiated rate transaction. DTI requests an effective date of November 1, 2003, for its proposed tariff sheet.

Fourth Revised Sheet No. 1406

DTI states that copies of the filing have been sent to DTI's customers and interested stated commissions. DTI also states that copies of its filing are available for public inspection during regular business hours in a convenient form and place, at DTI's offices at 120 Tredegar St, Richmond, VA 23219.

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 section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00320 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–420–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 7, 2003.

Take notice that on October 31, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheet proposed to become effective December 1, 2003:

Thirteenth Revised Sheet No. 120

Iroquois states that this sheet is submitted in compliance with the Commission's Orders issued in Docket No. RP03–420–000 on June 27, 2003 and August 29, 2003. The tariff sheet included herewith reflects the change required by the Commission.

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 § 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00314 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–398–004 and RP01–34–006]

Overthrust Pipeline Company; Notice of Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's Order on Rehearing and Compliance Filing issued March 4, 2003 (March 4 Order), in Docket Nos. RP00–398–001, 002, 003 and RP01–34–004, Overthrust Pipeline Company (Overthrust) tenders for filing, to be effective December 1, 2003, proposed tariff sheets to First Revised Volume No. 1–A of its FERC Gas Tariff that are listed as follows:

First Revised Volume No. 1–A
First Revised Sheet No. 78J
First Revised Sheet No. 78K

Overthrust states that in the March 4 Order, the Commission granted Overthrust an extension of time until December 1, 2003, to implement segmentation on a self-implementing basis through the nomination process and to allow segmenting shippers access to receipt and delivery points outside the flow path described by the service agreement's receipt and delivery points. The Commission's March 4 Order directed Overthrust to file revised tariff sheets 30 days prior to December 1, 2003, to implement those changes. This filing is tendered to comply with the Commission's March 4 Order.

Overthrust states that a copy of this filing has been served upon its customers and the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00312 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–001]

Paiute Pipeline Company; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 31, 2003, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 2003:

Eleventh Revised Sheet No. 10
Fifth Revised Sheet No. 21
Third Revised Sheet No. 22
Eleventh Revised Sheet No. 161

Paiute states that the purpose of this filing is to comply with the Commission's Order issued July 14, 2003, in Docket No. CP03–31–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00297 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–397–007 and RP–33–007]

Questar Pipeline Company; Notice of Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Pursuant to 18 CFR 154.7, and the Commission's Order issued August 27, 2002, in Docket Nos. RP00–397, et al. (August 27 Order), Questar Pipeline Company (Questar) tendered for filing and acceptance, the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective December 1, 2003.

First Revised Volume No. 1
Fourth Revised Sheet No. 41
Ninth Revised Sheet No. 45
Eleventh Revised Sheet No. 46
Ninth Revised sheet No. 71
Fifth Revised Sheet No. 71A
Third Revised sheet No. 75D
Fourth Revised Sheet No. 99J

In this filing Questar states that it filed tariff sheets to implement its Phase II segmentation proposal to be effective December 1, 2003, as directed by the August 27 Order in Docket Nos. RP00–397, *et al.*

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00311 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–128]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 30, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and Louis Dreyfus Energy Services, L.P. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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 Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00317 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–129]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and Tennessee Valley Authority. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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 Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 website 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00318 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–130]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and NJR Energy Services Company. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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 section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 website 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00319 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–016]

Texas Gas Transmission, LLC; Notice of Filing of Negotiated Rate Agreement

November 7, 2003.

Take notice that on October 30, 2003, Texas Gas Transmission, LLC (Texas Gas), submitted for filing the tariff sheets listed below for incorporation into its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 51
First Revised Sheet No. 56

Texas Gas states that the purpose of this filing is to propose revised tariff sheets in order to delete references to negotiated rate and/or non-conforming service agreements which have expired, or which have been modified to eliminate the non-conforming language.

Texas Gas states that copies of this filing are being mailed to all parties on the official service list in this docket, to 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 section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00313 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–480–002]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 30, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets with an effective date of November 19, 2003:

Substitute Third Revised Sheet No. 70
Seventh Revised Sheet No. 72

WIC states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission in WIC's gas quality settlement at Docket No. RP03–480–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00315 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–130–000, et al.]

Black Hills Corporation, et al.; Electric Rate and Corporate Filings

October 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Black Hills Corporation

[Docket No. EC03–130–000]

Take notice that on October 9, 2003, Black Hills Corporation (Black Hills) filed an amendment to its application filed on August 22, 2003, requesting authorization to implement a plan of internal corporate restructuring.

Comment Date: October 21, 2003.

2. John Hancock Life Insurance Company, Pitney Bowes Credit Corporation, U.S. Energy Corporation, Decker Energy Craven GP, LLC, Decker Energy Craven LP, LLC

[Docket No. EC04–5–000]

Take notice that on October 9, 2003, John Hancock Life Insurance Company, Pitney Bowes Credit Corporation, U.S. Energy Corporation, Decker Energy Craven GP, LLC, and Decker Energy Craven LP, LLC (Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby John Hancock Life Insurance Company, Pitney Bowes Credit Corporation, and U.S. Energy Corporation will divest, and Decker Energy Craven GP, LLC, and Decker Energy Craven LP, LLC will acquire, partnership interests in Craven County Wood Energy Limited Partnership, which owns a 45 megawatt (net) wood-burning qualifying small power production facility located in New Bern, North Carolina. The Applicants have requested privileged treatment for certain documents submitted with the filing.

Comment Date: October 30, 2003.

3. Idaho Power Company

[Docket No. ER97–1481–003]

Take notice that on October 9, 2003, Idaho Power Company filed with the Federal Energy Regulatory Commission an updated market power analysis.

Comment Date: October 30, 2003.

4. Mirant Americas Energy Marketing, LP

[Docket No. ER01–1265–002]

Mirant California, LLC

[Docket No. ER01–1267–003]

Mirant Delta, LLC

[Docket No. ER01–1270–003]

Mirant Potrero, LLC

[Docket No. ER01–1278–003]

Mirant New England, LLC

[Docket No. ER01–1274–003]

Mirant Canal, LLC

[Docket No. ER01–1268–003]

Mirant Kendall, LLC

[Docket No. ER01–1271–003]

Mirant Bowline, LLC

[Docket No. ER01–1266–002]

Mirant Lovett, LLC

[Docket No. ER01–1272–002]

Mirant NY-Gen, LLC

[Docket No. ER01–1275–002]

Mirant Chalk Point, LLC

[Docket No. ER01–1269–002]

Mirant Mid-Atlantic, LLC

[Docket No. ER01–1273–002]

Mirant Peaker, LLC

[Docket No. ER01–1276–002]

Mirant Potomac River, LLC

[Docket No. ER01–1277–002]

Mirant Zeeland, LLC

[Docket No. ER01–1263–002]

West Georgia Generating Company, LLC

[Docket No. ER02–1052–001]

Mirant Sugar Creek, LLC

[Docket No. ER02–900–001]

Shady Hills Power Company, LLC

[Docket No. ER02–537–002]

Wrighstville Power Facility, LLC

[Docket No. ER02–1028–001]

Mirant Energy Trading, LLC

[Docket No. ER02–1213–001]

Mirant Oregon, LLC

[Docket No. ER02–1331–002]

Mirant Las Vegas, LLC

[Docket No. ER03–160–001]

Take notice that on October 10, 2003, the above-referenced entities, collectively the ''Mirant Entities'' tendered for filing a triennial market-power analysis in compliance with the Commission's orders granting them authority to make sales at market-based rates.

Comment Date: October 31, 2003.

5. Condon Wind Power, LLC

[Docket No. ER02–305–001]

Take notice that on October 10, 2003, Condon Wind Power, LLC (Condon Wind Power) filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer of certain non-managing membership interests in Condon Wind Power to GS Wind Power I, LLC, a wholly-owned subsidiary of The Goldman Sachs Group, Inc.

Comment Date: October 31, 2003.

6. Virginia Electric and Power Company

[Docket No. ER03–743–003]

Take notice that on October 10, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC (CPV) in compliance with the Commission's June 10, 2003 and September 10, 2003 Orders. Virginia Electric and Power Company, 104 FERC ¶ 61,249; Virginia Electric and Power Company, 103 FERC ¶ 61,318.

Dominion Virginia Power respectfully requests that the Commission accept the Revised Interconnection Agreement allowing it to become effective on April 15, 2003, the effective date granted by the Commission in its June 10, 2003 Order.

Dominion Virginia Power states that copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: October 31, 2003.

7. Southern California Edison Company

[Docket No. ER03–1094–001]

Take notice that on October 10, 2003, Southern California Edison Company (SCE) tendered for filing its Response to the Commission's Letter Order issued September 22, 2003. SCE requests privileged treatment of certain data in their filing.

SCE states that copies of this filing were served upon all parties designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: October 31, 2003.

8. West Penn Power Company dba Allegheny Power

[Docket No. ER03–1232–000]

Take notice that on October 10, 2003, West Penn Power Company, d/a/ Allegheny Power, filed a request to withdraw Third Revised Service Agreement No. 6, First Revised Volume No. 1, an agreement with PPL Electric Utilities Corporation, formerly Pennsylvania Power & Light Company filed on August 21, 2003. Allegheny Power states that a copy of this filing has been served upon the customer.

Comment Date: October 31, 2003.

9. Geothermal Properties, Inc.

[Docket No. ER03–1314–001]

Take notice that on October 10, 2003, Geothermal Properties, Inc. submitted an amendment to the Notice of Cancellation of Market-Based Rate Authority under FERC Electric Tariff, Original Volume No.1, filed on September 9, 2003. Geothermal Properties, Inc. states that it amends the filing by including First Revised Sheet No. 1 to FERC Electric Tariff, Original Volume No. 1.

Comment Date: October 31, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–32–000]

Take notice that on October 9, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Anita Municipal Utilities, the Midwest ISO, and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Anita Municipal Utilities and Interstate Power and Light Company.

Comment Date: October 30, 2003.

11. Southwest Power Pool, Inc.

[Docket No. ER04–34–000]

Take notice that on October 9, 2003, Southwest Power Pool, Inc. (SPP), tendered for filing an executed Interconnection Agreement (IA) between SPP,FPL Energy Oklahoma Wind, LLC and OG&E Energy Corp under the SPP Open Access Transmission Tariff. SPP requests an effective date of September 10, 2003 for this IA.

SPP states that a copy of the filing was served on representatives of Blue Canyon and WFEC.

Comment Date: October 30, 2003.

12. Entergy Services, Inc.,

[Docket No. ER04–35–000]

Take notice that on October 9, 2003, Entergy Services, Inc., on behalf of the

Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. filed revisions to its Open Access Transmission Tariff to implement retail open access in the Entergy Settlement Area in Texas.

Comment Date: October 30, 2003.

13. Duke Energy Corporation

[Docket No. ER04–36–000]

Take notice that on October 10, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing a revised Service Agreement for Network Integration Transmission Service (NITSA) between Duke and the City of Seneca, South Carolina. Duke seeks an effective date for the revised NITSA of October 1, 2003.

Comment Date: October 31, 2003.

14. PJM Interconnection L.L.C.

[Docket No. ER04–37–000]

Take notice that on October 10, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing revisions to Schedule 2 of the PJM Open Access Transmission Tariff to reflect new or amended revenue requirements for Calpine Energy Services, L.P.; Duke Energy Fayette, LLC; Liberty Electric Power, LLC; and Reliant Energy Hunterstown, LLC, for providing cost-based Reactive Support and Voltage Control from Generation Sources Service in the PJM region.

PJM states that copies have been served on all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: October 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00294 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–140–000, et al.]

Blue Canyon Windpower LLC, et al.; Electric Rate and Corporate Filings

October 6, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Blue Canyon Windpower LLC

[Docket No. EC03–140–000]

Take notice that on September 30, 2003, Blue Canyon Windpower LLC (Blue Canyon), submitted an application pursuant to Section 203 of the Federal Power Act, seeking authorization for a transaction that would result in the transfer of indirect control of certain transmission facilities associated with Blue Canyon's planned 45-turbine wind farm located in southwestern Oklahoma and Blue Canyon's anticipated tariff for sales of power at wholesale, and requesting expedited consideration of its Application and certain waivers.

Blue Canyon states that the Transaction will have no effect on competition, rates or regulation and is in the public interest.

Comment Date: October 21, 2003.

2. Kloco Corporation

[Docket No. ER96–1735–001]

Take notice that on September 30, 2003, Kloco Corporation filed an amendment to their August 27, 2003 filing in Docket No. ER03–1259–000. Kloco Corporation states they are submitted a new Rate Schedule No.1 due to the change of name of GDK Corporation to Kloco Corporation.

Comment Date: October 21, 2003.

3. Devon Power LLC, Middletown, Power LLC, Montville Power LLC, Norwalk Power LLC and NRG, Power Marketing Inc.

[Docket No. ER03–563–022]

Take notice that on September 30, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc tendered an Errata to their compliance filing submitted August 5, 2003, in Docket No. ER03–563–013.

Applicants state that they have provided copies of the Errata Filing to ISO–NE and served each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: October 21, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–1086–001]

Take notice that on September 30, 2003, PJM Interconnection, L.L.C. (PJM) in compliance with the Commission's September 15, 2003 Order in this proceeding, 104 FERC ¶ 61,291 (2003), filed revisions to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to change a section cross-reference. PJM states, however, that it is submitting the filing subject to the outcome of a separately filed rehearing request because the Commission's September 15 Order is mistaken and the section reference originally filed by PJM was correct.

PJM states that the compliance tariff sheets have an effective date of July 18, 2003, as established by the September 15 Order.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: October 21, 2003.

5. Entegra North America, L.P.

[Docket No. ER03–1170–002]

Take notice that on September 30, 2003, Entegra North America, L.P. submitted for filing an amended Rate Schedule No. 1. to the filing originally submitted on August 6, 2003 and amended on September 22, 2003.

Comment Date: October 21, 2003.

6. American Electric Power Service Corporation

[Docket No. ER03–1401–000]

Take notice that on September 30, 2003, the American Electric Power Service Corporation (AEPSC), tendered for filing a New Network Integration

Transmission Service Agreement (NITSA) for MidAmerican Energy Company (MECR). AEP also requests termination of NITSA No. 403, an agreement with MidAmerican Energy Company that ended its initial term as of mid-night August 30, 2003. AEPSC states that these agreements are pursuant to the AEP Companies' Open Access Transmission Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective on and after September 1, 2003.

AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: October 21, 2003.

7. Progress Energy, Inc. On Behalf of Florida Power Corporation

[Docket No. ER03–1402–000]

Take notice that on September 30, 2003, Florida Power Corporation (FPC) tendered for filing an executed Interconnection and Operating Agreement with The City of Gainesville Florida. FPC Interconnection Agreement is being filed as a Service Agreement under the terms and conditions of the Open Access Transmission Tariff filed on behalf of Florida Power Corporation.

FPC is requesting an effective date of October 15, 2003 for this Service Agreement. FPC states that a copy of this filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: October 21, 2003.

8. California Independent System Operator Corporation

[Docket No. ER03–1404–000]

Take notice that, on September 30, 2003, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated transmission Access Charge rates effective as of October 1, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO states that it is posting the filing on the ISO Home Page.

Comment Date: October 21, 2003.

9. Ameren Services Company

[Docket No. ER03–1405–000]

Take notice that on September 30, 2003, Ameren Services Company (ASC) tendered for filing Service Agreements for Network Integration Transmission Service and a Network Operating Agreement between ASC and Ameren Energy Marketing Company as agent for retail customer Keystone Steel and Wire (Keystone). ASC states that the purpose of the Agreement is to permit ASC to provide transmission service to Keystone pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 21, 2003.

10. Ameren Services Company

[Docket No. ER03–1406–000]

Take notice that on September 30, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Services between ASC and Ameren Energy. ASC states that the purpose of the Agreement is to permit ASC to provide transmission services to Ameren Energy pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 21, 2003.

11. Michigan Electric Transmission Company, LLC

[Docket No. ER03–1407–000]

Take notice that on September 30, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an Interconnection Facilities Agreement (IFA) between METC, Wolverine Power Supply Cooperative, Inc. (Wolverine), and Traverse City Light and Power Department. METC requests an effective date for the IFA of October 1, 2003.

Comment Date: October 21, 2003.

12. Public Service Company of Colorado

[Docket Nos. ER03–1408–000 and ER03–1408–001]

Take notice that on September 30, 2003 as amended on October 1, 2003, Public Service Company of Colorado (PS Colorado) filed an Interim Restated Power Supply Agreement (Interim Restated PSA) between PS Colorado and Aquila, Inc. (Aquila), doing business as Aquila Networks-Colorado, under PS Colorado's Rate Schedule for Market-Based Power Sales. The Interim Restated PSA supersedes, in its entirety, the 1999 Power Supply Agreement, between PS Colorado and Aquila, designated as Service Agreement No. 6 under PS Colorado's FERC Electric Tariff, Original Volume No. 6.

PS Colorado seeks an effective date of October 1, 2003 for the Interim Restated PSA and, accordingly, seeks waiver of the Commission's notice requirements. PS Colorado states that copies of the filings have been served on Aquila and the Colorado Public Utilities Commission.

Comment Date: October 21, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–1409–000]

Take notice that on September 30, 2003, as directed by the Commission's March 12, 2003 Order in Docket No. ER03–406–000, 102 FERC ¶ 61,276, PJM Interconnection, L.L.C. (PJM) filed revisions to the auction revenue rights (ARR) allocation provisions in the PJM Operating Agreement (Operating Agreement) and PJM Open Access Transmission Tariff (Tariff), to provide additional detail on the designation of alternative source busses for ARRs.

PJM requests an effective date of February 1, 2004 for the proposed revisions.

PJM states that copies of its filing were served on all PJM members and utility regulatory commissions in the PJM region.

Comment Date: October 21, 2003.

14. Fitchburg Gas and Electric Light Company

[Docket No. ER03–1410–000]

Take notice that on September 30, 2003, Fitchburg Gas and Electric Light Company (FG&E) tendered for filing with the Federal Energy Regulatory Commission amendments to its Open Access Transmission Tariff. FG&E proposes to revise its non-Pool Transmission Facilities rates to establish and implement an annual formula rate, replacing a stated rate. FG&E also states that it proposes to make certain additional changes to its Tariff to update its currently effective Tariff and to reflect the change to a formula rate.

FG&E states that a copy of the filing was served upon the Massachusetts Department of Telecommunications and Energy and on all affected customers.

Comment Date: October 21, 2003.

15. American Transmission Systems, Inc.

[Docket No. ER03–1411–000]

Take notice that on September 30, 2003, American Transmission Systems, Inc. (ATSI) tendered for filing First Revised Service Agreement No. 337, an executed Network Integration Transmission Service Agreement with Buckeye Power, Inc. (Buckeye) under ATSI's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. ATSI states that the revision modifies the charges at four

distribution-level delivery points; and establishes the loss factor for customers taking service over ATSI's 69 kV transmission facilities as of October 1, 2003, when the Midwest ISO will begin providing transmission service over ATSI's facilities. ATSI requests that the agreement be placed in effect on July 1, 2003.

ATSI states that copies of the filing were served upon Buckeye and the Public Utilities Commission of Ohio.

Comment Date: October 21, 2003.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1412–000]

Take notice that on September 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners and Coordinating Owner submitted for filing proposed revisions to the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Midwest ISO Agreement), Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1, and the Midwest ISO Open Access Transmission Tariff (Midwest ISO OATT), FERC Electric Tariff, Second Revised Volume No. 1, in order to provide clarification of the process for distributing revenues collected under Schedule 18 of the Midwest ISO OATT regarding Sub-Regional Rate Adjustment.

The Midwest ISO and the Midwest ISO Transmission Owners and Coordinating Owner requested waiver of the notice provision of Section 205 of the Federal Power Act in order to accommodate an effective date of October 1, 2003, or the first date that one of the GridAmerica Companies places its facilities under the Midwest ISO OATT and charges under Schedule 18 begin.

The Midwest ISO and the Midwest ISO Transmission Owners and Coordinating Owner have also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: October 21, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00295 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Additional Scoping Meeting

November 12, 2003.

On October 22, 2003, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Soliciting Scoping Comments. The Commission's staff intends to hold an additional scoping meeting as described below.

a. *Type of Application:* New Major License.

b. *Project No.:* 1971–079.

c. *Date Filed:* July 21, 2003.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Hydropower Project.

f. *Location:* On the Snake River in Washington and Adams, Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074; *alan.mitchnick@ferc.gov*.

j. *Deadline for filing scoping comments:* December 22, 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 interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

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.

k. This application is not ready for environmental analysis at this time.

l. The existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps. Idaho Power proposes to exclude 3,800 acres of federal lands surrounding the

project reservoirs and 11 of 12 existing transmission lines from the project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Additional Scoping Meeting

In addition to previously scheduled scoping meetings in Boise (November 18, 2003) and Weiser (November 20, 2003), Idaho, and Halfway, Oregon (November 19, 2003), FERC staff will conduct an additional scoping meeting in Council, Adams County, Idaho. All interested individuals, organizations, and agencies are invited to attend any of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The time and location of the additional meeting is as follows:

When: Thursday, November 20, 2003, from 1 p.m. until about 2:30 p.m.
Where: Council Senior Center, 103 South Main Street, Council, Idaho.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission(s mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item m above).

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (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 the EIS, including viewpoints in opposition to, or in support of, the staff(s preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00303 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–4–000]

Lake Charles Express, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Lake Charles Express Project and Request for Comments on Environmental Issues

November 12, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Lake Charles Express Project (LCE Project) involving construction and operation of facilities by Lake Charles Express, LLC (LCE) in Beauregard, Allen, Jefferson Davis, and Calcasieu Parishes, Louisiana.[1] These facilities would consist of about 38.5 miles of various diameter pipeline. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice LCE provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

LCE wants to expand the capacity of its facilities in Louisiana to transport an additional 1,200,000 million British thermal units per day of natural gas to eight gas transmission companies. LCE seeks authority to:

- Construct an interconnection with the facilities of Trunkline LNG Company, LLC (TLNG) at the TLNG import terminal in Calcasieu Parish consisting of two tap valves, with meter and regulation facilities (M&Rs);
- Construct 22.84 miles of 36-inch-diameter pipeline (called the South Segment) from TLNG's facilities to Texas Eastern's Transmission, LP's (Texas Eastern's) Iowa Gas Plant in Jefferson Davis Parish;
- Construct 15.01 miles of 30-inch-diameter pipeline, (called the ''North Segment'') from the Iowa Gas Plant to an interconnection with the facilities of Texas Eastern's Gillis Compressor Station in Beauregard Parish;
- Construct five M&Rs along the South Segment to provide one interconnection with with Sabine Gas Transmission Company (Sabine Gas); two interconnections with Cantera Natural Gas, Inc (Cantera); one interconnection with Calcasieu Gas Gathering System (Calcasieu Gas) in Calcasieu Parish; and an interconnection with Texas Eastern where the proposed pipeline enters the Iowa Gas Plant;
- Construct six M&Rs and associated facilities along the North Segment to provide interconnections with Texas Eastern where the proposed pipeline exits the Iowa Gas Plant and including

[1] LCE's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission(s regulations.

a bypass regulator; Texas Gas Transmission Corporation (Texas Gas); Florida Gas Transmission Company (Florida Gas); and Tennessee Gas Pipeline Company (Tennessee Gas) in Jefferson Davis Parish; Transcontinental Gas Pipe Line Corporation (Transco) in Beauregard Parish; and Texas Eastern at the Gillis Compressor Station; and

• Construct two parallel 0.33-mile 16-inch-diameter lateral pipelines extending from the South Segment to the Cantera facility in Calcasieu Parish; and appurtenant facilities.

The location of the project facilities is shown in appendix 1.[2]

Nonjurisdictional Facilities

Non-jurisdictional facilities that will be built as a result of the proposed LCE Project are limited to taps and connecting piping that may be installed by Sabine Gas, Cantera, and Calcasieu Gas to connect the M&R facilities to their respective pipelines. LCE states these non-jurisdictional facilities will generally include less than 250 feet of small diameter pipeline for each connection.

Land Requirements for Construction

Construction of the proposed facilities would require about 461.8 acres of land. Following construction, about 227.5 acres would be maintained as new pipeline right-of-way or aboveground facility sites. The remaining 184.3 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety
- Water resources, fisheries, and wetlands

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by LCE. This preliminary list of issues may be changed based on your comments and our analysis.

• Two federally listed endangered or threatened species may occur in the proposed project area.

• A total of 29.56 acres of agricultural land, that includes prime farmland soils, would be permanently affected.

• Cultural resources may be affected in the project area.

• The Calcasieu River, designated as a state natural and scenic river by the Louisiana Natural and Scenic River System, would involve a 4,316 foot-long crossing using the horizontal directional drilling method.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 2.

• Reference Docket No. CP04–4–000.

• Mail your comments so that they will be received in Washington, DC on or before December 19, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

In addition, the Commission Staff will hold a Scoping Meeting for the project on December 10, 2003, at 7 p.m. at the following address: Iowa City Hall, 115

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

N. Thompson Street, Iowa, Louisiana 70647.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00301 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–12–000]

TransColorado Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Compression Expansion Project and Request for Comments on Environmental Issues

November 12, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Compression Expansion Project involving construction and operation of facilities by TransColorado Gas Transmission Company (TransCo) in various counties in Colorado.[1] These facilities would consist of three new compressor stations, additional compression at one existing compressor station, and an upgrade at one existing compressor station, providing a total of 20,120 additional horsepower. The new compression facilities would provide TransCo the ability to transport an additional 125,000 dekatherms per day. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with Colorado law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice TransCo provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

TransCo seeks authority to construct three new compressor stations; install additional compression at one existing compressor station; and make an upgrade at one existing compressor station. All facilities would be in Colorado. Specifically, TransCo would:

- Construct one new compressor station (Whitewater) in Mesa County and install one 4,735-horsepower (hp) compressor;
- Construct one new compressor station (Redvale) and 692 feet of 10-inch-diameter pipeline in Montrose County, and install one 4,735-hp compressor;
- Construct one new compressor station (Mancos) in Montezuma County and install two 3,550-hp compressors;
- Install one 3,550-hp compressor at an existing compressor station (Dolores) in Dolores County;
- Re-wheel a compressor at an existing compressor station (Olathe) in Montrose County, with no change in horsepower; and
- Construct, modify, and operate certain ancillary facilities entirely within or immediately adjacent to TransCo's existing facilities or those proposed in this application.

The general location of all project facilities as well as more detailed locations of the proposed new

[1] TransCo's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

compressor stations are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the new compressor stations (including access roads) would require about 17.8 acres of land. Of this, about 1.2 acres would revert to previous use while the rest would be maintained for operation of the new facilities. In addition, upgrades at the existing compressor stations would affect about 6.7 acres of land already in use for natural gas transmission.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology, soils, and groundwater
- Land use and visual quality
- Cultural resources
- Socioeconomics
- Vegetation and wildlife (including threatened and endangered species)
- Air quality and noise
- Reliability and safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Surface water resources, fisheries, and wetlands

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by TransCo. This preliminary list of issues may be changed based on your comments and our analysis.

- Visual impacts on Federal land, including National Forest.
- Noise impacts on nearby residents.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP04–12–000.
- Mail your comments so that they will be received in Washington, DC on or before December 12, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the Commission's proceedings. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA. The U.S.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission(s Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Bureau of Land Management and the U.S Forest Service have already agreed to be cooperating agencies.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, any public meetings or site visits conducted as part of our review of this project will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00300 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 178–017.

c. *Date filed:* April 14, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon Hydroelectric Project.

f. *Location:* On the Kern River, near the Town of Bakersfield, Kern County, California. The project occupies approximately 11.26 acres of public land located within the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randal S. Livingston, Pacific Gas and Electric Company, Power Generation, Mail Code N11E, P.O. Box 770000, San Francisco, CA 94177 (415) 973–7000.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Kern Canyon Hydroelectric Project consists of: (1) An existing 150-foot-long and 23-foot-high dam; (2) an existing 3-acre reservoir having a usable capacity of 27-acre-feet; (3) a 1.58-mile-long horseshoe shaped tunnel; (4) a 520-foot-long steel penstock varying in diameter from 96 inches to 90 inches; (5) a powerhouse containing one generating unit with an installed capacity of 9,540 kilowatts; (6) existing transmission facilities; and (7) appurtenant facilities. The project is estimated to generate an average of 67.6 gigawatthours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

The Commission directs, pursuant to § 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on

the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00302 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2114–116.

c. *Date Filed:* October 29, 2003.

d. *Applicant:* Public Utility District No. 2 of Grant County, WA.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Department of Energy, U.S. Department of the Army, and U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Laurel Heacock, Licensing Manager, Public Utility District No. 2 of Grant County, 30 C Street S.W., Ephrata, Washington 98823, telephone (509) 754–6622.

i. *FERC Contact:* Charles Hall, telephone (202) 502–6853, e-mail *Charles.Hall@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project includes two developments with a total authorized capacity of 1,755 megawatts (MW) as follows:

(a) The Wanapum development consisting of a dam 186.5 feet high and 8,637 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 14,680 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 900 MW, transmission lines, and appurtenant facilities.

(b) The Priest Rapids development consisting of a dam 179.5 feet high and 10,103 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 7,725 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 855 MW, transmission lines, and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00304 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2601–007.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Bryson Hydroelectric Project.

f. *Location:* The Bryson Project is located on the Oconaluftee River in Swain County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing, Duke Power, 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Bryson Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Oconaluftee River. The project consists of the following features: (1) A 341-foot-long, 36-foot-high concrete multiple arch dam, consisting of, from left to right facing downstream, (a) a concrete, non-overflow section, (b) two gravity spillway sections, each surmounted by a 16.5-foot-wide by 16-foot-high Tainter gate, and (c) an uncontrolled multiple-arch spillway with four bays; (2) a 1.5-mile-long, 38-acre impoundment at elevation 1828.41 mean sea level (msl); (3) two intake bays, each consisting of an 8.5-foot-diameter steel intake pipe with a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse having a brick and concrete superstructure and concrete substructure, containing two turbine/generating units, having a total installed capacity of 980 kilowatts (kW); (5) a switchyard, with three single-phased transformers; and

(6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5,534,230 kilowatt hours (kWh). Duke Power uses the Bryson Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00305 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2602–005.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Dillsboro Hydroelectric Project.

f. *Location:* The Dillsboro Project is located on the Tuckasegee River in Jackson County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dillsboro Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Tuckasegee River, which is dependent on Duke Power's East Fork (FERC No. 2698) and West Fork (FERC No. 2686) Tuckasegee River projects. The Dillsboro Project consists of the following features: (1) A 310-foot-long, 12-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a concrete, non-overflow section, (b) a 14-foot-long uncontrolled spillway section, (c) a 20-foot-long spillway section with two 6-

foot-wide spill gates, (d) a 197-foot-long uncontrolled spillway section, (e) an 80-foot-long intake section, and (f) a concrete, non-overflow section; (2) a 0.8-mile-long, 15-acre impoundment at elevation 1972.00 msl; (3) two intake bays, each consisting of a reinforced concrete flume and grated trashracks having a clear bar spacing varying from 2.0 to 3.38 inches; (4) a powerhouse having a reinforced concrete substructure and a wood/steel superstructure, containing two turbine/generating units, having a total installed capacity of 225 kW; (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 912, 330 Kwh. Duke Power uses the Dillsboro Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00306 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2603–012.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* The Franklin Project is located on the Little Tennessee River in Macon County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Franklin Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Little Tennessee River. The Franklin Project consists of the following features: (1) A 462.5-foot-long, 35.5-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a 15-foot-long non-overflow section, (b) a 54-foot-long ungated Ogee spillway, (c) a 181.5-foot-long gated spillway section, having six gated, ogee spillway bays, (d) a 54-foot-long ungated Ogee spillway, (e) a 25-foot-long non-overflow section, and (f) a 70-foot-long non-overflow section; (2) a 4.6-mile-long, 174-acre impoundment at elevation 2000.22 msl; (3) three intake bays, each consisting of a flume and grated trashracks having a clear bar spacing of 3 inches; (4) a powerhouse having a reinforced concrete substructure and a brick superstructure, containing two turbine/generating units, having a total installed capacity of 1.040 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5.313.065 kWh. Duke Power uses the Franklin Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00307 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2619–012.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Mission Hydroelectric Project.

f. *Location:* The Mission Project is located on the Hiwassee River in Clay County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Mission Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Hiwassee River, which is regulated by TVA's Chatuge dam located approximately 15 miles upstream. The Mission Project consists of the following features: (1) A 397-foot-long, 50-foot-high concrete gravity dam, consisting of, from left to right facing downstream, (a) three bulkhead sections, (b) seven ogee spillway sections, surmounted by 14-foot-high by 16-foot-wide gates, (c) four bulkhead sections, (d) a powerhouse intake structure, and (e) four bulkhead sections; (2) a 47-acre impoundment at elevation 1658.17 msl; (3) three intake bays, each consisting of an 8-foot-diameter steel-cased penstock and a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse consisting of a reinforced concrete substructure and a brick superstructure, containing three turbine/generating units, having a total installed capacity of 1,800 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 8,134,370 kWh. Duke Power uses the Mission Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant.

A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00308 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–200–092, RP96–200–097, RP96–200–101, RP96–200–102, RP96–200–103, RP96–200–104, RP96–200–105, RP96–200–106, RP96–200–107, RP96–200–108, RP96–200–110, RP96–200–111, RP96–200–113, RP96–200–114 and IN03–11–000]

CenterPoint Energy Gas Transmission Company; Notice of Technical and Settlement Conference

November 12, 2003.

The Commission staff will hold a combined technical and settlement conference in the captioned dockets on November 19, 2003, beginning at 10 a.m. at the Commission's headquarters at 888 First St. NE., Washington, DC, in a room to be established. The technical conference will discuss issues raised by the September 15, 2003 Order in Docket Nos. RP96–200–092, *et al.*, (104 FERC ¶ 61,280), which directed CenterPoint Energy Transmission Company (CEGT) to file certain tariff provisions and to modify certain non-conforming gas transportation agreements. The settlement conference will discuss the show cause Order issued September 15, 2003, in Docket No. IN03–11–000, (104 FERC ¶ 61,281), which required CEGT to show cause why its failure to report and post all of the non-conforming terms and conditions in its negotiated rate contracts does not violate certain provisions of the Natural Gas Act, the Commission's regulations and CEGT's negotiated rate authority.

Because the issues in all of the above captioned dockets are closely related, Commission staff believes that the discussion of these issues at a public technical and settlement conference, open to interested parties to the docket and Commission staff, will assist in an efficient resolution of these matters. Staff notes that, while the Commission's ex parte rules apply to the proceedings in Docket Nos. RP96–200–092, *et al.*, (*See* 18 CFR 385.2201(b) and (c)(1)), they do not apply to the Show Cause docket because it is an investigative proceeding with no parties (*See* 18 CFR 1b.9, 1b.11, 385.2201(b) and 385.2201(c)(2)). Because the proceedings in Docket Nos. RP96–200–092 *et al.* are subject to the ex parte rules, only information that has been publicly filed with the Commission or is publicly presented at this technical and settlement conference will be considered by the Commission in resolving those dockets. Parties to the above captioned dockets desiring further information should contact John M. Robinson of the advisory staff at (202) 502–6808, or Stuart Fischer of the enforcement staff at (202) 502–8517.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00316 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–302–000, CP03–303–000, CP03–304–000, PF03–1–000 and CP03–301–000]

Cheyenne Plains Gas Pipeline Company and Colorado Interstate Gas Company; Notice of Site Visit

November 12, 2003.

On November 19, 2003, the staff of the Office of Energy Projects, staff of the City of Brush!, Colorado, and representatives of Cheyenne Plains Gas Pipeline and Colorado Interstate Gas Pipeline Companies will conduct a site visit of the proposed Cheyenne Plains Gas Pipeline Project. The site visit will specifically focus on the City of Brush!/ Morgan County Water Quality District Well Field Route Variation, which is described in the Cheyenne Plains Draft Environmental Impact Statement, which was issued on September 30, 2003.

All interested parties may attend. Those planning to attend must provide their own transportation. Interested parties can meet staff at the Brush! City Hall, located at Edison and Carson, in Brush!, Colorado at 10:15 a.m. We will depart to the route variation promptly at 10:30 a.m.

For further information, please contact the Office of External Affairs at (202) 502–6088 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00321 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Meeting on the Draft Environmental Impact Statement for the Freeport LNG Project

November 7, 2003.

On December 9, 2003, the staff of the Federal Energy Regulatory Commission (Commission) will conduct a public meeting to receive comments on the draft environmental impact statement (DEIS) for the Freeport LNG Project.

The meeting will be held at the Lake Jackson Civic Center, which is located at 333 Highway 332 East in Lake Jackson, Texas. The meeting will start at 7 p.m.

The Executive Summary of the DEIS, which was unintentionally omitted from the recently issued DEIS, is being mailed to everyone on the environmental mailing list and the service list for this project.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00299 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

November 7, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part

of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date filed	Presenter or requester
1. Project Nos. 2000–000, 2216–000	10–08–03	Hon. Bradley H. Jones, Jr.
2. Project Nos. 2000–000, 2216–000	10–20–03	Hon. Patrick Leahy, Hon. James Jeffords, Hon. Bernard Sanders.
3. Docket Nos. CP02–90–000, CP01–409–000	10–26–03	James Martin/Charles Brown (Meeting Record).
4. Docket No. CP02–396–000	11–4–03	Hon. Robert C. Byrd (Ltr. from Retha Warren).
5. Docket No. CP01–49–000	11–4–03	Howard Knight (Meeting Record).
6. Docket Nos. EL02–28–000, *et al.*, EL02–60–000, *et al.*, EL02–80–000, *et al.*	11–5–03	Hon. Maria Cantwell, Hon Gordon Smith, Hon. Harry Reid, Hon. Ron Wyden, Hon. Barbara Boxer, Hon. Dianne Feinstein.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00309 Filed 11–18–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0176, FRL–7588–5]

Agency Information Collection Activities: Continuing Collection; Comment Request; Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network (40 CFR 80—Subparts D, E and F) EPA ICR Number 1591.15, OMB Control Number. 2060–0277

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 proposed 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 4–30–04. 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 January 20, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0213, 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, Office of Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jose M. Solar, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9027; fax number: (202) 565–2084; e-mail address: *Solar.Jose@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0213, which is available for public viewing at the Office of 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 Office of 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 which produce, import, or distribute gasoline.

Title: Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network (40 CFR 80—Subparts D, E and F), EPA ICR No. 1591.13, OMB Control No. 2060–0277, *expiration date:* 4–30–04.

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. The Clean Air Act (Act) requires that gasoline dispensed in certain areas with severe air quality problems be reformulated to reduce toxic and ozone-forming (smog) emissions. The Act also requires that in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be ''dumped'' into the remainder of the country's gasoline, known as conventional gasoline (CG). The EPA promulgated regulations at 40 CFR 80 establishing standards for RFG and CG, as specified in the Act, and establishing mandatory reporting and record keeping requirements for demonstrating compliance and as an aid to enforcement. The primary requirements are to test each batch of gasoline for various properties, report the results to EPA, and demonstrate compliance with the standards on an annual basis. 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: EPA estimates the respondent population at 75 RFG refineries, 25 RFG import facilities, 25 RFG oxygenate blenders, 225 CG refineries, 50 CG import facilities, 250 pipelines and terminals, 500 truckers, 19 independent laboratories, 20 auditors, and the RFG Survey Association, Inc. The typical RFG or CG respondent will have around 100 to 130 reports per year, depending primarily on the number of batches of gasoline involved. The total number of reports is estimated at 53,170 and the total burden at 101,585 hours. While this gives an average burden per report of about two hours, about 95% of the reports have an estimated burden of one hour. At $65 per hour, the labor cost is about $6.6 million. Most start-up costs were incurred at the start of the program in 1995. However, there is an estimated annualized capital cost for analysis equipment of $4.8 million. Annual operating and maintenance costs are estimated at about $5 million, and annual purchase of services costs are estimated at about $13.2 million. 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: October 24, 2003.

Suzanne Rudzinski,

Director, Transportation and Regional Programs Division.

[FR Doc. 03–28911 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7588–3]

National Advisory Council for Environmental Policy and Technology (NACEPT) Superfund Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT subcommittee on Superfund; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Superfund Subcommittee, a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), will meet on the dates and times described below. The meeting is open to the public. Seating will be on a first-come basis, and limited time will be provided for public comment on each day.

DATES: The meeting will be held from 8:30 a.m. to 6 p.m. on December 9, 2003; from 8:30 a.m. to 6 p.m. on December 10, 2003; and 8:30 a.m. to 1 p.m. on December 11, 2003.

ADDRESSES: The meeting will take place at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Designated Federal Officer for the NACEPT Superfund Subcommittee, Office of Superfund Remediation and Technology Innovation, Office of Solid Waste and Emergency Response, MC 5204G, 1200 Pennsylvania Ave., NW., Washington, DC, (703) 603–8828.

SUPPLEMENTARY INFORMATION:

Agenda

This eight meeting of the NACEPT Superfund Subcommittee will involve discussion of the latest version of the Subcommittee's draft report. The agenda for the meeting will be available one week prior to the meeting's occurrence.

Public Attendance

The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public sessions are encouraged to contact the Designated Federal Official. Each day will have one public comment period.

Dated: November 13, 2003.

Angelo Carasea,

Designated Federal Officer, NACEPT Superfund Subcommittee.

[FR Doc. 03–28912 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0326; FRL–7329–4]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency(EPA)

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Certis Technical Olive Fly Pheromone containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6928; e-mail address:*bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agriculturalproducer, food manufacturer, or 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–2003–0326. 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of 1,7-dioxaspiro-(5,5)-undecane, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 1,7-dioxaspiro-(5,5)-undecane when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of March 28, 2002 (67 FR 1493) (FRL–6827–7), which announced that Thermo Trilogy Corporation (Certis USA), 9145 Guilford Road, Suite 175, Columbia, MD, 21046, had submitted an application to register the pesticide product Olive Fly Attract and Kill (A & K) Target Device containing two new active ingredients (EPA File Symbol 70051–TA). This product contained two new active ingredients; ammonium bicarbonate at 12.8% and the arthropod pheromone 1 ,7-dioxaspiro-(5 ,5) undecane (Spiroketal) at 0.2%.

During the course of the review of the Section 3 application for Olive Fly Attract and Kill (A & K) Target Device (EPA File Symbol 70051–TA) the Agency determined that a separate registration for the technical grade of 1 ,7-dioxaspiro-(5,5) undecane was needed. The registrant then submitted a pesticide application (7/18/02) for a section three registration for the product Certis Technical Olive Fly Pheromone containing the active ingredient 1,7-dioxaspiro-(5,5) undecane at 97.6 percent. This new product was assigned EPA File Symbol 7005 1–TT. The receipt of this application was not published in the **Federal Register**.

The application for Certis Technical Olive Fly Pheromone (EPA Registration Number 70051–77), was approved on September 16, 2003, for use in the manufacturing of end-use agricultural products for control of olive fly.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 24, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–28914 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0343; FRL–7332–6]

N, N-dimethyloctanamide; N,N-dimethyldecanamide; Notice of Filing a Pesticide Petition To Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a request to amend a pending pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0343, must be received on or before December 19, 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: Kelly White, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8401; e-mail address: *white.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food 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 ID number OPP–2003–0343. 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 EPA's Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in 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–2003–0343. 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–2003–0343. 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–2003–0343.

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–2003–0343. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 5, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the amendment to the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the amendment to the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous information, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

The C.P. Hall Company

PP 1E6257

EPA has received an amendment to a pending pesticide petition (1E6257) from The C.P. Hall Company, 311 S. Wacker, Suite 4700, Chicago, IL 60606. The pending pesticide petition proposes, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for N,N-dimethyloctanamide (CAS Reg. No. 1118–92–9) and N,N-dimethyldecanamide (CAS Reg. No. 14433–76–2) when used as an inert ingredient, as an emulsifier, solvent, and cosolvent in pesticide formulations applied only to growing crops. The original pesticide petition specified that the use of N,N-dimethyloctanamide and N,N-dimethyldecanamide should be limited to less than 15% of the total pesticide formulation by weight, and this 15% limit was reflected in the original Notice of Filing, published in the **Federal Register** (66 FR 57450) (FRL–6808–6) on November 15, 2001. Subsequent to the publication of that Notice of Filing, the petitioner requested to amend the pending pesticide petition to remove the limitation on the percentage of N,N-dimethyloctanamide and N,N-dimethyldecanamide used in formulated products. There are no other changes to the information presented by the petitioner in the November 15, 2001, Notice of Filing.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

[FR Doc. 03–28654 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0365; FRL–7334–3]

Aminoethoxyvinylglycine hydrochloride (aviglycine HCl); Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0365, must be received on or before December 19, 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: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food 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 ID number OPP–2003–0365. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in 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.1. 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–2003–0365. 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–2003–0365. 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–2003–0365.

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–2003–0365. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2);

however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 7, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Valent BioSciences Corporation

PP 3F6772

EPA has received a pesticide petition (3F6772) from Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the biochemical pesticide aminoethoxyvinylglycine hydrochloride (aviglycine HCl), formerly designated as aminoethoxyvinylglycine (AVG), in or on the stone fruits crop group, excepting cherries, at 0.170 part per million (ppm).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Valent BioSciences Corporation has submitted the following summary of new information, data, and arguments in support of their pesticide petition (3F6772). This summary was prepared by Valent BioSciences Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

In addition to the new data summarized below, however, Valent BioSciences Corporation also is relying on a summary of information, data, and arguments previously submitted by Abbott Laboratories, pursuant to section 408(d)(2)(A)(i) of the FFDCA as amended, in support of a prior Abbott Laboratories pesticide petition 9G5048 that sought temporary tolerances for residues of AVG in or on the stone fruit crop group. This Abbott Laboratories request, including the referenced summarized information, was published in the **Federal Register** of March 10, 1999 (64 FR 11872) (FRL–6067–5). EPA issued a final rule, published in the **Federal Register** of June 10, 1999 (64 FR 31124) (FRL–6080–4), in which it announced the establishment of the temporary tolerances requested by Abbott Laboratories for residues of aminoethoxyvinylglcine in or on the stone fruit crop group at 0.170 ppm, with an expiration date of April 1, 2001. Subsequently, Valent BioSciences Corportion submitted a pesticide petition (9G5048, transferred from Abbott Laboratories) that sought to extend the temporary tolerances for AVG in or on the stone fruit crop group originally obtained by Abbott Laboratories. Notice of this previous pesticide petition by Valent BioSciences Corporation, which also relied, in part, on the referenced summary of information previously prepared and submitted by Abbott Laboratories, was published in the **Federal Register** of March 28, 2001 (66 FR 16931) (FRL–6775–1). EPA issued a final rule, published in the **Federal Register** of July 12, 2001 (66 FR 36477) (FRL–6788–7), announcing the establishment of the temporary tolerances requested by Valent BioSciences Corporation for residues of the plant regulator AVG in or on the stone fruit crop group at 0.170 ppm, with an expiration date of December 21, 2003. It is the original summary of information previously submitted by Abbott Laboratories, and previously relied upon by Valent BioSciences Corporation, that Valent BioSciences Corporation once again is relying upon in connection with this new pesticide petition. EPA has not republished the summary of information initially submitted by Abbott Laboratories and published in the March 10, 1999 **Federal Register,** except where EPA believes such information would be helpful in understanding the new data.

A. Product Name and Proposed Use Practices

Aminoethoxyvinylglycine hydrochloride (aviglycine HCl), which was previously designated as aminoethoxyvinylglycine (AVG), is a plant growth regulator used in the harvest management of apples, pears, and stone fruit (excluding cherries). It is used at the rate of 50 grams active ingredient per acre. Applications to apples are made once a season at 4 weeks before harvest; proposed use on stone fruit (except cherries) is for application 7 to 10 days before harvest.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* A study designed to determine whether uptake, translocation and metabolism of aminoethoxyvinylglycine hydrochloride occurs in apples identified seven minor metabolites in addition to the primary metabolite, *N*-acetyl-aminoethoxyvinylglycine. The study was not meant as a measure of the amount of aminoethoxyvinylglycine hydrochloride residues and metabolites found in apples under normal field conditions. The only significant incorporation of aminoethoxyvinylglycine hydrochloride in apple tissues, following brush-on application at high rates, resulted from absorption from the peel rather than translocation from the leaves. Aminoethoxyvinylglycine hydrochloride is also metabolized in the tissues to form *N*-acetyl-aminoethoxyvinylglycine and several other minor metabolites, and is partially degraded on the apple surface to water-soluble products that may be formed due to microbial and/or photodegradative action.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Crops in residue trials were treated at maximum label rates, or above, and harvested at the specified minimum treatment to harvest intervals. Residue data for apples previously submitted by Abbott Laboratories and reviewed by EPA indicated that at the proposed use rates, no quantifiable residues were present in or on the food commodities at 21 days after treatment. Additional pome fruit residue data generated internationally has been provided to EPA by Valent BioSciences Corporation. Residues on representative stone fruit were typically below levels of quantitation, maximum residues on plums at 7 days were 0.142 ppm, and maximum residues on cherries were 0.490 ppm at 7 days. The proposed tolerance excludes use on cherries.

Analytical Enforcement Methodology. There is a practical method for detecting and measuring levels of aviglycine HCI in or on food with a limit of detection (LOD) that allows monitoring of food

with residues at or above the levels set in these proposed tolerances. Abbott Laboratories has submitted a practical analytical methodology for detecting and measuring levels of aviglycine HCl in or on raw agricultural commodities (RACs). The proposed analytical method for determining residues is by high-performance liquid chromatography (HPLC). The HPLC/fluorescence detector analytical method used in the apple residue studies has been validated by an independent laboratory and provided to the Food and Drug Administration (FDA). This method was modified slightly for analysis of residue on peaches, plums, and cherries. This modified method has been validated by an independent laboratory. The limit of quantitation (LOQ) was 0.080 ppm for all matrices analyzed by either method. It was determined that residues on treated commodities were stable for a period of 22 months in frozen storage.

C. Mammalian Toxicological Profile

1. *Acute toxicity*. Aviglycine HCl has low acute oral, dermal, and inhalation toxicity. The oral lethal dose $(LD)_{50}$ in rats is >5,000 milligrams/kilogram (mg/kg), the dermal LD_{50} is >2,000 mg/kg and the inhalation 4–hour lethal concentration $(LC)_{50}$ is >5.00 milligrams/Liter (mg/L) air. Aviglycine HCl is not a skin sensitizer in guinea pigs, and is not irritating to the skin and eyes of rabbits. End-use formulations of aviglycine HCl have similar low acute toxicity profiles.

2. *Genotoxicity*. Aviglycine HCl does not induce gene mutations in bacterial and mammalian cells, chromosome aberrations in mammalian cells or deoxyribonucleic acid (DNA) damage in bacterial cells in *in vitro* test systems. Similarly, it does not exhibit a clastogenic effect *in vivo* in the rat micronucleus test. Therefore, there is no evidence to suggest a genotoxic hazard at any of the three main levels of genetic organization.

3. *Reproductive and developmental toxicity*. In the rabbit developmental toxicity study with aviglycine HCl, there was no evidence of teratogenicity or other embryotoxic effects at the highest dose levels tested, although maternal toxicity was evident. The rabbit maternal no observed adverse effect level (NOAEL) was established at 0.4 mg a.i./kg body weight/day (mg a.i./kg bwt/day) based on reduced body weight gains and food consumption, and decreased defecation. The developmental NOAEL was established at 0.4 mg a.i./kg bwt/day based on fetal body weights. In the rat test the maternal NOAEL was established at 1.77 mg a.i./kg bwt/day based on inhibition of body weight gain and reduced food consumption. The developmental NOAEL was found to be 1.77 mg a.i./kg bwt/day based on decreased mean fetal body weights and reduced ossification. The developmental and maternal lowest observed adverse effect levels (LOAELs) were established at 8.06 mg a.i./kg bwt/day. Aviglycine HCl was evaluated in a rat 2–generation reproduction study submitted by Abbott Laboratories. Based on reductions in body weight, changes in organ weights, and an increased incidence of microscopic findings, the parental NOAEL was established at 0.8 mg a.i./kg bwt/day. The NOAEL for reproductive toxicity was established at 4.0 mg a.i./kg bwt/day and the neonatal toxicity NOAEL was established at 2.5 mg a.i./kg bwt/day.

4. *Subchronic toxicity*. Subchronic 90–day feeding studies were conducted with rats, mice, and dogs. In a 90–day feeding study in rats, the NOAEL was 0.4 mg a.i./kg bwt/day for males and females based on increased incidence of periportal hepatocellular vacuolation in the liver. In the 90–day feeding study in mice, the NOAEL was established at 10 mg a.i./kg bwt/day for males and females - based on decreased body weight and histopathological changes in the liver (both sexes), in the testis (males) and the adrenal (females) at 25 mg a.i./kg bwt/day. For dogs, the NOAEL was established at 0.6 mg a.i./kg bwt/day - based on inappetence, low body weight gain and centrilobular histopathological changes in the liver at 1.2 mg a.i./kg bwt/day. Note that the liver vacuolation is considered an adaptive change. Increased vacuolation of the liver was not observed in the 52–week chronic rat study or the 104–week rat oncogenicity study. A 21–day repeat dose dermal toxicity study in rats was carried out at 0, 100, 500, and 1,000 mg a.i./kg bwt/day. The NOAEL is 1,000 mg a.i./kg bwt/day; a LOAEL was not determined.

5. *Chronic toxicity*. Chronic studies with aviglycine HCl were conducted on rats to determine oncogenic potential and/or chronic toxicity of the compound. The NOAEL for the 1–year chronic study was 0.7 mg a.i./kg bwt/day for males and females based on decreases in body weights, food consumption, testicular tubular and epithelial vacuolation, and pancreatic acinar cell atrophy. The rat carcinogenicity study with aviglycine HCl confirmed the substance has no carcinogenic potential. There was no evidence of cell necrosis that could be a preliminary stage before tumor genesis, and time of death was similar to controls. During the 2–year carcinogenicity study, the administration of aviglycine HCl at 7 mg a.i./kg bwt/day was associated with body weight and food consumption reductions, increases in the incidence of adrenal focal medullary cell hyperplasia, testicular tubular atrophy, and other associated findings in the testis and epididymis, ocular cataracts, and pancreatic lobular/acinar cell atrophy. The NOAEL was established at 0.7 mg a.i./kg bwt/day.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Expected dietary exposures from residues of aviglycine HCl would occur through apples, pears, peaches, nectarines, plums, and processed pome and stone-fruits. Acute and chronic dietary exposure assessments were conducted using a Tier I approach. This Tier I assessment incorporated; tolerance level residues for all commodities; assumption of 100% crop-treated for all crops; default processing factors and consumption data from the 1994 through 1998 U.S. Department of Agriculture (USDA) Continuing Surveys of Food Intakes by Individuals (CSFII) (USDA), 1994, 1995, 1996, and 1998). Estimates of chronic and acute dietary exposure were calculated using Dietary Exposure Evaluation Module Food Commodity Intake Database (DEEM-FCID™) software (Novigen, 2001). The resulting exposures were compared to a chronic reference dose (RfD) of 0.007 mg a.i./kg bwt/day and an acute NOAEL of 1.77 mg a.i./kg bwt/day. The RfD is based on the NOAEL of 0.7 mg a.i./kg bwt/day from the rat chronic toxicity study (52–week) and the rat carcinogenicity feeding study (104–week) with a 100–fold uncertainty factor (UF) to account for intraspecies and interspecies variations. The acute NOAEL is based on the rat oral developmental toxicity study.

Chronic dietary exposure estimates for the overall U.S. population and 24 population subgroups, including infants and children, are well below the chronic RfD. Estimated daily exposures from tolerance level residues and a 100% crop treated assumption for all crops were 15.9% of the RfD or less for all populations examined. Acute dietary exposure was estimated for the overall U.S. population and the population subgroups:

a. All infants.
b. Nursing infants.
c. Non-nursing infants.
d. Children 1 to 2 years of age.
e. Adult 20 to 49 years of age.
f. Females 13 t0 49 years of age.
g. Adults 50 years and older.

Estimated daily exposures from tolerance level residues (at the 95th percentile) and a 100% crop treated assumption for all crops resulted in margins of exposure (MOEs) greater than 430 for all population groups examined. The results of both the chronic and acute dietary exposure analyses clearly demonstrate a reasonable certainty that no harm will result from the proposed agricultural uses of aviglycine HCI.

ii. *Drinking water.* Aviglycine HCl is highly unlikely to contaminate ground water resources due to its high soil sorption, and short soil and water/sediment half-lives. Study results show that aviglycine HCl is easily adsorbed to soils, principally onto clay particles. Half-lives in soils vary between 1.7 and 4.7 days. Water-sediment studies have shown that aviglycine HCl will be readily adsorbed to sediment where it is mineralized and incorporated into the organic fraction of the sediment. Biodegradation occurs in both systems. The half-life of aviglycine HCl in the aqueous phase and total water/sediment system was calculated to be 1.5 and 4.3 days respectively. An aviglycine HCI water concentration assessment was conducted using EPA first tier screening models. FQPA Index Reservoir Screening Tool (FIRST) was used for surface water concentration assessment and screening concentration in ground water (SCI-GROW) was used for ground water assessment. There were no estimated ground water concentrations according to SCI-GROW. Peak surface water concentrations estimated using FIRST were 1,283 and the estimated annual average was 0.021 part per billion (ppb), assuming 87% crop treated. The contribution of drinking water to aggregate risk is considered to be negligible.

2. *Non-dietary exposure.* Aviglycine HCl has no product registrations for residential non-food uses. Non-occupational, non-dietary exposure for aviglycine HCl has thus been estimated to be extremely small. Therefore, the potential for non-dietary exposure is insignificant. The exposure from the commercial use is expected to be dermal in nature. A 21–day repeat dose dermal toxicity study resulted in no significant treatment related effects at 1,000 mg a.i./kg bwt/day, the highest dose tested (HDT).

E. Cumulative Exposure

Consideration of a common mechanism of toxicity is not necessary at this time because there is no indication that toxic effects of aviglycine HCl would be cumulative with those of any other chemical compounds. Aviglycine HCl has a novel mode of action compared to other currently registered active ingredients. Therefore, Valent BioSciences Corporation believes it is appropriate to consider only the potential risks of aviglycine HCl in an aggregate risk assessment.

F. Safety Determination

1. *U.S. population.* Aviglycine HCl is an amino acid which has been generated through a fermentation of a soil microorganism. Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to aviglycine HCl for the U.S. population was calculated to be 2.2% of the RfD. Therefore, taking into account the proposed uses, it can be concluded with reasonable certainty that residues of aviglycine HCl in food and drinking water will not result in unacceptable levels of human health risk.

2. *Infants and children.* FFDCA section 408 (b)(2)(C)(i) provides that EPA shall apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the lack of completeness of the data base. Only when there is no indication of increased sensitivity of infants and children and when the data base is complete, may the extra safety factor be removed. In the case of aviglycine HCl, the toxicology data base is complete. There is no indication of increased sensitivity in the data base overall, and specifically, there is no indication of increased sensitivity in the developmental and multi-generation reproductive toxicity studies. Therefore, Valent BioSciences Corporation concludes that there is no need for an additional safety factor and a safety factor of 100 be used for the assessment. Using the chronic exposure assumptions and the proposed RfD described above, the dietary exposure to aviglycine HCl for non-nursing infants, the most highly exposed population subgroup, was calculated to be 0.001110 mg a.i./kg bwt/day or 15.9% of the RfD. Daily exposure for the overall U.S. population was estimated to be 0.000153 mg a.i./kg bwt/day. The proposed tolerances will utilize 2.2% of the RfD for the U.S. population.

G. Effects on the Immune and Endocrine Systems

Lifespan, and multigenerational studies on mammals, and acute and subchronic studies on aquatic organisms and wildlife did not reveal any definite immune or endocrine effects. An immunotoxicity study in rats at 0, 1.25, 5, and 15 mg a.i./kg bwt/day presented a NOAEL of 5 mg a.i./kg bwt/day based on decreased primary antibody (igM) response to sheep red blood cells; decreased absolute and relative thymus weights; and decreased body weight, food consumption, and food efficiency at the high dose level. The LOAEL is 15 mg a.i./kg bwt/day. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of aviglycine HCl is considered negligible.

H. Existing Tolerances

Time limited tolerances have been established for the residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl, formerly aminoethoxyvinylglycine (AVG)) in or on the following food commodities:

Commodity	Parts per million	Expiration date
Apple	0.08	December 21, 2003
Pear	0.08	December 21, 2003

Temporary tolerances have been established for the residues of aminoethoxyvinylglycine hydrochloride (aviglycine HCl, formerly aminoethoxyvinylglycine (AVG)) in or on the following food commodities:

Commodity	Parts per million	Expiration date
Fruit, stone, group 12	0.170	December 21, 2003

I. International Tolerances

There are no codex maximum residue limits for use of aminoethoxyvinylglycine hydrochloride on apples or pears, stone fruits, or on any other crop.

[FR Doc. 03–28913 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0325; FRL–7329–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only

in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, 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–2003–0325. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. EUP

EPA has issued the following EUP:

68467–EUP–6. Issuance. Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This EUP allows the use of the plant-incorporated protectant *Bacillus thuringiensis* Cry 1F (Synpro)/Cry 1Ac (synpro construct 281/3006 insectical crystal protein as expressed in cotton) on 262.8 acres of cotton to evaluate the control of tobacco budworm and/or other lepidopteran insect feeding. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, and Missouri. The EUP is effective from April 11, 2003 to April 11, 2004. A tolerance has been established for residues of the active ingredient in or on cotton.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: November 5, 2003.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–28573 Filed 11–18–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection currently titled: Forms Related to Outside Counsel Services Contracting.

DATES: Comments must be submitted on or before January 20, 2004.

ADDRESSES: You may submit comments identified by the OMB control number, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include OMB control number in the subject line of the message.
- *Mail:* Leneta Gregorie, Counsel (Consumer and Compliance Unit), (202) 898–3719, Legal Division, Room 3062, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

- *Hand Delivery/Courier:* Guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and OMB control number for this notice. Comments will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collection of information:

Title: Forms Related to Outside Counsel Services Contracting.

OMB Number: 3064–0122.

Current Form Numbers: 5000/24; 5000/25; 5000/26; 5000/27; 5000/28; 5000/29; 5000/31; 5000/32; 5000/33; 5000/34; 5000/35; 5000/36; 5200/01.

Proposed New Form Numbers: 5210/01; 5210/02; 5210/03; 5210/03A; 5210/04; 5210/04A; 5210/06; 5210/06(A); 5210/08; 5210/10; 5210/10(A); 5210/11; 5210/12; and 5210/12A.

Frequency of Response: As necessary.

Affected Public: Law firms, sole proprietors, experts, and other legal services support providers who wish to contract with or who already are under contract with the FDIC.

Estimated Number of Respondents: 4,378.

Estimated Time per Response: 2,095 responses—1 hour; 1,045 responses—.75 hour; 1,238 responses—.50 hour.

Estimated Total Annual Burden: 3,498 hours.

General Description of Collection: The information collection ensures that law

firms, experts, and other legal service providers seeking to provide services to the FDIC meet the eligibility requirements established by Congress and facilitates the FDIC's monitoring of performance, progress and payments under the contracts.

Current Action: There are 13 forms, each of which supports the FDIC's Outside Counsel Program, currently approved under this information collection. These 13 forms have a total annual burden of 1,903 hours based on 2,783 responses, with the estimated response time for each form varying between .5 hour to 1.0 hour. The FDIC is proposing to (1) change the title of the collection to ''Forms Relating to FDIC Outside Counsel Services, Legal Support Services and Expert Services Programs' to reflect the broadened focus of the information collection, and (2) add an additional 14 forms to the collection, several of which reflect the need for more specialized forms to support the Outside Counsel Program and the remainder of which will support the direct engagement of experts and other legal service providers by the FDIC Legal Division. The 14 proposed new forms would add 1,595 responses, with an estimated response time of 1.0 hour each, for an additional 1,595 hours, thereby increasing the total estimated annual burden to 3,498 hours. The proposed new forms are as follows: Expert Invoice for Fees and Expenses, FDIC Form 5210/01; Legal Support Services (LSS) Provider Invoice for Fees and Expenses, FDIC Form 5210/02; Agreement for Services (Expert or Legal Support Services (LSS) Provider) Amendment, FDIC Form 5210/03; Agreement for Services (Expert or Legal Support Services (LSS) Provider) Amendment (Cont'), FDIC Form 5210/03A; Agreement for Services (Expert/Legal Support Services (LSS) Provider Rate Schedule, FDIC Form 5210/04; Agreement for Services (Expert/Legal Support Services (LSS) Provider Rate Schedule (Cont'), FDIC Form 5210/04A; Legal Services Agreement (LSA) Amendment, FDIC Form 5210/06; Legal Services Agreement Amendment (Continuation Sheet), FDIC Form 5210/06(A); Expert Budget, FDIC Form 5210/08; Outside Counsel Legal Services Agreement Rate Schedule, FDIC Form 5210.10; Outside Counsel Legal Services Agreement (Cont'), FDIC Form 5210/10A; Legal Invoice for Fees and Expenses, FDIC Form 5210/11; Law Firm Travel Voucher, FDIC Form/12; and Law Firm Travel Voucher, FDIC Form 5210/12A.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated in Washington, DC this 14th day of November, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–28900 Filed 11–18–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011665–006.

Title: Specialized Reefer Shipping Association.

Parties:

LauritzenCool AB, NYK Reefers Ltd.
Seatrade Group NV.

Synopsis: The amendment adds NYK Reefers Ltd. as a party to the agreement.

Agreement No.: 201026–004.

Title: New Orleans/P&O Ports LA Terminal Lease Agreement.

Parties:

Board of Commissioners of the Port of New Orleans
P&O Ports Louisiana, Inc.

Synopsis: The amendment amends the lease to include a larger acreage and a roadway reservation and to permit the lessee other similar rights of way in the facility.

By Order of the Federal Maritime Commission.

Dated: November 14, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28921 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P8–03]

Petition of Bax Global Inc. for Rulemaking; Reopening of Comment Period; Oral Presentations

Bax Global Inc. (''Petitioner'') has petitioned for the issuance of a rulemaking pursuant to 46 CFR 502.51. Petitioner seeks a rulemaking to amend the Commission's regulations to permit Petitioner to enter into confidential service contracts as ''ocean common carriers'' with their shipper-clients for the ocean transportation of cargo. The period for the filing of comments in response to the petition closed on October 10, 2003.

The Commission has determined to re-open the comment period. Interested persons are requested to submit views or arguments in reply to the petition, or in reply to comments already received, no later than January 16, 2004. Comments shall consist of an original and 15 copies, and shall be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. It is also requested that a copy be submitted in electronic form (WordPerfect, Word or ASCII) on diskette, or e-mailed to *Secretary@fmc.gov*.

The Commission has also determined to permit interested persons to make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact

the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has determined to waive the service requirements found at 46 CFR 502.114(b). Instead, copies of all filed comments, and copies of summaries or transcripts of oral presentations, may be viewed on the Commission's web page at *http://www.fmc.gov*.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28919 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P9–03]

Petition of C.H. Robinson Worldwide Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 To Permit Negotiation, Entry and Performance of Confidential Service Contracts; Reopening of Comment Period; Oral Presentations

C.H. Robinson Worldwide, Inc. (''Petitioner'') has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.67, for an exemption from the Shipping Act, to permit it to negotiate, enter into and perform service contracts. The period for the filing of comments in response to the petition closed on October 10, 2003.

The Commission has determined to re-open the comment period. Interested persons are requested to submit views or arguments in reply to the petition, or in reply to comments already received, no later than January 16, 2004. Comments shall consist of an original and 15 copies, and shall be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. It is also requested that a copy be submitted in electronic form (WordPerfect, Word or ASCII) on diskette, or e-mailed to *Secretary@fmc.gov*.

The Commission has also determined to permit interested persons to make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has determined to waive the service requirements found at 46 CFR 502.114(b). Instead, copies of all filed comments, and copies of summaries or transcripts of oral presentations, may be viewed on the Commission's Web page at *http://www.fmc.gov*.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28920 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P5–03]

Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption From Certain Tariff Requirements of the Shipping Act of 1984; Reopening of Comment Period; Oral Presentations

The National Customs Brokers and Forwarders Association of America, Inc. (''Petitioner'') has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.67, for an exemption from the provisions of Section 8 and 10 of the Shipping Act of 1984, which require non-vessel ocean common carriers (''NVOCCs'') to establish, publish, maintain and enforce tariffs setting forth ocean freight rates. Alternatively, Petitioner requests that the Commission consider a more limited exemption and rulemaking that would allow NVOCCs to establish ''range rates.'' The period for the filing of comments in response to the petition closed on October 10, 2003.

The Commission has determined to re-open the comment period. Interested persons are requested to submit views or arguments in reply to the petition, or in reply to comments already received, no later than January 16, 2004. Comments shall consist of an original and 15 copies, and shall be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. It is also requested that a copy be submitted in electronic form (WordPerfect, Word or ASCII) on diskette, or e-mailed to *Secretary@fmc.gov.*

The Commission has also determined to permit interested persons to make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has determined to waive the service requirements found at 46 CFR 502.114(b). Instead, copies of all filed comments, and copies of summaries or transcripts of oral presentations, may be viewed on the Commission's Web page at *http://www.fmc.gov.*

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28917 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P7–03]

Petition of Ocean World Lines, Inc., for a Rulemaking To Amend and Expand the Definition and Scope of ''Special Contracts'' To Include All Ocean Transportation Intermediaries; Reopening of Comment Period; Oral Presentations

Ocean World Lines, Inc. (''Petitioner'') has petitioned for the issuance of a rulemaking pursuant to 46 CFR 502.51. Petitioner seeks a rulemaking to address and evaluate the impact of the Commission's rules governing Ocean Transportation Intermediaries (''OTIs''). Specifically, Petitioner seeks a rulemaking that would expand the definition and scope of the term ''special contracts'' to include all OTIs in the same manner as currently applied to ocean freight forwarders (46 CFR 515.41(c)). The period for the filing of comments in response to the petition closed on October 10, 2003.

The Commission has determined to re-open the comment period. Interested persons are requested to submit views or arguments in reply to the petition, or in reply to comments already received, no later than January 16, 2004. Comments shall consist of an original and 15 copies, and shall be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. It is

also requested that a copy be submitted in electronic form (WordPerfect, Word or ASCII) on diskette, or e-mailed to *Secretary@fmc.gov.*

The Commission has also determined to permit interested persons to make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has determined to waive the service requirements found at 46 CFR 502.114(b). Instead, copies of all filed comments, and copies of summaries or transcripts of oral presentations, may be viewed on the Commission's web page at *http://www.fmc.gov.*

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28918 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition P3–03]

Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 To Permit Negotiation, Entry and Performance of Service Contracts; Reopening of Comment Period; Oral Presentations

United Parcel Service, Inc. (''Petitioner'') has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.67, for an exemption from the Shipping Act, to permit it to negotiate, enter into and perform service contracts. The period for the filing of comments in response to the petition closed on October 10, 2003.

The Commission has determined to re-open the comment period. Interested persons are requested to submit views or arguments in reply to the petition, or in reply to comments already received, no later than January 16, 2004. Comments shall consist of an original and 15 copies, and shall be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001. It is also requested that a copy be submitted in electronic form (WordPerfect, Word or ASCII) on diskette, or e-mailed to *Secretary@fmc.gov.*

The Commission has also determined to permit interested persons to make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

The Commission has determined to waive the service requirements found at 46 CFR 502.114(b). Instead, copies of all filed comments, and copies of summaries or transcripts of oral presentations, may be viewed on the Commission's Web page at *http://www.fmc.gov.*

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28916 Filed 11–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Midland States Bancorp, Inc., Effingham, Illinois; to acquire 100 percent of Sun Security Bank of America, Ellington, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Professional Capital, Inc., Dallas, Texas and Professional Capital of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring all of the shares of Professional Bank, National Association, Dallas, Texas (a *de novo* bank).

Board of Governors of the Federal Reserve System, November 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28847 Filed 11–18–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Carolina Financial Corporation, Charleston, South Carolina; to acquire certain assets and assume certain liabilities of Crescent Mortgage Services, Inc., Atlanta, Georgia, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–28846 Filed 11–18–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–71–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Evaluation of the Process Required to Effectively Expand the National Laboratory System (NLS) to All States—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

In October 2000, the Centers for Disease Control and Prevention (CDC) and the Association of Public Health Laboratories (APHL) collaborated to support demonstration projects designed to test the feasibility of strengthening the relationship between private clinical and public health laboratories to more rapidly identify and respond to emerging problems of public health importance. The National Laboratory System (NLS) concept was proposed because of concerns about the potential impact that a lack of integration among clinical and public health laboratories could have on the ability of the public health system to identify and carry out a timely response to foodborne illnesses, bioterrorism incidents or other emerging diseases.

NLS demonstration projects are funded in four states—Washington, Michigan, Minnesota and Nebraska.

The NLS concept would promote communication and collaboration between clinical laboratories and state public health laboratories within their states. CDC is now proposing to collect data from all state public health laboratory directors and from a sample of clinical laboratories in each state to determine the interest within states in implementing the NLS concept. Results of the data collection will be stratified by state and used to assist each state's public health laboratory in improving communication and collaboration with the clinical laboratories in their state. As more states implement the systems, the ability to respond to national emergencies through individual state systems, would be improved.

The goals of the data collection are:

- To determine the barriers that must be overcome to expand the NLS concept in other states.
- To determine the readiness of states to develop relationships with clinical laboratories.
- To determine the most effective communication links for sharing information among state public health laboratories and clinical laboratories within the state.
- To understand what topics of public health significance could be addressed in each state if communication and coordination between the clinical and state public health laboratories were improved.
- To determine the most successful approach state laboratories should use based on the organizational structure and climate of the state health department. The estimated annual burden is 325 hours.

Respondents	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs.)
Survey of State Public Health Directors in States Without NLS	50	1	30/60
Survey of Clinical Laboratory Directors in All States	600	1	30/60

Dated: November 13, 2003.

Laura Yerdon Martin,

Acting Director, Office of the Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–28865 Filed 11–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority for Regional Offices

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KD, the Regional Offices of the Administration for Children and Families for: Region I, as last amended (61 FR 50029–30) September 24, 1996; Region II, as last amended (61 FR 18147–49) April 24, 1996, and (60 FR 21211–12) May 1, 1995; Region III, as last amended (61 FR 68045) April 26, 1996; Region IV, as last amended (62 FR 15897–99) April 3, 1997; Region V, as last amended (65 FR 8173–74) February 17, 2000; Region VI, as last amended (61 FR 18147–49) April 24, 1996, and (60 FR 27315–16) May 23, 1995; Region VII, as last amended (61 FR 3937–38) February 2, 1996; Region VIII, as last amended (61 FR 52565–66) October 8, 1997; Region IX, as last amended (62 FR 31610–11) June 10, 1997; and Region X, as last amended (61 FR 68045–47) December 26, 1996.

This Notice reflects the elimination of the five-region ''Hub'' structure and the re-establishment of a ten-region organizational structure.

Each Regional Office is headed by a Regional Administrator who serves as the principal senior official for the Administration for Children and Families (ACF) in providing executive leadership, direction and coordination of ACF programs, goals and priorities in the ten Regional Offices.

I. Chapter KD Is Amended as Follows

A. Delete KD.00 Mission in its entirety and replace with the following:

KD.00 Mission. The Regional Offices of the Administration for Children and Families (ACF) operate with ten Regional Offices and are located as follows: Region I Boston, MA; Region II New York, NY; Region III Philadelphia, PA; Region IV Atlanta, GA; Region V Chicago, IL; Region VI Dallas, TX; Region VII Kansas City, MO; Region VIII Denver, CO; Region IX San Francisco, CA; and Region X Seattle, WA.

Each Regional Office in its respective region represents ACF to state, county, city or town, territories, and tribal governments, grantees, and public and private local organizations in the administration of programs that assist vulnerable and dependent children and families in achieving independence, stability, and self-reliance. These programs include: Child Support Enforcement (CSE), Temporary Assistance for Needy Families (TANF), Foster Care and Adoption Assistance, Head Start, Early Head Start, Child Welfare, Child Care and Development Fund, Child Abuse and Neglect, Runaway and Homeless Youth, and Developmental Disabilities.

The ACF Regional Offices oversee the programmatic and financial management and coordination of the ACF programs in the regions and provide guidance and assistance to the various entities responsible for administering these programs. They monitor the programs to ensure compliance with applicable laws and regulations, and adherence to program and fiscal policies and procedures. They contribute to the development of ACF national policy based on knowledge of implementation and services in the region. The ACF Regional Offices review and approve state plans and, if warranted, submit recommendations to the Assistant Secretary for Children and Families for state plan disapproval. They issue grant awards directly for certain programs, and make recommendations to approve and/or disapprove grant awards for other programs. They advise the Assistant Secretary for Children and Families of problems and issues that may have significant regional or national impact. The ACF Regional Offices act as liaison with the entities responsible for administering the programs, other Federal agencies, and public and private local organizations serving children and families. They develop plans to meet ACF goals and objectives and HHS initiatives. They participate in regional activities to inform the public about ACF programs in coordination with the ACF Office of Public Affairs and the Office of the Secretary at the regional level.

II. Region I, Boston Office of ACF

A. Delete KD1.10 Organization in its entirety and replace with the following:

KD1.10 Organization. The Administration for Children and Families, Region I, Boston Office has a goal-driven structure and is organized as follows:

Office of the Regional Administrator (KD1A)
Goal#1—Family Self Sufficiency
Goal#2—Healthy Children, Families and Communities
Goal#3—Financial Management

B. Delete KD1.20 Functions, Paragraph A, in its entirety and replace with the following:

KD1.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator. The Office provides executive leadership to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective, efficient, results-oriented program and financial management. In addition, the Regional Administrator is responsible for alerting the Assistant Secretary for Children and Families through the Director, Office of Regional Operations to issues that may have significant regional and/or national impact. ACF's primary goal is to assist vulnerable and dependent children and families to achieve economic independence, stability and self-reliance. The Office is responsible for providing centralized management and technical administration of ACF formula, block, entitlement and discretionary grant programs which are designed to assist families achieve economic independence and self-sufficiency, and to ensure that children have safe, healthy and permanent environments in which to grow. It oversees ACF operations and the management of ACF regional staff, coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out.

In order to ensure that agency goals are accomplished, the Office of the Regional Administrator provides leadership to grantees through a staff organized around and focused on ACF goals and priorities. ACF programs and functions are grouped within offices according to ACF goals and priorities. Each group reports to a goal leader charged with achieving measurable progress towards ACF goals and priorities, through its work with state and local grantees, the public, other Federal agencies and internally within the Department. The Regional goal structure is designed to allow ACF to respond quickly in a dynamic and changing environment to emphasize,

focus on and achieve ACF and HHS goals and priorities.

The Office takes action to approve certain state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs.

The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF programs. The Office provides technical assistance to entities responsible for administering ACF programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, works with appropriate state and local officials to develop and implement outcome-based performance measures and monitors the programs to ensure their efficiency and effectiveness. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office also reviews cost estimates and reports for ACF grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve or disallow costs under ACF grant programs and to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state and local grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office issues certain grant awards based on a review of project objectives, budget projections, and proposed funding levels. The Office establishes regional financial management priorities and reviews cost allocation plans, and assists in the review of office automation systems in the region and state systems projects for ACF programs.

The Office provides leadership in forming results-oriented, customer-focused partnerships with administrators of ACF programs. The Office is also responsible for providing administration and management support for the Regional Office. The Office is responsible for day-to-day operational management of regional administrative functions, including budget, performance management, procurement, property management, employee relations, human resource development activities and communications.

The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other Federal agencies, and public or private local organizations representing children and families.

III. Region II, New York Office of ACF

A. Delete KD2.10 Organization in its entirety and replace with the following:

KD2.10 Organization. The Administration for Children and Families, Region II, New York Office is organized as follows:

Office of the Regional Administrator (KD2A)
Office of Management and Data Services (KD2B)
Office of State and Youth Programs (KD2C)
Office of Early Childhood Programs (KD2D)

B. Delete KD2.20 Functions, Paragraph A, in its entirety and replace with the following:

KD2.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies and focuses on state agency culture change, more effective partnerships, and improved customer service. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve certain state plans and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives for all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other Federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, an administrative staff directs the development of regional work plans related to the overall ACF strategic plan; tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives; and manages special and sensitive projects. It serves as the focal point for public affairs and contacts with the media, public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director; and assists the Regional Administrator in the management of cross-cutting initiatives and activities among the regional components.

C. Delete KD2.20 Functions, Paragraph B in its entirety and replace with the following:

B. The Office of Management and Data Services is headed by an Assistant Regional Administrator for Operations who reports to the Regional Administrator. The Office provides day-to-day support for regional administrative and grants management functions, and provides data management and statistical analysis support to all Regional Office components. Administrative functions include budget planning and execution, facility management, employee relations, and human resources development. The Assistant Regional Administrator, acting in the capacity of Financial/Grants Management Officer, and staff provide expertise in business and other non-programmatic areas of grants administration and help ensure that grantees fulfill requirements of laws, regulations, and administrative policies. The Office establishes regional financial management priorities; reviews cost allocation plans; and makes recommendations to the Regional Administrator to (1) approve, defer or disallow claims for federal financial participation in ACF formula and entitlement programs and (2) approve or disallow costs under ACF discretionary

grant programs. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

The Office represents the Regional Administrator on administrative and grants management matters with ACF central office, states, contractors and grantees. It alerts the Regional Administrator to problems or issues that have significant implications for functional areas under its jurisdiction.

D. Delete KD2.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of State and Youth Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator and consists of: Child Support Enforcement Division; Self-Sufficiency Programs Division; and Youth and Family Services Division.

The Office is responsible for providing centralized program, financial management and technical administration of certain ACF formula, entitlement, block and discretionary programs, such as Temporary Assistance to Needy Families (TANF), Child Care Development Fund, Child Support Enforcement, Child Welfare Services, Family Preservation and Support, Foster Care and Adoption Assistance, Child Abuse and Neglect, and Runaway and Homeless Youth.

The Office represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

E. Delete KD2.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Office of Early Childhood Programs is headed by an Assistant Regional Administrator who reports to the Regional Administrator and consists of: New Jersey and Caribbean Division; and New York State Division.

The Office is responsible for providing a centralized program, financial management and technical administration of certain ACF formula, entitlement, and discretionary programs, such as Head Start and Early Head Start Programs, and Developmental Disabilities.

The Office represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

IV. Region III, Philadelphia Office of ACF

A. Delete KD3.10 Organization in its entirety and replace with the following:

KD3.10 Organization. The Administration for Children and Families, Region III, Philadelphia Office, is organized as follows:

Office of the Regional Administrator (KD3A)
Office of Program and Administrative Support (KD3B)
Office of Family Services (KD3C)
Office of Child Development and Developmental Disabilities (KD3D)

B. Delete KD3.20 Functions, Paragraph A, in its entirety and replace with the following:

KD3.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office provides executive leadership and directives to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office, through its Grants Officer, establishes regional financial management priorities. The Office provides cost allocation and financial support to the Office of Family Services and the Office of Child Development and Developmental Disabilities. The Office takes action to approve certain state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval, where applicable. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office provides executive representation for ACF in regional external communications and serves as ACF liaison with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

C. Delete KD3.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of Program and Administrative Support is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office assists the Regional Administrator in providing day-to-day support for regional administrative functions, including budget, performance management, procurement, property management, financial management, external and internal systems, statistical analyses, employee relations and human resource development activities.

The Office oversees the management and coordination of automated systems in the region, and provides data management and statistical analysis support to all Regional Office components. Data management responsibilities include the development of automated system applications to support and enhance program, fiscal, administrative and quality control operations, and the compilation and analysis of data on demographic and service trends that assist in monitoring and oversight responsibilities. Statistical analysis functions include the review of state and federal sampling procedures. The Office is also responsible for the development and maintenance of internal software applications to support the operation of the region's other components and provides backup to the OIS on-site Systems Administrator. The Office represents the Regional Administrator on administrative matters and on internal and state systems matters with ACF central office, states, contractors and grantees. It alerts the Regional Administrator to problems or issues that have significant implications for functional areas under its jurisdiction.

D. Delete KD3.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of Family Services is headed by an Assistant Regional Administrator who reports to the Regional Administrator.

The Office is responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs such as TANF (Temporary Assistance to Needy Families), Child

Care, Child Support Enforcement (CSE), Foster Care and Adoption Assistance, Child Welfare, Child Abuse and Neglect and the discretionary Runaway and Homeless Youth Program.

The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, monitors the programs to ensure their efficiency and effectiveness, establishes regional financial management priorities and reviews cost allocation plans, and monitors state systems projects for the CSE, TANF, Child Care, and Child Welfare programs. The Office provides financial management services for ACF formula and entitlement grants in the region as well as for the Runaway and Homeless Youth Program, which is a discretionary grant. The Office issues discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. The Office also reviews cost estimates and reports for ACF entitlement and formula grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office represents the Regional Administrator in dealing with the ACF program offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

E. Delete KD3.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Office of Child Development and Developmental Disabilities is headed by an Assistant Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF grant programs such as Head Start, Early Head Start, and Developmental Disabilities programs.

In that regard, the Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Office performs systematic fiscal reviews; makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs; and makes recommendations to the Regional Administrator concerning state plan approval or disapproval, as applicable. The Office issues discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies.

The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications on the programs.

V. Region IV, Atlanta Office of ACF

A. Delete KD4.10 Organization in its entirety and replace with the following:

KD 4.10 Organization. The Administration for Children and Families, Region IV, Atlanta Office is organized as follows:

Office of the Regional Administrator (KD4A)
Office of the Deputy Regional Administrator (KD4B)
Division of Community Programs (KD4B1)
Division of State Programs (KD4B2)

B. Delete KD4.20 Functions, Paragraph A, in its entirety and replace with the following:

KD4.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office is responsible for administration and oversight of the Administration for Children and Families' (ACF) programs and key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies and focuses on state agency culture change, more effective partnerships, and improved customer service and results-oriented performance measurement. The Office provides executive leadership and direction to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve certain state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval, where applicable. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that ACF goals are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office provides executive representation for ACF in regional external communications, and serves as ACF liaison with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator are a Special Initiatives Staff and an Administrative Staff. The Special Initiatives staff is responsible for providing leadership, direction, coordination and implementation of Administration, HHS, and ACF priorities and initiatives in the Region. The staff assists the Regional Administrator in the promotion and establishment of collaborative partnerships of the priorities and initiatives in every program area. Additionally, it serves as focal point for media inquiries and public affairs

activities and liaison with the Office of Community Services relative to the development of partnerships and collaborations around the Community Services/Action Agencies activities. The Administrative staff manages the regional administrative functions, budget planning and execution process, human resource and staff development activities, and technology.

C. Delete KD4.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of the Deputy Regional Administrator consists of the Deputy and the Grants Officers. The Deputy Regional Administrator serves as the full deputy or ''alter ego'' to the Regional Administrator, Administration for Children and Families. The Deputy assists the Regional Administrator with responsibility for providing executive direction, leadership and coordination to all ACF programs, financial operations and related activities in the Region. The Deputy has primary responsibility for overseeing day-to-day program operations. In the absence of the Regional Administrator, the Deputy Regional Administrator acts on all matters within the jurisdiction of the Regional Administrator, with full authority.

The Grants Officers, functioning independently of all program offices, provide program staff with expertise in the technical and other non-programmatic areas of grants administration, and provide appropriate internal control and checks and balances to ensure financial integrity in all phases of the grants process.

D. Delete KD4.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Division of Community Programs is headed by a Director who reports to the Deputy Regional Administrator. The Division consists of three branches with responsibility for ACF oversight and technical administration of the Head Start and discretionary grants funded directly from ACF to community-based grantees in the eight states. The Division provides policy guidance to county, city, town or tribal governments and public and private organizations to assure consistent compliance with federal requirements and the adoption of appropriate policies and procedures. The Division performs systematic on-site reviews of grantees to determine compliance with applicable federal requirements, requiring correction of identified deficiencies and, where necessary, adverse actions including defunding of dysfunctional grantees. The Division performs systematic fiscal reviews, makes recommendations to the Deputy Regional Administrator and Regional Administrator to approve or disallow costs under the ACF discretionary grant regulations, and makes recommendations regarding grant approval and disapproval. The Division issues discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. The Division makes recommendations on the clearance and closure of grantee audits, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of program service delivery to customers, and taking steps to monitor the resolution of such deficiencies. The Division oversees the management and coordination of the Head Start automation systems such as the Grant Application and Budget Instrument (GABI) for budget analysis on Head Start refunding applications, and to monitor grantee systems projects such as the Head Start Program Information Report (PIR) and the Head Start Management Tracking System. The Division represents the Regional Administrator in dealing with grantees on all matters of program policy and financial matters under its jurisdiction, providing early warnings on problems or issues that may have significant implications for ACF programs operated by local grantees.

E. Delete KD4.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Division of State Programs is headed by a Director who reports to the Deputy Regional Administrator. The Division consists of three branches responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs including Temporary Assistance for Needy Families (TANF), Child Care, Child Support Enforcement, Foster Care and Adoption Assistance, Child Welfare, Family Preservation and Support Services, Child Abuse and Neglect and Developmental Disabilities.

The Division provides policy guidance to state, county, city, town or tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing ACF grants. State plans are reviewed and recommendations made to the Regional Administrator concerning state plan approvals or disapprovals. The Division provides technical assistance to entities responsible for administering ACF grants, resolving identified problems and ensuring adoption of appropriate procedures and practices that promote policy compliance and program efficiency and effectiveness. The Division provides financial management oversight for ACF grants under its jurisdiction; reviews cost allocation plans, program objectives, budget projections, cost estimates, and reports. The Division performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer, or disallow claims for financial participation in ACF grants. As applicable, the Division makes recommendations regarding the clearance and closure of audits, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of ACF programs and closely monitors the resolution of such deficiencies.

The Division represents the Regional Administrator in dealing with entities receiving ACF funding on all matters under its jurisdiction, and in providing early warnings of problems or issues that may have significant implications for ACF programs. Additionally, the Division provides oversight of state systems projects for ACF programs and is focal point for technical assistance to states on the development and enhancement of automated systems.

VI. Region V, Chicago Regional Office of ACF

A. Delete KD5.10 Organization in its entirety and replace with the following:

KD5.10 Organization. The Administration for Children and Families, Region V, Chicago Office, is organized as follows:

Office of the Regional Administrator (KD5A)
Office of Family Self-Sufficiency Programs (KD5C)
Office of Family and Child Development Programs (KD5D)

B. Delete KD5.20 Functions, Paragraph A, in its entirety and replace with the following:

KD5.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies, and focuses on State agency culture change, more effective partnerships, collaborative relationships

and improved customer service. The Office provides executive leadership and direction to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve certain state plans and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives for all ACF programs. It oversees ACF operations and the management of ACF regional staff and coordinates the regional continuity of operations plan (COOP) in conjunction with the Regional Director, Regional Health Administrator and GSA. Also, the Office coordinates activities across regional programs; coordinates regional initiatives and operations; and assures that goals and objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families. The Deputy Regional Administrator serves as the full deputy or ''alter ego'' to the Regional Administrator, Administration for Children and Families. The Deputy assists the Regional Administrator with responsibility for providing executive direction, leadership and coordination to all ACF programs, financial operations and related activities in the Region. The Deputy has primary responsibility for managing the day-to-day operations. In the absence of the Regional Administrator, the Deputy acts on all matters within the jurisdiction of the Regional Administrator with full authority. Within the Office of the Regional Administrator, are the Management and Administration, and Fiscal Integrity Teams along with the Grants Officer. The Deputy supervises and directs the activities of these teams, focusing on regional administrative functions, including budget planning and execution, procurement, facility and property management, financial management, employee relations, human resources development, performance management, media inquiries and public affairs activities.

1. The Management and Administration Team directs and facilitates the development of regional work plans related to the overall ACF strategic plan; tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives; and coordinates and manages special and sensitive projects. Additionally it manages administrative functions, budget planning and execution and human resource development. It serves as the focal point for public affairs, in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director; and assists the Regional Administrator in the management of cross-cutting initiatives and activities among regional components.

2. The Fiscal Integrity Team is responsible for providing centralized financial management and technical administration of certain ACF formula, discretionary, entitlement and block grant programs. These programs include Temporary Assistance to Needy Families, Child Support, Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect, Developmental Disabilities and Runaway and Homeless Youth. It provides expert grants management technical support to the Office of Family Self-Sufficiency and the Office of Family and Child Development to resolve complex problems in such areas as cost allocation, accounting principles, audit, deferrals and disallowances. It provides data management support to all Regional Office components.

3. The Grants Officer, functioning independently of all program offices, provides program staff with expertise in the technical and other non-programmatic areas of grants administration, and provides appropriate internal controls and checks and balances to ensure financial discretionary grants integrity in all phases of the grants process. The Grants Officer, in conjunction with the Fiscal Integrity Team, provides guidance to program offices on more complex financial management issues. The Grants Officer approves and signs all discretionary grants.

C. Delete KD5.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of Family Self-Sufficiency Programs is headed by a Director who reports to the Deputy Regional Administrator. The Office of Family Self-Sufficiency represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It provides guidance and direction to States and grantees to improve the efficiency and effectiveness of ACF programs. It alerts the Deputy Regional Administrator to problems or issues that have significant implications for the programs. The Office consists of two branches operating collaboratively within a Tri-State team environment to administer Child Support Enforcement, Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect, Temporary Assistance to Needy Families and Runaway and Homeless Youth Programs for assigned states. The two branches provide policy guidance to states to assure consistent and uniform adherence to federal requirements governing formula, entitlement, block and discretionary grant programs. The two Branches are the Illinois, Indiana, Michigan Branch and the Minnesota, Ohio, Wisconsin Branch. The Office also consists of the Program Integration and Collaboration Team. The Program Integration and Collaboration Team provides administrative support, training, and facilitation of cross-cutting program initiatives and projects.

D. Delete KD5.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of Family and Child Development is headed by a Director who reports to the Deputy Regional Administrator. The Office is responsible for providing centralized program, financial management and technical administration of certain ACF discretionary, formula and block grant programs, such as Head Start, Early Head Start, Developmental Disabilities and the Child Care and Development Fund. The Office of Family and Child Development represents the Regional Administrator in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Deputy Regional Administrator to problems or issues that have significant implications for the programs.

The Office consists of three branches operating collaboratively within a Bi-State team environment to administer Head Start, Early Head Start and Child Care programs and a Program Integration and Collaboration Team. The Program Integration and Collaboration Team provides administrative support, training and facilitation of cross-cutting program initiatives and projects in addition to administering the

Developmental Disabilities Program. The Head Start and Child Care branches provide guidance to states and grantees to assure consistent and uniform adherence to federal requirements governing discretionary and block grant programs. It provides guidance and direction to States and grantees to improve the efficiency and effectiveness of ACF programs. A Financial Management Officer is located in each branch of the Office of Family and Child Development to provide expertise in business and other non-programmatic areas of grants administration and to help ensure that grantees fulfill requirements of law, regulations and administrative policies. The Office establishes regional financial management priorities; reviews cost allocation plans, and makes recommendations to the Regional Administrator to disallow costs under ACF discretionary, formula and block grant programs. The Office issues grant awards based on a review of project objectives, budget projections and proposed funding levels. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

VII. Region VI, Dallas Office of ACF

A. Delete KD6.10 Organization in its entirety and replace with the following:

KD6.10 Organization. The Administration for Children and Families, Region VI, Dallas Office, is organized as follows:

Office of the Regional Administrator (KD6A)
Office of State and Tribal Programs (KD6E)
Office of Community Programs (KD6F)

B. Delete KD6.20 Functions, Paragraph A, in its entirety and replace with the following:

KD6.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator and an Associate Regional Administrator. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies, and focuses on State agency culture change, more effective partnerships, collaborative relationships for outcomes/results, and improved, quality customer service. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as to other public and private local grantees to ensure effective and efficient program and financial management. The Office ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve certain state and tribal plans, and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives for all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; coordinates regional initiatives and operations; and assures that goals and objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

The Deputy Regional Administrator serves as the full deputy or ''alter ego'' to the Regional Administrator, Administration for Children and Families. The Deputy assists the Regional Administrator with responsibility for providing executive direction, leadership and coordination to all ACF programs, financial operations and related activities in the Region. The Deputy has primary responsibility for managing the day-to-day operations. In the absence of the Regional Administrator, the Deputy acts on all matters within the jurisdiction of the Regional Administrator with full authority.

Within the Office of the Regional Administrator are the Grants Officer, Grants Advisor, the Financial Management Resource Team, and Special Initiatives operations which are under the supervision and direction of the Deputy. The Grants Officer and Grants Advisor, functioning independently of all program offices, provide program staff with expertise in the business and other non-programmatic areas of grant award and administration, and provide appropriate internal controls and checks and balances to ensure financial integrity in all phases of the grants process. The Grants Officer, who serves as the team leader of the Financial Management Resource Team, and the Grants Advisor provide guidance to program offices on more complex financial management issues. The Grants Officer approves and signs all discretionary grants. The Grants Advisor has the full delegated grant authority and serves in that capacity in the absence of the Grants Officer.

The Financial Management Resource Team is responsible for providing centralized financial management and technical administration of certain ACF discretionary, entitlement, and block grant programs. These programs include Temporary Assistance to Needy Families, Child Care Programs, Child Support Enforcement, Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect, Developmental Disabilities, Head Start, Early Head Start and Runaway and Homeless Youth. It is responsible for ensuring that, for grants under their cognizance, both federal staff and grantees fulfill applicable statutory, regulatory, and administrative policy requirements. It provides expert grants management technical support to the Office of State and Tribal Programs and Office of Community Programs to resolve complex problems in such areas as cost allocation, accounting principles, audit, deferrals and disallowances.

The Associate Regional Administrator shares in the responsibility for executive direction, leadership and coordination to all ACF programs, financial operations and related activities in the Region. The Associate Regional Administrator has primary responsibility for regional administrative operations and management of the region's technology programs and operations. The Associate Regional Administrator supervises administrative staff, assisting the Regional Administrator in providing day-to-day support for regional administrative functions, including coordination of the development of regional work plans related to the overall ACF strategic plan; tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives; coordinates and manages special and sensitive projects; budget planning and execution, facilities management programs and human resource development; focal point for public

affairs, in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director; manages cross-cutting initiatives and activities among the Regional components; and provides telecommunications and data management support to all Regional office components, including the development of automated applications to support and enhance program, fiscal and administrative operations.

C. Delete KD6.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of State and Tribal Programs is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of certain ACF formula, block and entitlement programs such as Child Support Enforcement (CSE), Temporary Assistance for Needy Families (TANF), Child Care Programs, Child Welfare Services, Foster Care and Adoption Assistance, Child Abuse and Neglect, Developmental Disabilities and Tribal Programs. The Office provides policy guidance to state, county, city or town and tribal governments, grantees and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. It provides guidance and direction to states, local and tribal governments and grantees to improve the efficiency and effectiveness of ACF programs. State plans, Tribal plans and Tribal construction plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensuring that appropriate procedures and practices are adopted, monitoring the programs to ensure their efficiency and effectiveness and establishing regional financial management priorities and reviewing cost allocation plans. The Office provides financial management services for ACF entitlement grants in the region. It also reviews costs estimates and reports for ACF entitlement grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters for programs under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that have significant implications for the programs.

D. Delete KD6.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of Community Programs is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized program, financial management and technical administration of ACF discretionary grant programs such as Head Start, Early Head Start, and Runaway and Homeless Youth programs. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. The Office provides technical assistance to entities responsible for administering these programs to ensure that the appropriate procedures and practices are adopted, and monitoring the programs to ensure their efficiency and effectiveness. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projects, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters for programs under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that have significant implications for the programs.

VII. Region VII, Kansas City Office of ACF

A. Delete KD7.10 Organization in its entirety and replace with the following:

KD7.10 Organization. The Administration for Children and Families, Region VII, Kansas City Office, is organized as follows:

Office of the Regional Administrator (KD7A)

Office of State and Tribal Operations (KD7E)

Office of Community Operations (KD7F)

Office of Program Support (KD7G)

B. Delete KD7.20 Functions, Paragraph A, in its entirety and replace with the following:

KD7.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and directives to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Office takes action to approve certain state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, administrative staff assists the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for regional administrative functions, including budget, performance management, procurement, property

management, employee relations and human resource development activities.

C. Delete KD7.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of State and Tribal Operations is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs such as Temporary Assistance for Needy Families (TANF), Child Support Enforcement (CSE), Child Care, Foster Care and Adoption Assistance, Child Welfare, Child Abuse and Neglect and Developmental Disabilities. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, monitors the programs to ensure their efficiency and effectiveness and establishes regional financial management priorities and reviews cost allocation plans. The Office provides financial management services for ACF formula and entitlement grants in the region. The Office reviews cost estimates and reports for ACF entitlement and formula grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs. The Office represents the Regional Administrator in dealing with the ACF program offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

D. Delete KD7.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of Community Operations is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF discretionary grant programs such as Head Start and Youth Programs. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Office performs systematic fiscal reviews; and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs. The Office oversees the management and coordination of office automation systems in the region such as the Grants Application Budget Instrument (GABI) and the Grants Administration Tracking System (GATES) and monitors grantee systems projects such as the Head Start Program Information Report and the Head Start Management Tracking System. The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications on the programs.

E. Delete KD7.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Office of Program Support is headed by a Director who reports to the Regional Administrator. The Grants Officer function is located in the office and is responsible for providing centralized financial management services for all programs administered by the Regional Office. The Office provides cost allocation and audit support to the Office of State and Tribal Operations and the Office of Community Operations. The Office conducts analyses of state developments related to ACF programs and assists with tracking progress of the Government Performance and Results Act (GPRA) outcomes. The Office provides technical support to the Office of State and Tribal Operations and the Office of Community Operations on special projects and initiatives. The Office represents the Regional Administrator in dealing with ACF offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

IX. Region VIII, Denver Office of ACF

A. Delete KD8.10 Organization in its entirety and replace with the following:

KD8.10 Organization. The Administration for Children and Families, Region VIII, Denver Office is organized as follows:

Office of the Regional Administrator (KD8A)
Office of Early Childhood Programs (KD8B)
Office of State and Tribal Programs (KD8C)

B. Delete KD8.20 Functions, Paragraph A, in its entirety and replace with the following:

KD8.20 Functions A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Regional Operations. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies, and focuses on State agency culture change, more effective partnerships, collaborative relationships which focus on outcomes/results, and improved, quality customer service. The Office provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as to other public and private local grantees to ensure effective and efficient program and financial management. The Office ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve certain state and tribal plans and tribal construction plans and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on regional perspectives for all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and

objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

An administrative and program support team, under the leadership of the Regional Administrator, directs and facilitates development of regional work plans related to the overall ACF strategic plan, tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives, and coordinates and manages special and sensitive projects. Additionally, it manages regional administrative functions, budget planning and execution, facilities management, and human resource development. This team serves as the focal point for regional public affairs and assists the Regional Administrator in the management of crosscutting initiatives and activities among the regional components. In addition, the Team provides internal systems, telecommunications, and data management support to regional office components.

Within the Office of the Regional Administrator, the Grants Officer, functioning independently of all program offices, provides program staff with expertise in the business and other non-programmatic areas of grant award and administration, and provides appropriate internal controls and checks and balances to ensure financial integrity in all phases of the grants process. The Grants Officer approves and signs all grants and provides guidance to program offices on more complex financial management issues. The grants staff is responsible for providing centralized financial management and technical administration of certain ACF discretionary, entitlement, and block grant programs. These programs include Temporary Assistance to Needy Families, Child Care Programs, Child Support Enforcement, Child Welfare Services, Foster Care Youth Development Programs, and Adoption Assistance, Child Abuse and Neglect, Runaway and Homeless Youth, Developmental Disabilities, Head Start and Early Head Start. It is responsible for ensuring that, for grants under their cognizance, both federal staff and grantees fulfill applicable statutory, regulatory, and administrative policy requirements. It provides expert grants management technical support to the Office of Early Childhood Programs and the Office of State and Tribal Programs to resolve complex problems in such areas as cost allocation, accounting principles, audit, deferrals and disallowances.

C. Delete KD8.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Office of Early Childhood Programs is headed by a Deputy Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized program, financial management and technical administration of certain ACF discretionary and block grant programs such as Head Start, Early Head Start, Runaway and Homeless Youth, Developmental Disabilities, and Child Care Programs. The Office of Early Childhood Programs represents the Regional Administrator in dealing with ACF program offices and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

The Office administers the Head Start, Early Head Start, Runaway and Homeless Youth, Developmental Disabilities, and Child Care Programs and is responsible for providing centralized program, financial management and technical administration of these programs. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. State and Tribal plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensuring that appropriate procedures and practices are adopted, monitoring the programs to ensure their efficiency and effectiveness and establishing regional financial management priorities and reviewing cost allocation plans. The Office provides financial management services for ACF entitlement grants in the region. It also reviews costs estimates and reports for ACF entitlement and formula grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary, entitlement and block grant programs. The Office issues grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies.

D. Delete KD8.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Office of State and Tribal Programs is headed by a Deputy Regional Administrator who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of certain ACF block and entitlement programs. The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters for programs under its jurisdiction. It alerts the Regional Administrator to problems or issues that have significant implications for the programs.

The Office administers the Child Support Enforcement (CSE), Temporary Assistance for Needy Families (TANF), Child Welfare Services, Foster Care and Adoption Assistance, Youth Development, and Child Abuse and Neglect programs and is responsible for providing centralized program, financial management and technical administration of these programs. The Office provides policy guidance to state, county, city or town and tribal governments, grantees and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. It provides guidance and direction to states, local and tribal governments and grantees to improve the efficiency and effectiveness of ACF programs. State and tribal plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensuring that appropriate procedures and practices are adopted, monitoring the programs to ensure their efficiency and effectiveness and establishing regional financial management priorities and reviewing cost allocation plans. The Office provides financial management services for ACF entitlement grants in the region. It also reviews costs

estimates and reports for ACF entitlement grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional Administrator to approve, defer or disallow claims for federal financial participation in ACF entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies.

X. Region IX, San Francisco Office of ACF

A. Delete KD9.10 Organization in its entirety and replace with the following:

KD9.10 Organization. The Administration for Children and Families, Region IX, San Francisco Office is organized as follows:

Office of the Regional Administrator (KD9A)
Program Support Unit (KD9B)
Self-Sufficiency Unit (KD9C)
Children and Youth Development Unit (KD9D)

B. Delete KD9.20 Functions, Paragraph. A, in its entirety and replace with the following:

KD9.20 Functions. A. The Regional Office is headed by a Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. The Office is responsible for the Administration for Children and Families' (ACF) key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department of Health and Human Services (HHS) and among other Federal agencies, and focuses on State agency culture change, effective partnerships which focus on outcomes/results, and quality customer service. It provides executive leadership and direction to state, county, city, territorial and tribal governments, as well as to other public and private local grantees to ensure effective and efficient program and financial management. The Office ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office is responsible for approval of certain state plans and submission of recommendations to the Assistant Secretary for Children and Families for state plan disapproval. The Office contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF regional operations and the management of regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private organizations representing children and families.

C. Delete KD9.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Program Support Unit is headed by a manager who reports to the Regional Administrator. It supports the Office of the Regional Administrator and the Self-Sufficiency and Children and Youth Development Units and their grantees in the areas of quality concepts and performance measurement, including the reengineering of work processes and the development of computer applications, customer surveys, statistical applications, and performance measurement models. The Unit directs the development of regional work plans related to the overall ACF strategic plan and tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives. It manages and/or coordinates special, sensitive and/or cross-cutting projects and initiatives. The Unit serves as the focal point for public affairs and contacts with the media, public awareness activities, information dissemination and education campaigns in conjunction with the ACF Office of Public Affairs and the HHS Regional Director.

The Unit provides day-to-day support for regional administrative functions, oversees the management and coordination of internal automated systems in the region, and provides data management support to all Regional Office components. Administrative functions include budget formulation and execution, facility and space management, procurement, and human resources development and training. Data management responsibilities include the development of automated systems applications to support and enhance program, fiscal and administrative operations, and the compilation of data on demographic and service trends that assist in program monitoring and technical assistance responsibilities.

The Unit performs Grants Officer functions, including grants and fiscal oversight to ensure consistent policy application across the Regional Office units. The Unit assures that audit clearance and other financial management processes are implemented consistently and timely throughout the Regional Office. The Unit provides expert grants management technical support to the Self-Sufficiency and Children and Youth Development Units to resolve complex problems in such areas as cost allocation, accounting principles, audit, deferrals and disallowances. As Grants Officer, the Unit approves and signs all discretionary grants.

The Unit represents the Regional Administrator in dealing with ACF offices on all program and financial policy matters under its jurisdiction. Early alerts are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

D. Delete KD9.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Self-Sufficiency Unit is headed by a manager who reports to the Regional Administrator. The Unit is responsible for providing program and financial management services, and for technical administration of ACF formula, block and entitlement grant programs such as Temporary Assistance for Needy Families (TANF), Child Support Enforcement (CSE), Child Care and Development Fund, Foster Care and Adoption Assistance, Child Welfare, Child Abuse and Neglect and Developmental Disabilities. The Unit provides policy guidance to state, county, city, territorial and tribal governments, as well as to other public and private organizations to assure consistent and uniform adherence to federal requirements governing formula, block and entitlement grant programs. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Unit provides technical assistance to entities responsible for administering these programs to resolve identified problems; ensures that appropriate procedures and practices are adopted; monitors the programs to ensure their efficiency and effectiveness; establishes regional financial management priorities; reviews cost allocation plans; and provides technical assistance to and monitors state systems projects for designated ACF programs.

The Unit provides financial management services for ACF formula, entitlement, and block grants in the region. It also reviews cost estimates and reports for these grant programs and recommends funding levels. The Unit performs systematic fiscal reviews and makes recommendations to approve, defer or disallow claims for federal financial participation in ACF formula, entitlement and block grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of ACF programs and to monitoring the resolution of such deficiencies. The Unit represents the Regional Administrator in dealing with the ACF program offices on all program and financial policy matters under its jurisdiction. Early alerts are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

E. Delete KD9.20 Functions, Paragraph D, in its entirety and replace with the following:

D. The Children and Youth Development Unit is headed by a manager who reports to the Regional Administrator. The Unit is responsible for providing program and financial management services, and for technical administration of ACF discretionary grant programs such as Head Start (HS), Early Head Start (EHS), and Runaway and Homeless Youth (RHY). In that regard, the Unit provides policy guidance to public and private organizations, as well as to state, county, city, territorial and tribal governments to assure consistent and uniform adherence to federal requirements. The Unit provides technical assistance to and coordinates various training activities for entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Unit administers a system of fiscal reviews; reviews costs for allowability; and makes recommendations to disallow costs under ACF discretionary grant programs. It issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and to monitoring the resolution of such deficiencies.

The Unit represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters under its jurisdiction. Early alerts are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

XI. Region X, Seattle Office of ACF

A. Delete KD10.10 Organization in its entirety and replace with the following:

KD10.10 Organization. The Administration for Children and Families, Region X, Seattle Office, is organized as follows:

Management Team (KDXA)
Service Delivery Teams (KDXE)
Support Teams (KDXF)

B. Delete KD10.20 Functions, Paragraph A, in its entirety and replace with the following:

KD10.20 Functions. A. The Management Team is headed by the Regional Administrator who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. Also, the team has two Associate Regional Administrators who report directly to the Regional Administrator. In addition to being a team member, the Regional Administrator is responsible for alerting the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact.

The Team provides executive leadership to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective, efficient, results-oriented program and financial management. ACF's primary goal is to assist vulnerable and dependent children and families to achieve economic independence, stability, and self-reliance. The Team partners with state, local, and tribal organizations to promote adherence to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The Team takes action to approve certain state and tribal plans and submits recommendations to the Assistant Secretary for Children and Families concerning plan disapproval. The Team contributes to the development of national policy based on regional perspectives on all ACF programs. It oversees ACF operations; manages ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out.

The Team represents ACF at the regional level in executive communications within ACF, the HHS Regional Director, other HHS operating divisions, other federal agencies, Tribal and Native American Organizations, and public or private local organizations representing children and families.

In order to ensure that agency goals are accomplished, the Management Team provides leadership to grantees through a staff organized in Service Delivery Teams. ACF programs and functions are grouped within teams according to current ACF programs and/or initiatives. Each team is charged with achieving measurable progress towards ACF goals through their work with state, local, and tribal grantees, the public, other federal agencies and internally within the Department. The regional team structure is designed to allow ACF to respond quickly in a dynamic and changing environment to achieve ACF and HHS goals.

C. Delete KD10.20 Functions, Paragraph B, in its entirety and replace with the following:

B. The Service Delivery Teams (SDTs) report directly to the Management Team. The SDTs are responsible for providing centralized management and technical administration of ACF formula, block, discretionary, and entitlement grants and programs to assist families achieve economic independence and self-sufficiency, and to promote safe, healthy, and permanent environments in which children can grow. The SDTs review and recommend approval or disapproval of state and tribal plans to the Management Team. SDTs recommend issuance of certain grant awards based on a review of project objectives, budget projections, and proposed funding levels.

The SDTs provide policy guidance to state, local, and tribal governments, and public and private organizations to foster consistent and uniform adherence to federal requirements governing formula, block, and entitlement programs. The SDTs provide technical assistance to states, grantees, and tribes to resolve identified problems; ensure that appropriate procedures and practices are adopted; develop and implement outcome-based performance measures; and to monitor the programs to ensure their efficiency and effectiveness.

The SDTs represent the Management Team in dealing with the ACF program offices on all program and policy matters under their jurisdiction. Alerts or early warnings are provided to the

Management Team regarding problems or issues that may have significant implications for the programs.

D. Delete KD10.20 Functions, Paragraph C, in its entirety and replace with the following:

C. The Support Teams provide administrative and management support to the Regional Administrator and Management Team. Members of the Support Teams report directly to the Regional Administrator or a member of the Management Team. Functions within the Team include day-to-day operational management of regional administrative functions such as, budget, performance management, procurement, property management, employee relations, human resource development activities, planning and coordination, and office automation systems.

The Team includes experts in cash assistance and supportive services programs who serve as resources to all teams on issues which cross-cut the organization, such as legislative policy updates, partnership agreements, result measurements, policy guidance, and monitoring state systems projects for ACF programs.

Team members also provide leadership in regional financial management matters to the Service Delivery Teams and the Management Team, including reviewing cost estimates and reports for ACF grant programs, recommending funding levels, and performing systematic fiscal reviews. The Team approves grant awards based on a review of project objectives, budget projections, and approved funding plans. It provides funds accounting for discretionary grant programs. It establishes regional financial management priorities and reviews cost allocation plans.

Dated: November 7, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 03–28915 Filed 11–18–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0338]

Food Labels, Packaging, Restaurants, and Weight Management; Public Workshop; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting entitled ''Food Labels, Packaging, Restaurants, and Weight Management; Public Workshop.'' The notice published in the **Federal Register** of October 17, 2003 (68 FR 59795). The amendment is being made to reflect that FDA is requesting comments regarding the workshop. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Amber Jessup, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1689, e-mail: *amber.jessup@fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 2003 (68 FR 59795), FDA announced that a public workshop entitled ''Exploring the Connections Between Weight Management and Food Labels and Packaging'' would be held on November 20, 2003. On page 59795, in the second column, in the heading of the document, ''**[Docket No. 2003N–0338]**'' is added.

On page 59795, in the third column, the **DATES** section is amended to read as follows:

DATES: The public workshop will be held on November 20, 2003, from 8:30 a.m. to 6 p.m. Submit written or electronic comments by December 12, 2003.

On page 59795, in the third column, immediately following the **DATES** section, the **ADDRESSES** section is added to read as follows:

ADDRESSES: Submit written comments on the public workshop to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, via e-mail to *FDADockets@oc.fda.gov*, or on the Division of Dockets Management Web site at *http://www.fda.gov/dockets/ecomments*.

On page 59796, in the first column, at the end of the document, the following paragraph is added:

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28953 Filed 11–17–03; 8:58 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Performance Review Board—Appointment of Members

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs and Border Protection Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review performance appraisals for senior executives and to make recommendations to the appointing authority regarding proposed performance ratings, bonuses, and other related personnel actions.

EFFECTIVE DATE: November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 2.4–A, Washington, DC 20229, Telephone (202) 927–1250.

Background: There are two PRB's in U.S. Customs and Border Protection.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report directly to the Deputy Commissioner or the Commissioner of Customs and Border Protection. The members are:

Kay Frances Dolan, Director, Departmental Human Resources Policy, Department of Homeland Security.

John Dooher, Senior Assistant Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury.

Carla F. Kidwell, Associate Director for Technology, Bureau of Engraving and Printing, Department of the Treasury.

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury.

Richard Williams, Director, Program Analysis and Evaluation, Department of Homeland Security.

Performance Review Board 2

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives *except* those who report directly to the Deputy Commissioner or the Commissioner of U.S. Customs and Border Protection. The members are:

Assistant Commissioners:

Jayson P. Ahern, Field Operations.

Marjorie L. Budd, Training and Development.

Gustavo DeLaVina, Border Patrol.

William A. Keefer, Internal Affairs.

Dennis H. Murphy, Public Affairs.

John E. Eichelberger, Finance/CFO.

Michael T. Schmitz, Regulations and Rulings.

Robert M. Smith, Human Resources Management.

Deborah J. Spero, Strategic Trade.

Dated: November 13, 2003.

Robert C. Bonner,

Commissioner.

[FR Doc. 03–28809 Filed 11–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Recordation of Trade Name: ''DISPALCA''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''DISPALCA''. The trade name is owned by Caribbean Imports, Inc., a Florida corporation.

The application states that the trade name ''Dispalca'' is used in connection with the advertising and sale of pre-packaged seafood products in the United States, which are manufactured in Venezuela and Colombia and imported from South America and the Caribbean.

The applicant states that the only foreign entity entitled to use the ''DISPALCA'' trade name within the United States is Dispalca, located at Avenida 17, Los Haticos, Maracaibo, Venezuela. The company's use of the trade name is purportedly limited to packaging and shipping products to Caribbean Imports, Inc. The applicant also states that the trade name ''DISPALCA'' is solely and exclusively used by Caribbean Imports, Inc.

Before final action is taken on the application, consideration will be give to any relevant data, views, or arguments, submitted in writing, by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received or on before January 20, 2004.

ADDRESSES: Written comments should be addressed to U.S. Customs and Border Protection, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: La Verne Watkins, Intellectual Property Rights Branch at (202) 572–8710.

Dated: November 11, 2003.

George Frederick McCray,

Chief, Intellectual Property Rights Branch.

[FR Doc. 03–28808 Filed 11–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–13]

Upcoming Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

DATES: The meetings will be held on Tuesday, December 9, 2003, from 8 a.m. to 5 p.m., Wednesday, December 10, 2003, from 8 a.m. to 5 p.m., and Thursday, December 11, 2003, 8 a.m. to 12 noon.

ADDRESSES: These meetings will be held at the Wyndham Phoenix-Downtown, 50 East Adams Street, Phoenix, Arizona, telephone (602) 333–0000.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 4503(a)(3). The Consensus Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured housing construction and safety standards and procedural and enforcement regulations, and with developing proposed model installation standards.

Tentative Agenda

A. Welcome and Opening Remarks
B. Subcommittee meetings
C. Visit to Cavco Durango Plant
D. Public Testimony
E. Full Committee meeting
F. Reports to Full Committee and actions
G. Adjournment

Dated: November 7, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–28832 Filed 11–18–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for

discussion will include manager's reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 515–5046.

DATE AND TIME: The RAC will meet on December 4 and 5, 2003, in the BLM's Las Vegas Field Office; on March 25 and 26, 2004 also in the BLM's Las Vegas Field Office; June 9, 10 and 11, 2004, in the BLM's Ely Field Office; and August 19 and 20, 2004, in the BLM's Tonopah Field Station. The meetings are from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301, or by phone at (702) 515–5046.

Dated: November 12, 2003.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 03–28863 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–HC–M

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 (1010–0051).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that will be submitted 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 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.''

DATE: Submit written comments by January 20, 2004.

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 1010–0051'' 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 at (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 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.

OMB Control Number: 1010–0051.

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 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 Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*) at section 1712(b)(2) prescribes that an operator will ''develop and comply with such minimum site security measures as the Secretary deems appropriate, to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft.'' These authorities and responsibilities are among those delegated to MMS under which regulations are issued to govern oil and gas and sulphur operations in the OCS. This information collection request addresses the regulations at 30 CFR part 250, subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security, and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

MMS uses the information collected under subpart L to ensure that the volumes of hydrocarbons produced are measured accurately and that royalties are paid on the proper volumes. Specifically, MMS needs the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;
- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters, which can be examined during field inspections;
- Ascertain if all removals of oil and condensate from the lease are reported;
- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;
- Ensure that the sales location is secure and that production cannot be removed without the volumes being recorded; and
- Review proving reports to verify that data on run tickets are calculated and reported accurately.

MMS 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 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies by section but primarily monthly or ''on occasion.''

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 6,540 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, MMS 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 250 subpart L	Reporting or recordkeeping requirement	Hour burden per response or record
	Reporting Requirements	
1202(a)(1), (b)(1)	Submit liquid hydrocarbon measurement procedures application and/or changes.	8 hours.
1202(a)(4)	Copy & send pipeline (retrograde) condensate volumes upon request.	¾ hour.
1202(c)(4)*	Copy & send all liquid hydrocarbon run tickets monthly	1 minute.
1202(d)(4)	Request approval for proving on a schedule other than monthly	1 hour.
1202(d)(5)*	Copy & submit liquid hydrocarbon royalty meter proving reports monthly & request waiver as needed.	1 minute.
1202(f)(2)*	Copy & submit mechanical-displacement prover & tank prover calibration reports.	10 minutes.
1202(l)(2)*	Copy & submit royalty tank calibration charts before using for royalty measurement.	10 minutes.
1202(l)(3)*	Copy & submit inventory tank calibration charts upon request	¼ hour.
1203(b)(1)	Submit application for gas measurement procedures or changes	8 hours.
1203(b)(6), (8), (9)*	Copy & submit gas quality and volume statements upon request (80% of these will be routine; 20% will take longer).	80% @ 5 mins. 20% @ 30 mins.
1203(c)(4)*	Copy & submit gas meter calibration reports upon request	5 minutes.
1203(e)(1)*	Copy & submit gas processing plant records upon request	½ hour.
1203(f)(5)	Copy & submit measuring records of gas lost or used on lease upon request.	5 minutes.
1204(a)(1)	Submit application for commingling of production or changes	8 hours.
1204(a)(2)	Provide state production volumetric and/or fractional analysis data upon request.	1 hour.
1205(a)(2)	Post signs at royalty or inventory tank used in royalty determination process.	1 hour.
1205(a)(4)	Report security problems (telephone)	¼ hour
1200 thru 1205	General departure and alternative compliance requests not specifically covered elsewhere in subpart L.	1 hour.
	Recordkeeping Requirements	
1202(c)(1), (2)	Record observed data, correction factors & net standard volume on royalty meter and tank run tickets.	Respondents record these items as part of normal business records & practices to verify accuracy of production measured for sale purposes.
1202(e)(4)	Record master meter calibration runs.	
1202(h)(1), (2), (3), (4)	Record mechanical-displacement prover, master meter, or tank prover proof runs.	
1202(i)(1)(iv), (2)(iii)	Record liquid hydrocarbon royalty meter malfunction and repair or adjustment on proving report; record unregistered production on run ticket.	
1202(j)	List Cpl and Ctl factors on run tickets.	
1202(e)(6)	Retain master meter calibration reports for 2 years	1 minute.
1202(k)(5)	Retain liquid hydrocarbon allocation meter proving reports for 2 years.	1 minute.
1202(l)(3)	Retain liquid hydrocarbon inventory tank calibration charts for as long as tanks are in use.	5 minutes.
1203(c)(4)	Retain calibration reports for 2 years	1 minute.
1203(f)(4)	Document & retain measurement records on gas lost or used on lease for 2 years at field location and minimum 7 years at location of respondent's choice.	1 minute.
1204(b)(3)	Retain well test data for 2 years	2 minutes.
1205(b)(3), (4)	Retain seal number lists for 2 years	2 minutes.

*Respondents gather this information as part of their normal business practices. MMS only requires copies of readily available documents. There is no burden for testing, meter reading, *etc.*

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor 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: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson, (202) 208–3976.

Dated: November 12, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–28834 Filed 11–18–03; 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 (1010–0142).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is 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 250, subpart Q ''Decommissioning Activities.''

DATES: Submit written comments by January 20, 2004.

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 1010–0142'' 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 at (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 250, subpart Q, Decommissioning Activities.

OMB Control Number: 1010–0142.

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.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The regulations at 30 CFR 250, subpart Q, implement these requirements and concern decommissioning of platforms, wells, and pipelines, as well as site clearance and platform removal. The MMS uses the information collected under subpart Q in the following ways:

- To determine the necessity for allowing a well to be temporarily abandoned, the lessee/operator must demonstrate that there is a reason for not permanently abandoning the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. MMS uses the information and documentation to verify that the lessee is diligently pursuing the final disposition of the well and that the lessee has performed the temporary plugging of the wellbore.
- The information submitted in ''initial'' decommissioning plans in the Alaska and Pacific OCS Regions will permit MMS to become involved on the ground floor planning of the world-class platform removals anticipated to occur in these OCS regions.
- Site clearance and platform or pipeline removal information ensures that all objects (wellheads, platforms, etc.) installed on the OCS are properly removed using procedures that will protect marine life and the environment during removal operations and that the site is cleared so as not to conflict with or harm other uses of the OCS.
- Decommissioning a pipeline in place is needed to ensure that it will not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects.
- The information is necessary to verify that decommissioning activities comply with approved applications and procedures and are satisfactorily completed.

MMS 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 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, annual, and as specified in sections.

Estimated Number and Description of Respondents: Approximately 236 Federal OCS oil, gas, and sulphur lessees and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 6,071 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 250 Subpart Q	Reporting requirement	Hour burden
1703; 1704	Request approval for decommissioning	Burden included below.
1704(g); 1712; 1716; 1717; 1721(a), (f), (g); 1722(a), (b), (d); 1723(b); 1743(a).	Submit form MMS–124 to plug wells; provide subsequent report; request alternate depth departure; request procedure to protect obstructions above seafloor; report results of trawling; certify area cleared of obstructions; remove casing stub or mud line suspension equipment and subsea protective covering; or other departures.	Burden included under 1010–0045.
1713	Notify MMS 48 hours before beginning operations to permanently plug a well	15 minutes.
1721(e); 1722(e), (h)(1); 1741(c).	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements.
1722(c), (g)(2)	Notify MMS within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	15 minutes.
1722(f), (g)(3)	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2.
1722(h)	Request waiver of trawling test	2.
1704(a); 1726	Submit initial decommissioning application in the Pacific OCS Region and Alaska OCS Region.	20.
1704(b); 1725; 1727; 1728; 1730.	Submit final application to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to convert to artificial reef.	8.
1725(e)	Notify MMS 48 hours before beginning removal of platform and other facilities	15 minutes.
1704(c); 1729	Submit post platform or other facility removal report	2.
1740; 1743(b)	Request approval to use alternative methods of well site, platform, or other facility clearance.	4.
1743(b)	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions and submit certification letter.	12.
1704(d); 1751; 1752	Submit application to decommission pipeline in place or remove pipeline	8.
1753	Submit post pipeline decommissioning report	2.
1700 thru 1754	General departure and alternative compliance requests not specifically covered elsewhere in subpart Q regulations.	2.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

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.

MMS will summarize written responses to this notice and address them in the submission for OMB approval. As a result of your comments, MMS will make any necessary adjustments to the burden in the submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this

prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson at (202) 208–3976.

Dated: November 12, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–28835 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of the Final Environmental Impact Statement (EIS) for Proposed Oil and Gas Lease Sales in Cook Inlet, Alaska.

SUMMARY: MMS announces the availability of the Final EIS prepared by MMS for proposed OCS Lease Sales 191 (2004) and 199 (2006) offshore Cook Inlet, Alaska.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, Attention: Dr. James Lima, telephone: (907) 271–6684 or toll free 1–800–764–2627.

SUPPLEMENTARY INFORMATION: This EIS assesses two sales in the 2002–2007 5-Year Oil and Gas Leasing Program for the Cook Inlet OCS Planning Area. Sale 191 is scheduled for 2004 and Sale 199 for 2006. Federal Regulations (40 CFR 1502.4) suggest analyzing similar or like proposals in a single EIS. The proposal analyzed for each sale is to offer 517 whole or partial lease blocks in the Cook Inlet OCS Planning Area, covering about 2.5 million acres (about 1 million hectares). The proposed sale area is seaward of the State of Alaska submerged lands boundary, extending from 3 miles to approximately 30 miles offshore and to water depths more than 650 feet. It extends from below Kalgin Island south to approximately Shuyak Island.

EIS Availability: Persons interested in reviewing the Final EIS ''OCS EIS/EA, MMS 2003–055'' (Volumes I through III) can either locate it on the Internet at *www.mms.gov/alaska/cproject/Cook_Inlet/Cook Inlet Sale.htm;* or contact the MMS Alaska OCS Regional Office. The documents are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov.* You may obtain single copies of the Final EIS, the Executive Summary, or a CD/ROM version, from the same address. You may also look at copies of the Final EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;

Alaska Resources Library and Information Service (ARLIS), U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;

Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska; Anchor Point Public Library, 73405 Milo Fitz Avenue,

Anchor Point, Alaska; Chiniak Public Library, 42650 Chiniak Highway, Chiniak,

Alaska; Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;

Halibut Cove Library, Halibut Cove, Alaska;

Homer Public Library, 141 W. Pioneer Avenue, Homer, Alaska;

Jessie Wakefield Memorial Library, 207 Spruce Drive, Port Lions, Alaska;

Johnson Memorial Library, 319 Lower Mill Bay Road, Kodiak, Alaska;

Juneau Public Library, 292 Marine Way, Juneau, Alaska;

Kachemak Bay Campus Library, 533 Pioneer Avenue, Homer, Alaska;

Kasilof Public Library, Mile 110 Sterling Highway, Kasilof, Alaska;

Kenai Community Library, 163 Main Street Loop, Kenai, Alaska;

Kenai Peninsula College Library, 34820 College Drive, Soldotna, Alaska;

King Cove Community School Library, King Cove, Alaska;

Kodiak College Library, 117 Benny Benson Drive, Kodiak, Alaska;

Nanwalek Elementary/High School Library, Nanwalek, Alaska;

Ninilchik Community Library, 15850 Sterling Highway, Ninilchik, Alaska;

North Slope Borough School District, Library/Media Center, Barrow, Alaska;

Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;

Old Harbor Library, Three Saints Avenue, Old Harbor, Alaska;

Ouzinkie Tribal Media Center, 110 Third Street, Ouzinkie, Alaska;

Port Graham Elementary/High School Library, Port Graham, Alaska;

Sand Point School Library, Sand Point, Alaska;

Seldovia Public Library, 260 Seldovia Street, Seldovia, Alaska;

Soldatna Public Library, 235 Binkley Street, Soldatna, Alaska;

U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;

U.S. Environmental Protection Agency, Region 10 Library, 1200 6th Avenue, OMP–104, Seattle, Washington;

University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;

University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;

University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks,

Alaska; University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks,

Alaska; University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;

Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska; Z. J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

Dated: September 22, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved: September 24, 2003.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–28868 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Planning Area, Oil and Gas Lease Sale 192 (2004)

AGENCY: Minerals Management Service.

ACTION: Preparation of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed Lease Sale 192 (scheduled for August 2004) in the Western Planning Area (WPA) of the Gulf of Mexico (GOM). The preparation of this EA is the

first step in the decision process for Lease Sale 192. The proposal and alternatives for Lease Sale 192 were identified by the Director of MMS in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007, Central Planning Area Sales 185, 190, 194, 198, and 201, and Western Planning Area Sales 187, 192, 196, and 200, Final Environmental Impact Statement, Volumes I and II (Final EIS, OCS EIS/EA MMS 2002–052). The WPA proposed action analyzed in the Final EIS was the offering of all available unleased acreage in the WPA. The analysis in the EA will reexamine the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final EIS was prepared.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Final EIS, which addressed nine proposed Federal actions that offer for lease areas on the GOM Outer Continental Shelf (OCS) that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine Central Planning Area (CPA) and WPA lease sales scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (the 5-Year Program). Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Final EIS; a separate EA was prepared for that proposal. The Final EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Final EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional National Environmental Policy Act review will be conducted to address any new information relevant to that proposed action. After completion of the EA, for proposed Lease Sale 192, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether the sale is consistent with their Federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of affected States on the size, timing, and location of Lease Sale 192. The tentative schedule for the prelease decision process for the sale is as follows: EA FONNSI or Supplemental EIS decision, March 2004; CD's sent to affected States, March 2004; PNOS sent to governors of affected States, March 2004; Final Notice of Sale published in the **Federal Register**, July 2004; and Lease Sale 192, August 2004.

Public Comments: Federal, State, and local government agencies, and other interested parties are requested to send within 30 days of this Notice's publication comments regarding any new information or issues that should be addressed in the EA to the Regional Supervisor, Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled ''Comments on WPA Lease Sale 192 EA.'' You may also send comments to the MMS email address: *environment@mms.gov*. Comments, including the names and home addresses of respondents, will be made available for public review during regular business hours. You may request that your name, home address, or both be withheld from the public record by stating so at the beginning of your submission. The MMS will honor such a request to the extent allowable by law. All comments submitted by organizations and businesses or by individuals identifying themselves as representatives of organizations and businesses will be made available for inspection in their entirety. Anonymous comments will not be considered. To obtain single copies of the Final EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Final EIS or check the list of libraries that have copies of the Final EIS and their locations on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: October 22, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–28932 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Cook Inlet Oil and Gas Lease Sale 191

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

SUMMARY: Alaska OCS, Cook Inlet; Notice of Availability of the proposed Notice of Sale for proposed Oil and Gas Lease Sale 191 in Cook Inlet. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale for Sale 191 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Alaska OCS Region, Information Resource Center, Minerals Management Service, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4302. Telephone: (907) 271–6070 or 1–800–764–2627. Certain documents may be viewed and downloaded from the MMS Web site at *http://www.mms.gov/alaska.*

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for May 19, 2004.

Dated: November 12, 2003.

R. M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 03–28933 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service, Interior.

ACTION: Notice of request for a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, the National Park Service (NPS) is announcing its intention to request an extension for a currently approved information collection (OMB Control Number 1024–0029) under 36 CFR part 51 relating to Concessioner Annual Financial Reports. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act. Send comments on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; (4) and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information.

DATES: Comments on this notice must be received no later than January 20, 2004.

ADDITIONAL INFORMATION OR COMMENTS: Contact Cynthia Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW., (2410) Washington, DC 20240, or (202) 513–7144.

SUPPLEMENTARY INFORMATION:

Title: Concessioner Annual Financial Report.

OMB Control Number: 1024–0029.

Expiration Date of Approval: December 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The regulations at 36 CFR part 51 primarily implement title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which requires that the Secretary of the Interior exercise authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to the opportunity for net profit in relation to both gross receipts and capital invested. The financial information being collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees determined in a timely manner and without an undue burden on the concessioner.

Bureau Form Number: 10–356, 10–356a, 10–356b.

Frequency of Collection: Annually.

Description of Respondents: National Park Service concessioners.

Total Annual Responses: 500.

Estimate of Burden: Approximately 20 hours per response.

Total Annual Burden Hours: 3,800.

Total Non-hour Cost Burden: None.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW., (2410), Washington, DC 20240.

Dated: October 15, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, National Park Service, Washington Administrative Program Center.

[FR Doc. 03–28837 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of intended submission to the Office of Management and Budget (OMB) and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*) and 5 CFR part 1320, the National Park Service (NPS) invites comments on its intention to request OMB to approve information collections associated with Historic Preservation Fund (HPF) grants to Historically Black Colleges and Universities (HBCUs). These are existing collections in use without an OMB control number. Section 101(e)(3)(B) of the National Historic Preservation Act, as amended, (16 U.S.C. 470a(e)(3)(B)) provides general authorization for this kind of grant program. Section 507 of the Omnibus Parks and Public Land Management Act of 1996 (P.L. 104–333), as amended (16 U.S.C. 470a note) specifically mandates grants to HBCUs. The purpose of the HPF grants-to-HBCUs program is to assist in the preservation and restoration of historic buildings and structures on the campuses of Historically Black Colleges and Universities.

DATES: To assure that the NPS considers your comments on this notice, NPS must receive the comments on or before January 20, 2004.

Send Comments To: John W. Renaud, Project Coordinator, State, Tribal and Local Programs, Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 1849 C St., NW., Org. Code 2255, Washington, DC 20240–0001, via fax at (202) 371–1961, or via e-mail at *John_Renaud@nps.gov*.

FOR FURTHER INFORMATION CONTACT: John W. Renaud, Project Coordinator, State, Tribal and Local Programs, Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 1849 C St., NW., Org. Code 2255, Washington, DC 20240–0001, via fax at (202) 371–1961, via e-mail at *John_Renaud@nps.gov,* or via telephone at (202) 354–2066.

SUPPLEMENTARY INFORMATION:

Title: Historic Preservation Fund grants to Historically Black Colleges and Universities.

OMB Number: 1024-xxxx.

Expiration Date of Approval: Being requested from OMB.

Type of Request: Existing collection in use without an OMB control number.

Abstract: This information collection has an impact on not for profit institutions that wish to apply for Historic Preservation Fund grants to Historically Black Colleges and Universities to preserve and restore historic buildings and structures on campus. The NPS uses the information collections to ensure compliance with the requirements of section 507 of the Omnibus Parks and Public Land Management Act of 1996 (Pub. L. 104–333), as amended (16 U.S.C. 470a note) and the government-wide grant requirements that OMB has issued and the Department of the Interior implements through 43 CFR part 12. This information collection also will produce performance data that NPS uses to assess its progress in meeting goals set in Departmental and NPS strategic plans created pursuant to the 1993 Government Performance and Results Act, as amended.

Respondents: Not for profit institutions.

Estimate of Burden: NPS estimates that the public burden for the HPF grants for HBCUs program collection of information will average 10 hours per

application and 21 hours per grant per year for all of the grant-related collections. The combined total public burden for the HPF grants-for-HBCUs program-related information collections would average 31 hours per successful applicant/grantee. These estimates of burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Estimated Number of Respondents/ Record Keepers: NPS estimates that there are 335 responses per year. This is the gross number of responses for all of the elements included in this information collection. The net numbers of applicants and grantees participating in this information collection annually are 47 applicants and from among them 24 grantees. The frequency of response varies depending upon the activity. Applicants complete the grant application once. Successful applicants execute the grant agreement once and usually seek an amendment once during the two-year grant cycle. During the grant cycle, grantees seek NPS approval once for qualified consultants, plans and specifications, and the final report. There are three on-site inspections during the course of the two-year grant. There is one on-site inspection at the beginning of the project, one in the middle, and one at the end of the project. Grantees comply with government-wide record-keeping requirements throughout the duration of the grant. Grantees provide one interim report per year and usually make requests for payment six times a year.

Estimated average number of Applicant responses: 47 annually.

Estimated average gross number of Grantee responses: 288 annually.

Estimated average gross number of responses: 335 annually.

Estimated average burden hours per Applicant response: 10 hours.

Estimated average burden hours per Grantee response: 2 hours.

Estimated average annual burden hours per Grantee for all responses: 21 hours.

Estimated total annual average burden hours per respondent: 31 hours.

Estimated Annual Burden on Respondents: 957 hours.

NPS is soliciting comments regarding:

(1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility;

(2) The accuracy of the burden estimate including the validity of the method and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of collecting the information, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology; or,

(5) Any other aspect of this collection of information.

NPS will summarize and include in the request for OMB approval all responses to this notice. All comments will also become a matter of public record. You can obtain copies of the information collection from John W. Renaud, Project Coordinator, State, Tribal and Local Programs, Heritage Preservation Services, National Center for Cultural Resources, National Park Service, 1849 C St., NW., Org. Code 2255, Washington, DC 20240–0001

Dated: October 28, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 03–28838 Filed 11–18–03; 8:45 am]

BILLING CODE 4312–CT–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yellowstone National Park.

ACTION: Notice and request for comments.

SUMMARY: The Yellowstone National Park Wolf Economic Study will provide park managers and others with important, accurate information about the Yellowstone National Park visitor population in general as well as visitor and trip characteristics of those who specifically view wolves in the park. The importance of visitation specifically tied to wolves in the park will be examined. The mail-back questionnaire is designed to systematically collect data from visitors in several different topic areas: Individual characteristics, trip/visit characteristics, individual activities and individual opinions on park and wildlife management.

	Estimated numbers of	
	Responses	Burden hours
Yellowstone National Park Wolf Economic Study ..	5,000	1,917

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to develop statistically valid estimates of Yellowstone National Park visitation and to evaluate the economic effects of wolf restoration in the context of an accurate regional economic model that measures the role of Yellowstone National Park in the overall regional economy. The broader information on visitation, visitor demographics, and the regional economy will have application to other park planning efforts where reliable visitation and economic data is needed for evaluation of project proposals and other management issues.

DATES: Public comments will be accepted on or before 60 days from the date of publication in the **Federal Register**.

Send Comments to: Dr. John Duffield, University of Montana, Department of Economics, Missoula, MT 59812.

FOR FURTHER INFORMATION CONTACT: Dr. John Duffield. Voice: 406–721–2265, Email: <*bioecon@montana.com*>.

SUPPLEMENTARY INFORMATION:

Titles: Yellowstone National Park Wolf Economic Study.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: Wolf restoration in Yellowstone is an internationally important wildlife conservation success story. The visibility and public interest in wolves, wolf viewing, and wolf-based education programs has far exceeded initial expectations. A major public issue with wolf restoration was the cost to implement, in tax dollars, versus

economic benefits. Proponents thought it a boon; opponents predicted negative regional economic impacts. Economic studies done prior to restoration predicted large positive economic benefits. The wolf recovery program has now matured; this proposal would quantify the economic and social effects due to wolf restoration as well as provide critical baseline information for other planning and analyses.

Wolf recovery generates positive economic impacts on the Greater Yellowstone Area (GYA) regional economy in several ways. The most significant impacts arise from visitors traveling from outside the region who choose to come to Yellowstone because wolves are present or who extend their stay because of wolves. Other impacts include wolf-program related expenditures. Economic impacts depend on visitor numbers and expenditures, which are best measured through visitor surveys. Understanding the contribution of wolf recovery requires development of a model of the actual aggregate role of Yellowstone National Park in the regional economy.

Automated data collection: At the present time, there is no automated way to gather this information because it includes directly contacting visitors to Yellowstone National Park.

Description of respondents: Visitors to Yellowstone National Park.

Estimated average number of respondents: 5,000.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 23 minutes.

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 1,917 hours.

Dated: November 4, 2003.

Leonard E. Stowe,

Acting National Park Service Information Collection Clearance Officer.

[FR Doc. 03–28843 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations and Environmental Assessment for Seismic Exploration, Big Thicket National Preserve, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the plan of operations and environmental assessment for Seismic Exploration within the Big Sandy Creek, Menard Creek Corridor, and Hickory Creek Savannah Units of Big Thicket National Preserve, Polk, Hardin and Tyler Counties, Texas.

SUMMARY: The National Park Service, in accordance with subsection 9.52(b) of Title 36 of the Code of Federal Regulations, part 9, subpart B, has received from Seismic Assistants, Ltd., a Plan of Operations for seismic exploration within Big Thicket National Preserve, Texas. The Plan of Operations and accompanying Environmental Assessment are available for public review and comment.

DATES: The National Park Service will accept comments from the public on the Plan of Operations and Environmental Assessment for 30 days after publication of this notice. No public meetings are scheduled at this time.

ADDRESSES: The Plan of Operations and Environmental Assessment will be available for public review and comment in the office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701 or by calling (409) 839–2689.

FOR FURTHER INFORMATION CONTACT: Doug Hutter, Acting Chief, Division of Resources Management, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701, (409) 839–2689, Extension 232.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may mail comments to the Superintendent, Big Thicket National Preserve, at the above street address. You may also hand deliver comments to the superintendent at the same address. 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 record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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. 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.

Dated: September 23, 2003.

Michael D. Snyder,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 03–28842 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, Padre Island National Seashore, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Plan of Operations, Environmental Assessment, and Floodplains and Wetlands Statement of Findings for a 30-day public review at Padre Island National Seashore.

SUMMARY: The National Park Service (NPS), in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands has received from BNP Petroleum Corporation a Plan of Operations for drilling and production of the Dunn-Peach No. 1 Well from a surface location 6.9 miles south along the Gulf beach, from the end of Park Road 22, within Padre Island National Seashore. Additionally, the NPS has prepared an Environmental Assessment and a Floodplains and Wetlands Statement of Findings for the site of the proposed well.

DATES: The above documents are available for public review and comment through December 19, 2003.

ADDRESSES: The Plan of Operations, Environmental Assessment, and Floodplain and Wetlands Statement of Findings are available for public review and comment in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Padre Island National Seashore, PO Box 181300, Corpus Christi, Texas 78480–1300.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene Wimer, Environmental Protection Specialist, Padre Island National Seashore, PO Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173 x 224, e-mail at *Arlene_Wimer@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days; mail them

to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. 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 record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the 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. 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.

Dated: September 25, 2003.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–28844 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces four public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Monday, November 24, 2003, at 7 p.m.

ADDRESS: Pocono Environmental Education Center, Brisco Mountain Road, Dingmans Ferry, PA 18328.

The agenda will include reports from Citizen Advisory Commission members including the establishment of Commission committees such as Recruitment, Natural Resources, Inter-governmental Cultural Resources, Special Projects, and Public Visitation and Tourism.

Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

MEETING DATE AND TIME: Saturday, January 10, 2004, at 9 a.m. (snow date January 17).

ADDRESS: Mohican Outdoor Center, 50 Camp Road, Blairstown, NJ 07825–9655.

The agenda will include reports from Citizen Advisory Commission Committees, including Recruitment, Natural Resources, Inter-governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

MEETING DATE AND TIME: Thursday, March 4, 2004, at 7 p.m.

ADDRESS: Bushkill Visitor Center, Route 209, Bushkill PA 18324.

The agenda will include reports from Citizen Advisory Commission Committees, including Recruitment, Natural Resources, Inter-governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

MEETING DATE AND TIME: Thursday, March 4, 2004, at 7 p.m.

ADDRESS: Bushkill Visitor Center, Route 209, Bushkill PA 18324.

This is the annual meeting of the Commission held for the election of officers for the 2004–2005 term.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, (570) 588–2418.

Dated: September 18, 2003.

John J. Donahue,

Superintendent.

[FR Doc. 03–28839 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–MY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of change of public meeting.

SUMMARY: The Native American Graves Protection and Repatriation Review Committee meeting scheduled for November 21–23, 2003, in Albuquerque, NM, and announced in the **Federal Register** on April 8, 2003 (FR Doc. 03–8506), is rescheduled for early in 2004. A notice will be published in the **Federal Register** when dates and other details for the next Review Committee meeting have been determined.

FOR FURTHER INFORMATION CONTACT: Martha Graham, Program Officer, National NAGPRA, telephone (202) 354–2202, facsimile (202) 371–5197, or e-mail martha__graham@nps.gov.

SUPPLEMENTARY INFORMATION: National NAGPRA consultation meetings and training sessions scheduled to be held in Albuquerque, NM, November 18–20, 2003, will be held as planned.

Dated: October 9, 2003.

John Robbins,

Designated Federal Officer, NAGPRA Review Committee.

[FR Doc. 03–28845 Filed 11–18–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 25, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed

comments should be submitted by December 4, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Georgia

Fulton County

Wallace, Anne, Branch—Carnegie Library of Atlanta, 535 Luckie St. NW., Fulton, 03001223.

Kentucky

Allen County

Dumont Hill, 0.25 mi. N of KY 1386, Scottsville, 03001227.

Barren County

Glasgow Central Business District (Boundary Increase), Roughly bounded by Water St., Broadway St., Wayne St., and Liberty St., Glasgow, 03001228.

North Race Street Historic District (Boundary Increase), (Barren County MRA), Roughly bounded by Happy Valley Rd., Green St., Garmon Ave. and Front St., Glasgow, 03001229.

Southwest Glasgow Residential District (Boundary Increase), (Barren County MRA), Roughly bounded by Washington St., Broadway St., Brookdale Dr., Cottage Ave., and Jefferson St., Glasgow, 03001230.

Boone County

Rabbit Hash Historic District, (Boone County, Kentucky MPS), Roughly along Lower River Rd., Rabbit Hash, 03001231.

Bullitt County

Lebanon Junction Historic District, Roughly bounded by Maple St., KY 61, Knoxville Ave. and Harrel and Masden Sts., Lebanon Junction, 03001224.

Jefferson County

Pendennis Club, 218 W. Walnut St., Louisville, 03001225.

Pike County

Stone Historic District, Portions of Pond Creek and Hensley Hollow Rds., Baptist, Irick, Eastern and May Sts., and Trout Town Ln., Stone, 03001226.

Louisiana

Orleans Parish

Sister Stanislaus Memorial Building, 450 S. Claiborne Ave., New Orleans, 03001233.

Pointe Coupee Parish

Dupre, Jacques, House, (Louisiana's French Creole Architecture MPS), 13987 Chenal Rd., Jarreau, 03001232.

Massachusetts

Hampden County

New Bay Diner Restaurant, (Diners of Massachusetts MPS), 950 Bay St., Springfield, 03001244.

Middlesex County

Whit's Diner, (Diners of Massachusetts MPS), 184A Fountain St., Framingham, 03001243.

Worcester County

Miss Toy Town Diner, (Diners of Massachusetts MPS), 102 Main St., Gardner, 03001242.

New Mexico

Bernalillo County

Manzano Court Addition Historic District, (Twentieth Century Suburban Growth of Albuquerque MPS), 1000–1025 Manzano Court NW., Albuquerque, 03001234.

New York

Albany County

Bennett Hill Farm, Bennett Hill Rd. at Rowe Rd., New Scotland, 03001241.

Nassau County

Goodyear, A. Conger, House, 14 Orchard Ln., Old Westbury, 03001246.

Otsego County

Oneonta Downtown Historic District, Main, Chestnut, Dietz, Market, Elm, Water, Wall, S. Main Sts., Oneonta, 03001245.

Saratoga County

Noxon Bank Building, 9 Terminal Rd., Crescent, 03001247.

North Carolina

Pitt County

Renston Rural Historic District, Approx 2.5 mi along NC 903, roughly bounded by NC 1127 and Stokes Ln., Winterville, 03001236.

Oklahoma

Canadian County

Bridgeport Hill Service Station, (Route 66 in Oklahoma MPS), Jct. Old Route 66 and U.S. 281 Spur, Geary, 03001239.

Creek County

Little Deep Fork Creek Bridge, (Route 66 in Oklahoma MPS), 0.33 mi. E of jct. of E0830 Rd. and N3700 Rd., Bristow, 03001237.

Lincoln County

Ozark Trails Section of Route 66, (Route 66 in Oklahoma MPS), Jct. of N3540 Rd and E0890 Rd W to jct. of E0890 Rd. and St. Louis and San Francisco RR tracks, Stroud, 03001235.

Osage County

Lincoln Colored School, 171 NE Walnut, Fairfax, 03001238.

Ottawa County

Narcissa D–X Gas Station, (Route 66 in Oklahoma MPS), 15050 S. OK 69, Miami, 03001240.

Vermont

Windsor County

Christian Street Rural Historic District, Christian St., Hemlock Ridge Dr., and Jericho St., Hartford, 03001248.

Virginia

Greene County

Skyline Drive Historic District (Boundary Increase), Shenandoah National Park, Skyland, Lewis Mountain and Big Meadows, Luray, 03001251.

Wisconsin

Jefferson County

Solliday, Albert F., House, 114 S. Church St., Watertown, 03001249.

Wyoming

Albany County

Lincoln School, 209 S. Cedar St., Laramie, 03001252.

Teton County

George Washington Memorial Park, Bet. Cache, Center, Broadway, and Deloney, Jackson, 03001250.

Huff Memorial Library 320 S. King St. Jackson, 03001253.

Requests for REMOVAL have been made for the following resources:

Kentucky

Red Bird River Petroglyph (15CY51), (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Eriline vicinity, 89001182.

Louisiana

St. Landry Parish

Dupre, Jacques, House, Off U.S. 167, N of Opelousas, Opelousas vicinity, 90000543.

Pennsylvania

Risser's Mill Covered Bridge, (Covered Bridges of Lancaster County TR), SW. of Manheim of LR 36069, Rapho/Mount Joy Townships Manheim vicinity, 80004612.

[FR Doc. 03–28840 Filed 11–18–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 1, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed

comments should be submitted by December 4, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Iowa

Polk County

Hotel Kirkwood, 400 4th St. (400 Walnut St.), Des Moines, 03001256

Linden Heights Historic District, Foster Dr., Glenview Dr., Woodlawn, Park Hill Dr. W of SW 42nd St., Des Moines, 03001262

Kansas

Douglas County

Coal Creek Library, 698 E. 1719 Rd., Baldwin City, 03001257

Pratt County

Thornton Adobe Barn, 1 mi. E and 1.25 mi N of Isabel, Isabel, 03001258

Thomas County

Colby City Hall, (New Deal-Era Resources of Kansas MPS) 585 N. Franklin Ave., Colby, 03001259

Colby Community High School, (New Deal-Era Resources of Kansas MPS) 750 W. Third St., Colby, 03001260

Maryland

Baltimore Independent city

Miller, H.F. Miller & Son Tin Box and Can Manufacturing Plant, 2601 N. Howard St., Baltimore (Independent City), 03001268

Carroll County

Englar—Scweigart—Rinehart Farm, 47 Rockland Rd., Westminster, 03001267

Queen Anne's County

Female Seminary, 205–207 S. Commerce St., Centreville, 03001266

Massachusetts

Bristol County

Common Avenue Historic District, Commonwealth Ave., N side from Stanley St. to beyond Robinson St., North Attleborough, 03001261

Cottage—Freeman Historic District, Cottage St. Freeman St., from Commonwealth Ave. to Ten Mile River and Park Ln., North Attleborough, 03001263

Essex County

Ann's Diner, (Diners of Massachusetts MPS) 11 Bridge Rd. (US 1), Salisbury, 03001264

Missouri

Cape Girardeau County

Wood Building, (Cape Girardeau, Missouri MPS) 1–3 S. Frederick and 605–607 Independence Sts., Cape Girardeau, 03001269

New Hampshire

Carroll County

North Conway 5 and 10 Cent Store, 2683 Main St., North Conway, 03001282

Coos County

Meadow Bridge, Spur of North Rd. in Ahelburne across the Androscoggin R., Shelburne, 03001284

Hillsborough County

Nichols, Marion, Summer Home, 56 Love Lane, Hollis, 03001283

New Jersey

Camden County

Church of the Immaculate Conception, 642 Market St., Camden, 03001277

Middlesex County

St. Mary's Church, Jct. of Jackson St. and Whitehead Ave., South River Borough, 03001276

Somerset County

Gurlick, Dirck, House, 506 Belle Mead—Blawenburg Rd., Montgomery Township, 03001285

New York

Albany County

Babcock, Dr. John, House, 101 Lasher Rd., Selkirk, 03001278

Cayuga County

Mosher Farmstead, 1016 Sherwood Rd., Aurora, 03001280

Saratoga County

Berry, Col. Sidney, House, 725 W. River Rd., Northumberland, 03001281

Gideon Putnam Burying Ground, Franklin St., Saratoga Springs, 03001279

North Carolina

Cabarrus County

Union Street Nourth—Cabarrus Avenue Commercial Historic District, Roughly Union St. N, Cabarrus Ave. E, Cabarrus Ave. W, and Church St. S, Concord, 03001272

Duplin County

Kenansville Historic District (Boundary Decrease), NC 24, cic. of Bostic and Stokes Sts., Stokes St. from S. Main St. to Seminary St., Kenansville, 03001271

Lincoln County

Laboratory Historic District, Jct. of Laboratory Rd. and S. Fork Rd., Laboratory, 03001273

Mecklenburg County

Grinnell Company—General Fire Extinquisher Company Complex, 1431 W. Morehead St., Charlotte, 03001275

Mitchell County

Penland School Historic District, NC 1164 (Conley Ridge Rd.), Penland, 03001270

New Hanover County

Sunset Park Historic District, Roughly bounded by Carolina Beach Rd., Southern Blvd., Burnett Blvd., and Sunset Ave., Wilmington, 03001265

Scotland County

Laurinburg Commercial Historic District, Roughly bounded by Church, Atkinson, Biggs Sts. and the Laurinburg and Sourthern RR, Laurinburg, 03001274

Ohio

Hamilton County

Glencoe-Auburn Hotel and Clecoe-Auburn Place Row Houses, Glencoe Place, Leroy Court, View Court, Cincinnati, 03001286

Montgomery County

Exposition Hall, Montgomery County Fairgrounds, Montgomery County Fairgrounds, 1043 S. Main St., Dayton, 03001287

South Carolina

Aiken County

US Court House—Aiken, South Carolina, 223 Park Ave., SE, Aiken, 03001288

A request for REMOVAL has been made for the following reasons:

Iowa

Calhoun County

Welsh Bridge, (Highway Bridges of Iowa MPS), 1st Ave. Over Welsh's Slough, Somers, 98000751

Clayton County

County Road Bridge 15, (Highway Bridges of Iowa MPS), County Road over unnamed stream, Elkader vicinity, 98000804

Des Moines County

Yellow Spring Creek Bridge, (Highway Bridges of Iowa MPS), Sperry Rd. Over Yellow Spring Cr., Mediapolis vicinity, 98000791

Story County

Soper's Mill Bridge, N of Ames off IA 35, Ames vicinity, 78001261

Tennessee

White County

Oldham Theater, W. Liberty Sq., Sparta, 93001188

[FR Doc. 03–28841 Filed 11–18–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, a Partial Consent Decree with Intertrade Holdings was docketed with the United States District Court for the Middle District of Georgia in the matter of *United States* v. *American Cyanamid, et al.,* No. 1:02–CV–109–1 (M.D. Ga.) (Docket No. 60).

In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(b)(2) of the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA''), 42 U.S.C. 9607 and 9613(G)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia.

Under the proposed Partial Consent Decree, Defendant Intertrade Holdings will pay $100,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

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, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga) (Partial Consent Decree with Intertrade Holdings, DOJ Ref. No. 90–11–3–07602).

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Elizabeth Davis, Esp. (404) 562–9696). During the public comment period, the 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 Partial Consent Decree may also 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 refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga) (Partial Consent Decree with Intertrade Holdings, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–28926 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, notice is hereby given that on June 12, 2003, a Partial Consent Decree with American Cyanamid was docketed with the United States District Court for the Middle District of Georgia in the matter of *United States* v. *American Cyanamid, et al.*, No. 1:02–CV–109–1(M.D. Ga.) (Docket No. 60).

In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA''), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia.

Under the proposed Partial Consent Decree, Defendant American Cyanamid will pay $205,000 to the hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

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, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid, et al.*, (M.D. Ga.) (Partial Consent Decree with American Cyanamid, DOJ Ref. No. 90–11–3–07602).

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Elizabeth Davis, Esq. (404) 562–9696). During the public comment period, the 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 Partial Consent Decree may also be obtained by mail from the Consent Decree Library, PO 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 refer to *United States* v. *American Cyanamid, et al.*, (M.D. Ga.) (Partial Consent Decree with American Cyanamid, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–28927 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, notice is hereby given that on June 12, 2003, a Partial Consent Decree with The Dial Corporation was docketed with the United States District Court for the Middle District of Georgia in the matter of *United States* v. *American Cyanamid, et al.,* No. 1:02–CV–109–1 (M.D. Ga.) (Docket No. 60).

In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA''), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia.

Under the proposed Partial Consent Decree, The Dial Corporation will pay $570,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

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 *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with The Dial Corporation, DOJ Ref. No. 90–11–3–07602).

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Elizabeth Davis, Esq. (404) 562–9696). During the public comment period, the 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 Partial Consent Decree may also 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 refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with The Dial Corporation, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–28928 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, a Partial Consent Decree among the United States, Brenntag Mid-South, Inc., PVS Chemical Solutions, and Winn-Dixie Stores, Inc. was docketed with the United States District Court for the Middle District of Georgia in the matter of *United States* v. *American Cyanamid, et al.,* No. 1:02–CV–109–1(M.D. Ga.) (Docket No. 60).

In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia.

Under the proposed Partial Consent Decree, the Settling Defendants will pay the following amounts to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site: Brenntag Mid-South, Inc.—$23,441; PVS Chemical Solution, Inc.—$47,000; and Winn-Dixie Stores, Inc.—$17,500.

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 *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Brenntag Mid-South, Inc., PVS Chemical Solutions, and Winn-Dixie Stores, Inc, DOJ Ref. No. 90–11–3–07602).

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Elizabeth Davis, Esq. (404) 562–9696). During the public comment period, the 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 Partial Consent Decree may also 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 refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Brenntag Mid-South, Inc., PVS Chemical Solutions, and Winn-Dixie Stores, Inc, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–28929 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, notice is hereby given that on June 12, 2003, a Partial Consent Decree among the United States, Blackman Uhler, Clariant Corp., and Southwire was docketed with the United States District Court for the Middle District of Georgia in the matter of *United States* v. *American Cyanamid, et al.,* No. 1:02–CV–109–1 (M.D. Ga.) (Docket No. 60).

In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia.

Under the proposed Partial Consent Decree, Defendants Blackman Uhler, Clariant Corp., and Southwire collectively will pay $247,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the site.

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 *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Blackman Uhler, Clariant Corp., and Southwire, DOJ Ref. No. 90–11–3–07602).

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433

Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Elizabeth Davis, Esq. (404) 562–9696). During the public comment period, the 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 Partial Consent Decree may also 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 refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Blackman Uhler, Clariant Corp., and Southwire, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–28930 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 30, 2003, a proposed Consent Decree in *United States and Idaho* v. *Estate of J.J. Oberbillig*, Civil Action No. CV02–451–S–LMB was lodged with the United States District Court for the District of Idaho.

The United States and Idaho filed a civil action for injunctive relief and recovery of response costs for cleaning up the Stibnite Mine Site and Cinnabar Mine Site in Valley County, Idaho (the ''Sites'') against the Estate of J.J. Oberbillig (''Defendant'') in the District of Idaho on September 26, 2002. In this action, the United States asserted claims under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, (''CERCLA''), 42 U.S.C. 9606(a) and 9607, and Idaho asserted claims under Section 107(a) of CERCLA and Idaho Code Sections 39–108, 39–4414.

Under the terms of the proposed Consent Decree settling the claims asserted in the Complaint, Defendant agrees to pay $152,206.00 of the United States' past response costs and $50,703.00 of Idaho's past response costs. The remaining monies in the Estate, $25,323.00, will be retained by Defendant for probate and estate administration expenses. Defendant also agrees to access by the United States and Idaho to the Sites, and to adjacent property, and to construction of a repository on Defendant's property at the Stibnite Site where wastes from the response actions will be deposited. In return for the commitments by Defendant, the United States grants Defendant a covenant not to sue under CERCLA Sections 106 and 107(a), 42 U.S.C. 9606 and 9607(a), relating to the Sites, and Idaho grants Defendant a covenant not to sue under CERCLA Section 107(a) of 42 U.S.C. 9607(a), and Idaho Environmental Protection and Health Act, Idaho Code Section 39–101, *et seq.*, relating to the Sites.

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, D.C. 20044–7611, and should refer to *United States and Idaho* v. *Estate of J.J. Oberbillig*, D.J. Ref. No. 90–11–3–06069/3.

The Consent Decree may be examined at the Office of the United States Attorney, 877 West Main Street, Suite 201, Boise, ID 83702 and at U.S. EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101. During the public comment period, the 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 Consent Decree may also 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 $10.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. If requesting a copy of the Consent Decree exclusive of Appendices, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–28931 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on October 2, 2003, a proposed Consent Decree in *United States* v. *Metropolitan St. Louis Sewer District, et al.,* Civil Action No. 4: 03CV01625 ERW lodged with the United States District Court for the Eastern District of Missouri.

In this action the United States sought response costs relating to response actions by the Environmental Protection Agency (''EPA'') at the Great Lakes Superfund Site in St. Louis, MO. The Site is a former drum reclamation facility contaminated primarily with lead and polychlorinated biphenyls (''PCBs''). The settling defendant, the Metropolitan St. Louis Sewer District (''MSD'') owns a portion of the Site property but did not participate in the disposal of hazardous substances on the property. In the proposed consent decree MSD has agreed to reimburse EPA $230,000 in past response costs and grant access and institutional controls on its property.

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, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Metropolitan St. Louis Sewer District* Consent Decree, D.J. Ref. 90–11–3–07280/3.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 111 S. 10th Street, Room 20.333, St. Louis, MO, 63102, (314) 539–2200 and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7471. During the public comment period, the 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 Consent Decree may also be obtained by mail from the Consent

Decree Library, PO 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 $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–28925 Filed 11–18–03; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Theater/Musical Theater: December 2–5, 2003, Room 730 (Challenge America/Access, Heritage and Preservation categories). A portion of this meeting, from 3 p.m. to 4:30 p.m. on December 4th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6 p.m. on December 2nd, from 9:30 a.m. to 6:30 p.m. on December 3rd, from 9:30 a.m. to 3 p.m. and from 4:30 p.m. to 6:30 p.m. on December 4th, and from 10 a.m. to 4:30 p.m. on December 5th, will be closed.

Literature: December 8–9, 2003, Room 714 (Challenge America/Access. Heritage & Preservation categories). A portion of this meeting, from 11 a.m. to 12 p.m. on December 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 8th, and from 9 a.m. to 11 a.m. and 12 p.m. to 4 p.m. on December 9th, will be closed.

Arts Education: December 8–12, 2003, Room 716 (Learning in the Arts for Children and Youth, Panel C—Dance, Multidisciplinary, Music and Opera). A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on December 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 8th—11th and from 9 a.m. to 12:30 p.m. and 1:30 p.m. to 2:45 p.m. on December 12th, will be closed.

Arts Education: December 15–19, 2003, Room 716 (Learning in the Arts for Children and Youth, Panel D–Folk and Traditional Arts, Local Arts Agencies, Multidisciplinary, and Presenting). A portion of this meeting, from 12:30 p.m. to 1:30 p.m. on December 19th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 15th—18th and from 9 a.m. to 12:30 p.m. and 1:30 p.m. to 3:30 p.m. on December 19th, will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 13, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–28880 Filed 11–18–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnerships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Partnerships Advisory Panel (Regional Partnership Agreements), to the National Council on the Arts will be held by teleconference on December 10, 2003 and on December 12, 2003. The first panel will meet from 2:30 p.m. to 3:30 p.m. on December 10th and the second panel will meet from 12 p.m. to 1 p.m. on December 12th in Room 710 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

These meetings will be open to the public. Topics will include review of the Regional Partnership Agreement applications and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 14, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–28881 Filed 11–18–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-

of-Coolant Accident,'' describes methods acceptable to the NRC staff for implementing regulatory requirements with respect to the sumps and suppression pools performing the functions of water sources for emergency core cooling, containment heat removal, or containment atmosphere cleanup. The guide also provides guidelines for evaluating the adequacy of the availability of the sump and suppression pool for long-term recirculation cooling following a loss-of-coolant accident.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. T.Y. Chang, (301) 415–6450; e-mail *tyc@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

For the Nuclear Regulatory Commission.

Dated at Rockville, MD this 5th day of November 2003.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–28884 Filed 11–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ac1–5, SEC File No. 270–488, OMB Control No. 3235–0542

Rule 11Ac1–6, SEC File No. 270–489, OMB Control No. 3235–0541

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–5 requires market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that many market centers retain most, if not all, the underlying raw data necessary to generate these reports in electronic format. Once the necessary data is collected, market centers could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or a self-regulatory organization (''SRO'')) that would generate the statistics and reports.

The collection of information obligations of Rule 11Ac1–5 apply to all market centers that receive covered orders in national market system securities. The Commission estimates that approximately 367 market centers are subject to the collection of information obligations of Rule 11Ac1–5. Each of these respondents is required to respond to the collection of information on a monthly basis.

The Commission staff estimates that, on average, Rule 11Ac1–5 causes respondents to spend 6 hours per month in additional time to collect the data necessary to generate the reports, or 72 hours per year. With an estimated 367 market centers subject to Rule 11Ac1–5, the total data collection cost to comply with the monthly reporting requirement is estimated to be 26,424 hours per year.

Rule 11Ac1–6 requires broker-dealers to prepare and disseminate quarterly order routing reports. Much of the information needed to generate these reports already should be collected by broker-dealers in connection with their periodic evaluations of their order routing practices. Broker-dealers must conduct such evaluations to fulfill the duty of best execution that they owe their customers.

The collection of information obligations of Rule 11Ac1–6 applies to broker-dealers that route non-directed customer orders in covered securities. The Commission estimates that out of the currently 2678 broker-dealers that are subject to the collection of information obligations of Rule 11Ac1–6, clearing brokers bear a substantial portion of the burden of complying with the reporting and recordkeeping requirements of Rule 11Ac1–6 on behalf of small to mid-sized introducing firms. There currently are approximately 330 clearing brokers. In addition, there are approximately 610 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of Rule 11Ac1–6.

The Commission staff estimates that each firm significantly involved in order routing practices incurs an average burden of 40 hours to prepare and disseminate a quarterly report required by Rule 11Ac1–6, or a burden of 160 hours per year. With an estimated 940 broker-dealers significantly involved in order routing practices, the total burden per year to comply with the quarterly reporting requirement in Rule 11Ac1–6 is estimated to be 150,400 hours.

Rule 11Ac1–6 requires broker-dealers to respond to individual customer requests for information on orders handled by the broker-dealer for that customer. Clearing brokers generally bear the burden of responding to these requests. The Commission staff estimates that an average clearing broker incurs an annual burden of 400 hours (2000 responses $\times$ 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 11Ac1–6. With an estimated 330 clearing brokers subject to Rule 11Ac1–6, the total burden per year to comply with the customer response requirement in Rule 11Ac1–6 is estimated to be 132,000 hours.

The collection of information obligations imposed by Rule 11Ac1–5 and Rule 11Ac1–6 are mandatory. The response will be available to the public and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of

Management and Budget, Room 10102, New Executive Office building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28848 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 11Ac1–3, SEC File No. 270–382, OMB Control No. 3235–0435.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 11Ac1–3 Customer account statements

Rule 11Ac1–3, 17 CFR 240.11Ac1–3, under the Securities Exchange Act of 1934 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are approximately 6,752 registered broker-dealers.[1] The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 11Ac1–3 is fourteen hours annually. Thus, the total burden is 94,528 hours annually. The average cost per hour is approximately $85. Therefore, the total cost of compliance for broker-dealers is $8,034,880.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: November 13, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28889 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (The Ziegler Companies, Inc., Common Stock, $1.00 Par Value) File No. 1–10854

November 13, 2003.

The Ziegler Companies, Inc., a Wisconsin corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on October 28, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of the Issuer states that the reasons it is taking such action is as follows: (i) The continuing costs to the Issuer of complying with the Exchange Act and other obligations placed upon the Issuer the Exchange; (ii) the significant new costs that the Issuer would be obligated to incur to comply with certain of the recently-enacted provisions of the Exchange Act, including the Sarbanes-Oxley Act of 2002, and the resulting negative effect on the Issuer's profitability; (iii) the Issuer does not seem to be enjoying the benefits of being listed on the Exchange and being a reporting company under the Exchange Act, which include access to capital, potentially higher valuations through analyst coverage and institutional investor interest, ability to use equity as currency for acquisitions and a liquid trading market, all of which perceived benefits have either been not available to the Issuer or only of limited availability or utility; (iv) the availability of an alternative to the Exchange in the form of the Pink Sheets quotation service; (v) the availability of an alternative to Exchange specialists in the form of market makers to facilitate an orderly market for the Issuer's shares; and (vi) the ability of the Issuer, subject to the availability of adequate resources and the Board continuing to believe that such programs are in or not opposed to the best interest of shareholders, to continue its share buy-back program and its dividend.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Wisconsin, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act[3] shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 8, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date

[1] This estimate is based on FYE 2002 Focus Reports received by the Commission.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28890 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26253; File No. 812–12962]

Principal Life Insurance Company, et al., Notice of Application

November 13, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving the substitution of securities.

APPLICANTS: Principal Life Insurance Company (''Principal Life''), Principal Life Insurance Company Variable Life VL Separate Account (''VL Separate Account''), and Principal Life Insurance Company Separate Account B (''Separate Account B'').

SUMMARY OF APPLICATION: Applicants seek an order to permit, under the specific circumstances identified in the application, the substitution of shares of the LargeCap Growth Equity Account of Principal Variable Contracts Fund, Inc. (''Principal Fund'') for shares of the LargeCap Growth Account of Principal Fund; shares of the LargeCap Stock Index Account of Principal Fund for shares of the Blue Chip Account of Principal Fund; shares of the MidCap Growth Account of Principal Fund for shares of the MidCap Growth Equity Account of Principal Fund; shares of the Asset Allocation Account of Principal Fund for shares of the Putnam VT Global Asset Allocation Fund of Putnam Variable Trust (''Putnam Trust''); and shares of the Equity Growth Account of Principal Fund for shares of the Putnam VT Vista Fund of Putnam Trust. The shares are currently held by VL Separate Account and Separate Account B.

FILING DATE: The application was filed on April 18, 2003, and amended on November 10, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on December 4, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch LLP, 1025 Thomas Jefferson Street, NW., Washington, DC 20007–5254; copy to Michael D. Roughton, Esq., Principal Financial Group, Inc., 711 High Street, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Principal Life is a stock life insurance company organized under the laws of Iowa in 1879. It is authorized to transact life insurance and annuity business in all of the United States and the District of Columbia.

2. VL Separate Account was established in 1987 by Principal Life as a separate account under Iowa law for the purpose of funding variable life contracts issued by Principal Life (File No. 811–05118). Separate Account B was established in 1970 by Principal Life as a separate account under Iowa law for the purpose of funding variable annuity contracts issued by Principal Life (File No. 811–02091).

3. There are nine variable insurance contracts affected by the application (the ''Contracts''). Six of the Contracts are flexible premium variable life insurance policies (collectively, the ''VL Contracts''); three are variable annuity contracts, two individual deferred contracts and one group annuity contract (collectively, the ''VA Contracts''). Purchase payments for the VL Contracts are allocated to VL Separate Account. Purchase payments for the VA Contracts are allocated to Separate Account B.

4. Purchase payments for the Contracts are allocated to one or more subaccounts (''Divisions'') of VL Separate Account or Separate Account B. Each Division invests in shares of an underlying mutual fund (''Underlying Fund''), including Principal Fund, an open-end management investment company registered under the Act (File Nos. 811–1944 and 002–35570), and Putnam Trust, an open-end management investment company registered under the Act (File Nos. 811–05346 and 033–17486). The Contracts permit transfers of accumulated value from one Division to another.

5. The following table (i) identifies each Contract affected by the application, (ii) sets forth the total number of Divisions available under each Contract and the number of those Divisions that invest in either the Principal Fund or the Putnam Trust, and (iii) summarizes the transfer rights under each Contract.

Contracts/File Nos.	Total	Divisions		Transfers	
		Principal fund	Putnam trust	Minimum amount	Fee
VL Contracts:					
Flex Variable Life (File No. 33–13481)	49	27	3	$250	[1] $25
Prinflex Life (File No. 333–00101)	49	27	3	100	None
Survivorship Variable Life (File No. 333–71521)	49	27	3	100	None
Principal Variable Universal Life Accumulator (File No. 333–65690)	49	27	3	100	None
Principal Executive Variable Universal Minimum Life (File No. 333–81714)	73	21	0	([3])	None
Principal Benefit Variable Universal Minimum Life (File No. 333–89446)	73	21	0	([3])	None

[5] 17 CFR 200.30–3(a)(1).

Contracts/File Nos.	Total	Divisions		Transfers	
		Principal fund	Putnam trust	Minimum amount	Fee
VA Contracts:					
Flexible Variable Annuity (File No. 33–74232)	42	27	0	100	[2] 30
Freedom Variable Annuity (File No. 333–63401)	17	15	0	50	None
Premier Variable Annuity (File No. 33–44670)	25	25	0	([3])	None

[1] Imposed on each transfer exceeding four per policy year.
[2] Imposed on each transfer exceeding twelve per policy year.
[3] No minimum.

6. The only Divisions affected by the application are those identified in the following table. Each of those Divisions invests solely in the Principal Fund Account or the Putnam Trust Fund as indicated in this table.

Division of each of VL separate account and separate account B	Principal fund
LargeCap Growth	LargeCap Growth Account
LargeCap Growth Equity	LargeCap Growth Equity Account
Blue Chip [4]	Blue Chip Account
LargeCap Stock Index	LargeCap Stock Index Account
MidCap Growth Equity	MidCap Growth Equity Account
MidCap Growth	MidCap Growth Account
Asset Allocation	Asset Allocation Account
Equity Growth	Equity Growth Account
	Putnam Trust
Putnam VT Global Asset Allocation	Putnam VT Global Asset Allocation Fund
Putnam VT Vista	Putnam VT Vista Fund

[4] Separate Account B has a Blue Chip Division; VL Separate Account does not have a Blue Chip Division.

The Principal Fund Accounts and the Putnam Trust Funds indicated in the table above are referred to herein collectively as the ''Principal Funds'' and the ''Putnam Funds,'' respectively. Principal Funds and Putnam Funds are referred to herein collectively as the ''Funds.''

7. Principal Funds are managed by Principal Management Corporation (''PMC''), a registered investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act'') and an indirect, wholly-owned subsidiary of Principal Financial Group, Inc. The following table identifies the sub-adviser for each of the Principal Funds and indicates its affiliation, if any, with Principal Financial Group, Inc.

Fund	Sub-adviser
LargeCap Growth Account	Janus Capital Management LLC (''Janus''), a registered investment adviser under the Advisers Act (File No. 801–13991).
LargeCap Growth Equity Account	Putnam Investment Management LLC (''Putnam''), a registered investment adviser under the Advisers Act (File No. 801–7974).
Blue Chip Account	Principal Global Investors, LLC (''PGI''), an indirect, wholly-owned subsidiary of Principal Life and a registered investment adviser under the Advisers Act (File No. 801–55959)
LargeCap Stock Index Account	PGI.
MidCap Growth Equity Account	Turner Investment Partners, Inc. (''Turner''), a registered investment adviser under the Advisers Act (File No. 801–36220).
MidCap Growth Account	The Dreyfus Service Corporation (''Dreyfus''), a registered investment adviser under the Advisers Act (File No. 801–54739).
Asset Allocation Account	Morgan Stanley Investment Management, Inc. (''Morgan Stanley''), a registered investment adviser under the Advisers Act (File No. 801–15757).
Equity Growth Account	Morgan Stanley.

8. Putnam Funds are managed by Putnam.

9. Applicants seek an order permitting each the following substitutions (''Substitutions''):

Substitution	Replaced fund/sub-adviser	Substituted fund/sub-adviser
One	LargeCap Growth Account (Janus)	LargeCap Growth Equity Account (Putnam).
Two	Blue Chip Account (PGI)	LargeCap Stock Index Account (PGI).
Three	MidCap Growth Equity Account (Turner)	MidCap Growth Account (Dreyfus).
Four	Putnam VT Global Asset Allocation Fund Account (Putnam).	Asset Allocation (Morgan Stanley).

Substitution	Replaced fund/sub-adviser	Substituted fund/sub-adviser
Five	Putnam VT Vista Fund (Putnam)	Equity Growth Account (Morgan Stanley)

10. The investment objective of LargeCap Growth Account (''LargeCap Growth'') is to seek long-term growth of capital. It invests primarily in equity securities of growth companies. Under normal market conditions, LargeCap Growth invests at least 80% of its assets in equity securities of companies with large market capitalizations (those with market capitalizations similar to companies in the Russell 1000 Growth Index) at the time of purchase. (The market capitalization of companies included in the Russell 1000 Growth Index as of June 30, 2003, ranged approximately from $1.3 billion to $310 billion.) The Account may invest up to 25% of its assets in securities of foreign companies. The investment objective of LargeCap Growth Equity Account (''LCGE'') is to seek long-term growth of capital. It invests primarily in common stocks of U.S. companies, with a focus on growth stocks. Under normal market conditions, LCGE invests at least 80% of its assets in common stocks of companies with large market capitalizations (those with market capitalizations similar to companies in the Russell 1000 Growth Index) at the time of purchase. LCGE may invest up to 25% of its assets in securities of foreign issuers. Applicants believe that the substitution will serve the interests of the owners of the contracts because it will permit them to continue to pursue their current investment objective (long-term growth of capital) through investments in the same kinds of securities while paying a lower advisory fee and lower overall expense ratio.

11. The investment objective of Blue Chip Account (''BC Account'') is to seek long-term growth of capital. BC Account invests primarily by investing in common stocks of well-established large capitalization companies. Under normal market conditions, BC Account invests at least 80% of its assets in common stocks of companies with large market capitalizations (similar to companies in the S&P 500 Index) at the time of purchase. Blue chip companies have market capitalizations of at least $1 billion. BC Account may invest up to 20% of its Account assets in foreign securities. The investment objective of LargeCap Stock Index Account (''LCSI'') is to seek long-term growth of capital. Under normal market conditions, LCSI invests at least 80% of its assets in common stocks of companies that compose the S&P 500 Index, an unmanaged index of 500 common stocks chosen to reflect the industries of the U.S. economy. Applicants believe that the substitution will serve the interest of owners of the contracts because it will provide those owners with an investment option that is comparable in terms of pursuing long-term investment goals and has a lower expense ratio.

12. The investment objective of MidCap Growth Equity Account (''MCGE'') is to seek long-term growth of capital by investing primarily in medium capitalization U.S. companies with strong earnings growth potential. Under normal market conditions, MCGE invests at least 80% of its assets in common stocks of companies with medium market capitalizations (those with market capitalizations similar to companies in the Russell MidCap Growth Index) at the time of purchase. (The market capitalization of companies included in the Russell MidCap Growth Index as of June 30, 2003 ranged approximately from $1.3 billion to $10.8 billion.) MCGE may invest up to 10% of its assets in securities of foreign issuers. The investment objective of MidCap Growth Account (''MidCap Growth'') is to seek long-term growth of capital. Under normal market conditions, MidCap Growth invests at least 80% of its assets in common stocks of companies with medium market capitalizations (those with market capitalizations similar to companies in the Russell MidCap Growth Index) at the time of purchase. MidCap Growth may invest up to 10% of its assets in securities of foreign issuers. Applicants believe that the substitution will serve the interests of owners of the contracts because it will provide those owners with an investment option that is comparable in terms of pursuing long-term investment goals and has a lower expense ratio.

13. The investment objective of Putnam VT Global Asset Allocation Fund (''Putnam GAAF'') is to seek a high level of long-term total return consistent with preservation of capital. Putnam GAAF invests in a wide variety of equity and fixed-income securities of both U.S. and foreign issuers of any size. Putnam GAAF invests in growth and value stocks of domestic and foreign corporations and in domestic and foreign fixed income securities. The investment objective of Asset Allocation Account (''AAA'') is to generate a total investment return consistent with preservation of capital. AAA invests in a wide variety of equity and fixed-income securities of both U.S. and foreign issuers of any size. AAA invests in growth and value stocks of domestic and foreign corporations and in domestic fixed-income securities and may invest in foreign fixed-income securities. Applicants believe that the substitution will serve the interest of owners of the contracts because it will provide those owners with an investment option that is comparable in terms of pursuing long-term investment goals and has a lower expense ratio.

14. The investment objective of Putnam VT Vista Fund (''Vista'') is to seek capital appreciation. Vista invests mainly in common stocks of U.S. companies, with a focus on growth stocks. Vista invests mainly in mid-sized companies. The Fund uses the Russell MidCap Growth Index for comparison purposes. The investment objective of Equity Growth Account (''Equity Growth'') is to provide long-term capital appreciation by investing primarily in equity securities. Equity Growth seeks to maximize long-term capital appreciation by investing primarily in growth-oriented equity securities of U.S. and, to a limited extent, foreign companies that are listed on U.S. exchanges or traded in U.S. markets. It invests at least 80% of its assets in equity securities and invests primarily in companies with market capitalizations of $10 billion or more. Although Equity Growth may invest up to 25% of its assets in investments in foreign companies that are traded in foreign markets, it is considered to be a domestic stock fund and, therefore, will generally limit its foreign stock holdings to 10% of its assets and generally invests only in securities of foreign companies that are traded in the U.S. Applicants represent that the substitution will serve the interest of owners of the contracts because it will provide those owners with an investment option that is comparable in terms of pursuing long-term investment goals and has a lower expense ratio.

15. The annual operating expenses of each replaced fund and each substituting fund as a percentage of average daily net assets are as follows:

[In percent]

	Management fee	Distribution and service fee (12b–1)	Other expenses	Total expenses (before reimbursement and/or fee waivers if applicable)	Total expenses (after fee waivers and/or reimbursement if applicable)
Replaced Fund: LargeCap Growth	1.10	N/A	0.04	1.14	1.14
Substituting Fund: LCGE	1.00	N/A	0.09	1.09	1.09
Replaced Fund: BC Account	0.60	N/A	0.23	0.83	0.83
Substituting Fund: LCSI	0.35	N/A	0.04	0.39	0.39
Replaced Fund: MCGE	1.00	N/A	0.13	1.13	1.10
Substituting Fund: MidCap Growth	0.90	N/A	0.02	0.92	0.92
Replaced Fund: Putnam GAAF	0.67	0.25	0.17	1.09	1.09
Substituting Fund: AAA	0.80	N/A	0.04	0.84	0.84
Replaced Fund: Vista	0.61	0.25	0.06	0.92	0.92
Substituting Fund: Equity Growth	0.75	N/A	0.02	0.77	0.77

Note: The expenses shown above are for the year ended December 31, 2002.

16. Applicants represent that the Substitutions will take place at the relative net asset values determined on the date of the Substitution in accordance with section 22 of the Act and Rule 22c–1 thereunder. Applicants represent that there will be no financial impact to any contractowner.

17. Each of the Substitutions will be effected by having each Division that invests in a Replaced Fund redeem its shares of that fund for cash at the net asset value calculated on the date of the Substitution and purchase shares of the Substituted Fund for cash at net asset value on the same date. In connection with the completion of each of the Substitutions, Principal Life will withdraw its seed money from each of the Principal Funds in which it has seed money (LargeCap Growth, BC Account, and MCGE) and terminate those funds. In addition, Principal Life will combine each Division of each of the Separate Accounts that invests in a Replaced Fund with the Division of that Separate Account that invests in the Substituted Fund.

18. Applicants agree that: (a) For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into LCSI, AAA and Equity Growth, Principal Life will adjust the Contract values invested in the Substituted Fund as a result of the Substitution, to the extent necessary to effectively reimburse the affected owners for their proportionate share of any amount by which the annual rate of the Substituted Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: the annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months; and (b) for each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into LCGE and MidCap Growth, Principal Life will, with respect to all Contracts outstanding on the date of the Substitution, adjust the Contract values invested in the Substituted Fund, to the extent necessary to effectively reimburse the owners of those Contracts for their proportionate share of any amount by which the annual rate of the Substituted Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: the annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

19. Applicants represent that each of the Substitutions has been described in the annual post-effective amendments to the registration statements for the Contracts which became effective on May 1, 2003. The post-effective amendments mailed to contractowners gave them notice of each of the Substitutions and described the reasons for engaging in each of the Substitutions. The post-effective amendments also informed existing contractowners that no amounts may be transferred to the Replaced Funds on or after May 19, 2003. In addition, the post-effective amendments informed affected contractowners that they will have an opportunity to reallocate accumulation value prior to each Substitution or for 60 days after each Substitution (''Free Transfer Right'') from each Division investing in a Replaced Fund to another Division available under the Contracts, without the imposition of any transfer charge or limitation and without counting the transfer as one of the annual free transfers.

20. Each contractowner has been provided a prospectus for each of the Substituted Funds. Applicants represent that, within five days after a Substitution, Principal Life will send to affected contractowners written confirmation that the Substitution has occurred.

21. Applicants represent that the cost of each of the Substitutions, including legal, accounting, brokerage commissions and other fees and expenses, will be borne by Principal Life and will not be borne by the Funds or the contractowners either directly or indirectly. Applicants represent that each of the Substitutions will have no impact on the insurance benefits that Principal Life is obligated to provide under the Contracts or on the other rights of contractowners and other obligations of Principal Life under the Contracts. Applicants represent that each of the Substitutions will not cause

the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution. Applicants also represent that each of the Substitutions will not have a tax impact on contractowners.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 26(c) of the Act approving each of the Substitutions. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of each of the Substitutions are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Substitution is an appropriate solution to the lack of contractowner interest in and higher relative expense of the Replaced Funds. Applicants represent that they do not expect that any Substitution will have a significant impact on the expense ratio of the Substituted Fund and believe that because of lower expense ratios each Substituted Fund will serve contractowner interests better than the current fund Applicants seek to replace. Moreover, Principal Life has reserved the right to effect substitutions in the Contracts and disclosed this reserved right in the prospectuses for the Contracts.

3. Applicants represent that each of the Substitutions will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each of the proposed Substitutions permits contractowners continuity of investment objectives and expectations.

(1) Both LCGE and LargeCap Growth seek long term growth of capital primarily by investing in common stocks of companies with large market capitalizations. LCGE, with its emphasis on investing in companies with large market capitalizations, will afford shareholders of LargeCap Growth an opportunity for continued investment exposure to companies with market capitalizations within an equivalent large market capitalization range.

(2) BC Account seeks long-term growth of capital and growth of income primarily by investing in common stocks of well established large capitalization companies (similar to companies in the S&P 500 Index), and LCSI seeks long-term growth of capital by investing primarily in common stocks of companies that compose the S&P 500 Index. LCSI, with its emphasis of investing in companies that are components of the S&P 500 Index, will afford shareholders of BC Account an opportunity for continued investment exposure to the kinds of companies in which BC Account may invest.

(3) Both MidCap Growth and MCGE seek long-term growth of capital primarily by investing in common stocks of companies with medium market capitalizations. MidCap Growth, with its emphasis on investing in companies with medium market capitalizations, will afford shareholders of MCGE an opportunity for continued investment exposure to companies within the same medium market capitalization range.

(4) Both AAA and Putnam GAAF seek a high long-term return consistent with preservation of capital. AAA, with its emphasis on investing in equity and fixed-income securities of domestic and foreign issuers, will afford shareholders of Putnam GAAF an opportunity for continued investment exposure to equity and fixed-income securities of domestic and foreign issuers.

(5) Both Equity Growth and Vista seek capital appreciation by investing primarily in growth stocks of U.S. companies. Equity Growth, with its emphasis on investing in growth-oriented equity securities of U.S. companies, will afford shareholders of Vista an opportunity for continued investment exposure to growth stocks of domestic corporations.

(b) The contractowners will have ample opportunity to consider their investment options because they will be given notice prior to the Substitutions and will have an opportunity to reallocate accumulation value among other available Divisions without the imposition of any transfer charge or limitation as a result of the Free Transfer Right.

(c) The costs of each of the Substitutions, including legal, accounting, brokerage commissions and other fees and expenses, will be borne by Principal Life and will not be borne by the Funds or the contractowners directly or indirectly.

(d) Each Substitution will be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value under the Contracts.

(e) The Substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitutions than before the Substitutions.

(f) Within five days after a Substitution, Principal Life will send to contractowners written confirmation that the Substitution has occurred.

(g) The Substitutions will have no impact on the insurance benefits that Principal Life is obligated to provide under the Contracts or on the other rights of contractowners and other obligations of Principal Life under the Contracts.

(h) The Substitutions will in no way alter the tax benefits to contractowners.

(j) For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into LCSI, AAA and Equity Growth, Principal Life will adjust the Contract values invested in the Substituted Fund as a result of the Substitution, to the extent necessary to effectively reimburse the affected owners for their proportionate share of any amount by which the annual rate of the Substituted Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such Replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months; and

(k) For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into LCGE and MidCap Growth, Principal Life will, with respect to all Contracts outstanding on the date of the Substitution, adjust the Contract values invested in the Substituted Fund, to the extent necessary to effectively reimburse the owners of those Contracts for their proportionate share of any amount by which the annual rate of the Substituted Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of

any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

4. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving each of the Substitutions. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28849 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27760]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 13, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70–10179)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company, 10435 Downsville Pike, Hagerstown, Maryland 21740, has filed an application-declaration (''Application'') under sections 6(a), 7, 9, and 12(e) of the Act and rule 54 under the Act.

Allegheny seeks authority to issue common stock and options to purchase common stock under Allegheny's Long-Term Incentive Plan (''LTIP''). Allegheny was previously authorized by order dated May 29, 1998 (Holding Co. Act Release No. 26879), (''LTIP Order'') to issue and sell, through December 31, 2010, up to 10 million shares of its common stock, par value $1.25 per share (''Common Stock''), under the LTIP.

Although the LTIP has not materially changed since it was approved by the Commission,[1] the authorization to issue stock under the Plan has been undermined by Allegheny's current financial status. At the time of the LTIP Order, the criteria of rule 53 under the Act were satisfied by Allegheny, and, therefore, the Commission did not consider the effect of capitalization or earnings of any Allegheny exempt wholesale generator (''EWG'') or foreign utility company (''FUCO'') in granting its authorization. Allegheny no longer satisfies certain of the standards set forth in rule 53. Specifically, Allegheny's increased level of investments in EWGs and FUCOs, as described below, was conditioned on compliance with certain financing requirements that are currently not satisfied. Also, Allegheny's consolidated retained earnings have decreased over the four most recent quarterly periods, and Allegheny has reported operating losses attributable to EWG and FUCO investments in excess of the limitations set forth in rule 53(b).

Allegheny, therefore, seeks authority to continue issuing Common Stock under the LTIP. Allegheny requests that the Commission authorize it to issue up to 8 million shares of Common Stock (decreased from 10 million) under the LTIP through December 31, 2010. The stock would be issued according to the same terms and conditions set forth in the LTIP Order. As explained in that order, the LTIP was adopted by Allegheny in 1998 to attract and retain key employees and directors and motivate performance.

I. Description of the LTIP

The LTIP is administered by the Management Compensation and Development Committee (''Committee''), which may delegate to an executive officer the power to determine the employees (other than himself or herself) eligible to receive awards. The Committee may from time to time designate key employees and directors to participate in the LTIP for a particular year. As approved in the LTIP Order, the LTIP authorizes Allegheny to issue up to 10 million shares of Common Stock, subject to adjustments for recapitalizations or other changes to Allegheny's common shares. In this Application, Allegheny requests authority to issue up to 8 million shares of Common Stock under the LTIP. No participant in the LTIP may be granted more than 600,000 shares (or rights or options in respect of more than 600,000 shares) in any calendar year. For purposes of this limit, shares subject to an award that is to be earned over a period of more than one calendar year will be allocated to the first calendar year in which these shares may be earned.

[1] Allegheny amended the LTIP in September 1998 to allow for the issuance of stock options as payments for Performance Awards in addition to payments in Common Stock and cash. Although the original LTIP provided for the issuance of stock options as payment for other awards, payments for Performance Awards were more limited. The LTIP Order, however, generally authorized Allegheny to issue both stock and stock options as payments for all awards under the LTIP. Allegheny, therefore, subsequently amended the LTIP to provide for the issuance of stock options as Performance Awards.

The LTIP permits awards of options to purchase Allegheny Common Stock on terms and conditions as determined by the Committee. Stock options are issued at strike prices equal to the fair market value (as defined in the LTIP) of Allegheny Common Stock as of the date of the option grant. The terms of option awards are set forth in option award agreements. The Committee may award non-qualified stock options or incentive stock options (each as defined in the LTIP). No participant in the LTIP may receive incentive stock option awards under the LTIP or any other Allegheny compensation plan that would result in incentive stock options to purchase shares of Allegheny Common Stock with an aggregate fair market value of more than $100,000 first becoming exercisable by a participant in any one calendar year.

Options awarded under the LTIP will terminate upon the first to occur of: (i) The option's expiration under the terms of the related option award agreement; (ii) termination of the award following termination of the participant's employment under the rules described in the next paragraph; and (iii) 10 years after the date of the option grant. The Committee may accelerate the exercise period of awarded options and may extend the exercise period of options granted to employees who have been terminated.

In the event of the termination of employment of a participant in the LTIP, options not exercisable at the time of the termination will expire as of the date of the termination and exercisable options will expire 90 days from the date of termination. In the event of termination of a participant's employment due to retirement or disability, options not exercisable will expire as of the date of termination and exercisable options will expire one year after the date of termination. In the event of the death of a participant in the LTIP, all options not exercisable at the time of death will expire, and exercisable options will remain exercisable by the participant's beneficiary until the first to occur of one year from the time of death or, if applicable, one year from the date of the termination of the participant's employment due to retirement or disability.

The Committee may establish dividend equivalent accounts with respect to awarded options. A participant's dividend equivalent account will be credited with notional amounts equal to dividends that would be payable on the shares for which the participant's options are exercisable, assuming that the shares were issued to the participant. The participant or other holder of the option will be entitled to receive cash from the dividend equivalent account at times and subject to terms and conditions that the Committee determines and provides in the applicable option award agreement. If an option terminates or expires prior to exercise, the dividend equivalent account related to the option will be concurrently eliminated and no payment in respect of the account will be made.

The Committee may permit the exercise of options or the payment of applicable withholding taxes through tender of previously acquired shares of Allegheny Common Stock or through reduction in the number of shares issuable upon option exercise. The Committee may grant reload options to participants in the event that participants pay option exercise prices or withholding taxes by these methods.

In the event of a change of control of Allegheny (as defined in the LTIP), unless provided to the contrary in the applicable option award agreement, all options outstanding on the date of the change in control will become immediately and fully exercisable.

The Committee may grant shares of Common Stock on terms, conditions and restrictions as the Committee may determine. Restrictions, terms, and conditions may be based on performance standards, period of service, share ownership, or other criteria. Performance-based awards intended for federal income tax deductibility will be subject to performance targets with respect to operating income, return on investment, return on shareholders' equity, stock price appreciation, earnings before interest, taxes and depreciation/amortization, earnings per share, and/or growth in earnings per share. The terms of restricted stock awards will be set forth in award agreements.

The participant will be an owner of restricted shares awarded to him or her under the LTIP. The shares may not be transferred, pledged, or assigned (other than by will or the laws of descent and distribution or to an inter vivos trust with respect to which the participant is treated as the owner under the internal revenue code) prior to the lapse of the applicable restrictions. A participant's restricted shares will be forfeited to Allegheny in the event that the participant ceases to be employed by Allegheny prior to the expiration of the applicable forfeiture period. The Committee may waive an award's forfeiture provisions under appropriate circumstances.

In the event of a change of control of Allegheny (as defined in the LTIP), unless provided to the contrary in the applicable restricted stock award agreement, the restrictions applicable to all restricted stock awards will terminate fully on the date of the change of control.

The Committee may grant performance awards, which will consist of a right to receive a payment that is either measured by the fair market value of a specified number of shares of Allegheny Common Stock, increases in the fair market value of Common Stock during an award period and/or consists of a fixed cash amount. Performance awards may be made in conjunction with or in addition to restricted stock awards. Award periods will be two or more years or other annual periods as determined by the Committee. The Committee may permit newly eligible participants to receive performance awards after an award period has commenced.

The Committee establishes performance targets in connection with performance awards. In the case of awards intended to be deductible for federal income tax purposes, performance targets will relate to operating income, return on investment, return on shareholders' equity, stock price appreciation, earnings before interest, taxes and depreciation/amortization, earnings per share, and/or growth in earnings per share. The Committee prescribes formulas to determine the percentage of the awards to be earned based on the degree of attainment of award targets. Allegheny may make payments in respect of performance awards in the form of cash or shares of Allegheny Common Stock, or a combination of both.

In the event of a participant's retirement during an award period, the participant will not receive a performance award unless otherwise determined by the Committee, in which case the participant will be entitled to a prorated portion of the award. In the event of the death or disability of a participant during an award period, the participant or his or her representative will be entitled to a prorated portion of the performance award. A participant will not be entitled to a performance award if his or her employment terminates prior to the conclusion of an award period, provided that the Committee may determine in its discretion to pay performance awards, including full (*i.e.,* non-prorated) awards, to any participant whose employment is terminated. In the event of a change of control of Allegheny, all performance awards for all award

periods will immediately become payable to all participants and will be paid within 30 days after the change in control.

The Committee may, unless the relevant award agreement otherwise specifies, cancel, rescind, or suspend an award in the event that the LTIP participant engages in competitive activity, discloses confidential information, solicits employees, customers, partners or suppliers of Allegheny, or undertakes any other action determined by the Committee to be detrimental to Allegheny.

The LTIP contains provisions intended to ensure that certain restricted share awards and performance awards to ''covered employees'' under Section 162(m) of the Internal Revenue Code are exempt from the $1 million deduction limit contained in that section of the code. Those exemptive provisions, by their terms and under the applicable IRS regulations, expired as of May 14, 2003. Any pending, but unvested, awards issued under these provisions are unaffected by the provisions' expiration, but any future restricted stock or performance awards to covered employees will not eligible for the exemption from the Section 162(m) limit unless the provisions are reapproved by the shareholders. Allegheny may seek stockholder reauthorization of the LTIP with respect to these provisions, but has no present intention to do so. Allegheny may choose alternative methods to compensate covered employees who would have received compensation under the terminated provisions of the LTIP had these provisions not terminated.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28891 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48771; File No. SR–CBOE–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Chicago Board Options Exchange, Inc. Relating to Bid-Ask Differentials

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and, III below, which Items have been prepared by the Exchange. The CBOE filed Amendments Nos. 1, 2, and 3 to the proposal on July 3, 2003,[3] September 10, 2003,[4] and October 29, 2003,[5] respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 8.7, ''Obligations of Market Makers,'' to allow the appropriate Market Performance Committee (''MPC'') to establish bid-ask differentials that are no more than $0.50 wide (''double-width'') for options where the bid price is less than $2 when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote, including any Liquidity Quote;[6] or (2) disseminates an inverted quote. The double-width relief must terminate automatically when the triggering event ceases.

The text of the proposed rule change appears below. Additions are in *italics.*

Rule 8.7 Obligations of Market Makers

(a) No change.

(b) No change.

(i)–(iii) No change.

(iv) No change.

(A) Without limiting the authority provided to it in Rule 8.7(b)(iv), the appropriate MPC may, with respect to options trading with a bid price less than $2, establish bid-ask differentials that are no more than $0.50 wide (''double-width'') when the primary market for the underling security: (a) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote. The imposition of double-width relief must automatically terminate when the condition that necessitated the double-width relief (i.e., condition (a) or (b)) is no longer present. Market makers that have not automated this process may not avail themselves of the relief provided herein (i.e., they may not manually adjust prices).

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

CBOE Rule 8.7(b)(iv) establishes bid-ask differentials and allows the appropriate MPC to establish differences for one or more options series.[7] The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division of Market Regulation (''Division''), Commission, dated July 2, 2003, and accompanying Form 19b–4 (''Amendment No. 1''). Amendment No. 1 converts the proposal from a filing submitted pursuant to Section 19(b)(3)(A) of the Act to a proposal filed pursuant to Section 19(b)(2) of the Act. In addition, Amendment No. 1 clarifies that the CBOE's autoquote systems automatically will widen quotes to double the applicable bid-ask differential upon the occurrence of one of the triggering events and automatically will return the quotes to the normal bid-ask differential when the triggering event ceases.

[4] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated September 9, 2003 (''Amendment No. 2''). Amendment No. 2 provides examples illustrating the need for the proposed relief, clarifies that CBOE market makers will not be able to widen their quotes when the New York Stock Exchange, Inc. (''NYSE'') prints a trade at or within its Liquidity Quote, and states that neither the CBOE's Retail Automated Execution System (''RAES'') nor the CBOE's Hybrid System will automatically execute incoming orders at prices inferior to the national best bid or offer (''NBBO'').

[5] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated October 28, 2003 (''Amendment No. 3''). Amendment No. 3 revises the proposal to limit the application of the quote width relief to options that trade with a bid price of less than $2 and clarifies that the quote width relief provided in the proposal will be available only to a market maker who has an automated quotation system that will return his or her quotes to the normal bid-ask differential when the triggering event ceases.

[6] The rules of the NYSE permit the dissemination, in selected securities, of a ''Liquidity Bid'' and a ''Liquidity Offer'' which reflect aggregated NYSE trading interest at a specific price interval below the best bid (in the case of a Liquidity Bid) or at a specific price interval above the best offer (in the case of a Liquidity Offer). *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (File No. SR–NYSE–2002–55).

[7] CBOE Rule 8.7(b)(iv) requires market makers to bid and/or offer so as to create differences of no more than $0.25 between the bid and the offer for each option contract for which the bid is less than $2; no more than $0.40 where the bid is at least $2

Exchange proposes to amend this rule to codify two instances when the bid-ask differential for options trading with a bid price of less than $2 may be wider than the $0.25 interval expressly required for such options by CBOE Rule 8.7(b)(iv). Specifically, proposed CBOE Rule 8.7(b)(iv)(A) authorizes the appropriate MPC, with respect to options trading with a bid price less than $2, to establish bid-ask differentials that are no more than $0.50 wide (''double-width'') when the primary market for the underlying security: (a) Reports a trade that occurs outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote (together, the ''triggering events''). The proposed quote width relief will apply to options on stocks and options on exchange-traded funds (''ETFs'').[8]

The proposed quote width relief will apply only to options that trade with a bid price of less than $2.[9] Thus, options trading at a price of $2 (bid) or higher will not be eligible for the proposed quote width relief. The CBOE notes that options trading at less than $2 are subject to a $0.25 bid-ask differential, which generally means that market makers have only $0.125 of pricing latitude on either side of the theoretical value to widen their quotes to take into account any pricing discrepancy in the underlying security. As described more fully below, the CBOE believes that the grant of double-width relief for low-priced options will provide market makers with more pricing flexibility with which to protect themselves.

Under the proposal, CBOE market makers will not be permitted to widen their quotes when the NYSE prints a trade at or within its Liquidity Quote. Because the NYSE disseminates Liquidity Quotes, which are quotes of substantial size outside of the regular disseminated quote, the CBOE notes that CBOE market makers should not be surprised if the NYSE prints a trade outside of its regular quote but at or within its Liquidity Quote. For this reason, the CBOE does not propose to allow the MPC to authorize CBOE market makers to widen their quotes when the NYSE prints a trade at or within its Liquidity Quote. However, if the NYSE prints a trade outside of the Liquidity Quote, a CBOE market maker would be able to widen its quotes. The following example illustrates the operation of the proposal with respect to Liquidity Quotes:

- NYSE disseminated quote: $23.10–$23.20, 300 × 1000
- NYSE Liquidity Quote: $22.95–$23.35, 15,000 × 15,000

With the above quotes, if the NYSE reports a trade between $22.95 and $23.35, CBOE market makers would not be permitted to quote double-wide. If the NYSE reports a trade below $22.95 or above $23.35 without changing its disseminated quote, CBOE market makers would be permitted to quote double-wide.

The CBOE intends to automate its systems so that the CBOE's autoquote systems automatically will widen the quote to double the bid-ask differential upon the occurrence of either of the two triggering events.[10] The quotes will remain double-width until the triggering event ceases, at which time CBOE systems automatically will return the quote to the normal bid-ask differential. Accordingly, if the primary market's quotes invert and the CBOE quotes double-wide, the CBOE's quotes must return to normal width when the underlying market's quotes no longer are inverted. Similarly, if the primary market prints a trade outside of its disseminated quote, the CBOE may quote double-wide until the print is no longer outside of the disseminated quotes (*i.e.*, until the quotes move to encompass the previous print or the next print is inside of the disseminated quotes).[11]

The CBOE notes that the automation of this process ensures that double-width relief will take effect only when permissible and, more importantly, will last only as long as the condition that necessitated it occurs. Thus, there will be no sustained dissemination of stale double-wide quotes when one of the triggering events is not present.[12] In addition, the CBOE states that a market maker will be able to utilize the double-width relief only if the market maker has an automated quotation system that returns the market maker's quotes to normal width upon the termination of the triggering event.[13] Double-width relief will not be available to market makers who must rely on manual input to restore quote values to normal width.

The CBOE notes that the grant of double-width relief will not result in the automatic execution of customer orders at artificially wide prices.[14] According to the CBOE, neither RAES nor the CBOE Hybrid System will automatically execute incoming orders at prices inferior to the NBBO. Instead, orders received while the CBOE is not the NBBO will route to PAR, where the DPM can expose the order to the crowd or send a linkage order to an away market. Accordingly, the CBOE notes that orders received while the CBOE's quotes are double-wide would receive a measure of price protection.

In addition, the CBOE represents that the purpose of the proposal is not to create a heightened profit opportunity by allowing CBOE market makers to execute trades at widened quotes and, hence, increased profits.[15] Instead, the CBOE believes that the proposal represents a narrowly-tailored protective measure designed to enable CBOE market makers to widen their quotes when a situation occurs in the underlying market that prevents accurate pricing. Under the proposal, market makers will have the ability, if they choose, to widen their quotes to limit the losses that may occur when the underlying market disseminates faulty or delayed information.

Necessity for the Relief Requested

According to the CBOE, the main component of equity option pricing is the value of the underlying security. The CBOE states that accurate option pricing is impossible if the value of the underlying security is unreliable or indiscernible. The following examples provided by the CBOE highlight the difficulties and risks in pricing options when the quote for the underlying security is inverted and/or when the underlying market prints a trade outside of its disseminated quote.

a. Underlying Market Disseminates an Inverted Quote

Assume that the quote for stock ABCD is $21.06–$21.16 and that, based on those prices, the quote for the July 20 call option is $1.15–$1.25. Now assume that the stock quote changes to $21.12–$21.02, creating an inversion. Under these circumstances, it is not clear which price, the bid or the offer, is correct, or whether both prices are incorrect. If the bid is correct, the quote for the underlying stock might be

but does not exceed $5; no more than $0.50 where the bid is more than $5 but does not exceed $10; no more than $0.80 where the bid is more than $10 but does not exceed $20; and no more than $1.00 where the bid is more than $20. The bid/ask differentials do not apply to in-the-money series where the underlying securities market is wider than the differentials set forth in CBOE Rule 8.7(b)(iv). For those series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

[8] Upon Commission approval of the proposal, the CBOE, prior to the effective date of the rule, will disseminate to members a Regulatory Circular that identifies the specific ETF that will serve as the underlying security for each option class. *See* Amendment No. 3, *supra* note 5.

[9] *See* Amendment No. 3, *supra* note 5.

[10] *See* Amendment No. 1, *supra* note 3.

[11] *See* Amendment No. 3, *supra* note 5.

[12] *See* Amendment No. 1, *supra* note 3.

[13] *See* Amendment No. 3, *supra* note 5.

[14] *See* Amendment No. 2, *supra* note 4.

[15] *See* Amendment No. 2, *supra* note 4.

$21.12–$21.22, which might drive the options quote to $1.25–$1.35. If the offer is correct, the quote for the underlying stock might be $20.92–$21.02, which might drive the options quote to $1.05–$1.15. If both the bid and the offer for the underlying stock are incorrect, it is difficult to know what the price of the underlying stock might be. Assuming that either the bid or the offer is correct, but not both, the stock price probably ranges somewhere between $20.92–$21.22, which is three times wider than the original non-inverted quote.

If a CBOE market maker believes that the bid for the underlying stock is correct and has a quote size of 25-up at $1.25–$1.35, assume he executes an incoming market order to sell at $1.25. Now assume that the price of the underlying stock corrects to $20.92–$21.02, sending the market maker's quote to $1.05–$1.15, and that the market maker receives an incoming market order to buy, which he executes at $1.15. Under these circumstances, the market maker has purchased the options (*i.e.*, the market maker was on the contra side of the first market order to sell) at $1.25 and sold the options (*i.e.*, the market maker was on the contra side of the second market order to buy) at $1.15, locking in a loss of $0.10, 25 times.

b. Underlying Market Reports a Trade Outside of the Disseminated Quote

According to the CBOE, it is not uncommon for the primary market for an underlying security, in its haste to report trades to the tape, to report trades before changing the disseminated quote, resulting in a transaction that falls outside of the disseminated quote. For example, assume that the disseminated quote for a stock is $22.10–$22.25 and that the last sale was $22.15. Without a change in the quote the next sale is reported at $22. In this instance, the market for the underlying security could come out in any direction, *i.e.*, it could be $21.75–$22, it could be unchanged, or it could be $22.00–$22.25. As in the previous example, the CBOE market maker must attempt to guess where the market for the underlying security will come out. If the market maker guesses incorrectly, he has exposure. Allowing the market maker to widen his quote allows him a measure of protection until the market for the underlying security again reports trades within the disseminated quote.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or 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 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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–25 and should be submitted by December 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28850 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78(f).

[17] 15 U.S.C. 78(f)(b)(5).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48774; File No. SR–CSE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. and Amendment No. 1 To Change Its Name to National Stock Exchange

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2003, The Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the CSE. On November 12, 2003, the Exchange filed an amendment to the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and has designated the proposed rule change as one being concerned solely with the administration of the Exchange under Rule 19b–4(f)(3) of the Act,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment on the proposed rule

[1] 15 U.S.C. 781(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 12, 2003 letter from Jennifer M. Lamie, Assistant General Counsel and Secretary, CSE, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the CSE replaces ''involves a member due, fee or other charge'' with ''is concerned solely with the administration of the Exchange'' in Item III below, to bring it into conformity with Rule 19b–4(f)(3) under the Act. 17 CFR 240.19b–4(f)(3).

[4] 15 U.S.C. 781(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(3).

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Amended Articles of Incorporation, By-Laws and Rules to change the name of the Exchange to National Stock Exchange[SM]. The text of the proposed rule change is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE 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 CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

First organized in 1885, the CSE operated as a floor-based exchange in Cincinnati, Ohio, into the mid-1970s. The Exchange thereafter developed and implemented an electronic exchange that has been in operation for over 20 years. In 1988, the CSE engaged the Chicago Board Options Exchange as its systems facilities manager and, thereafter, the CSE determined to move its headquarters to Chicago in the early 1990s.

Today, with enhancements in technology, orders and quotations are sent to the Exchange from all over the country, and the Exchange trades securities listed in the New York Stock Exchange, the American Stock Exchange and the Nasdaq Stock Market. In keeping with this expanding role, the members of the Exchange and its Board of Trustees have deemed it advisable that the name of the Exchange be changed from The Cincinnati Stock Exchange to National Stock Exchange.

The three documents that need to be revised to accomplish and reflect the name change are the Exchange's Amended Articles of Incorporation, By-Laws and Rules. The Exchange represents that the filing reflects a name change only and does not affect the manner of the Exchange's operations and governance structure.

2. Statutory Basis

The CSE believes the proposed rule change is consistent with Section 6(b)(1) of the Act[6] in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

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

The members of the Exchange approved the name change at a special membership meeting held on October 23, 2003 pursuant to Article II, Section 10.2 of the Exchange's By-Laws.

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[7] and subparagraph (f)(3) of Rule 19b–4, thereunder,[8] because it is concerned solely with the administration of the exchange. At any time within sixty (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, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be 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 Exchange. All submissions should refer to file number SR–CSE–2003–12 and should be submitted by December 10, 2003.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28893 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(3).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48775; File No. SR–DTC–2003–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Processing of Maturity Presentments in DTC's Money Market Instrument Program

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on, September 30, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow DTC to implement new Money Market Instrument (''MMI'') Program procedures regarding the processing of Maturity Presentments (''MP'').[2] Specifically, the new procedures would allow an Issuing/Paying Agent (''IPA'') to assign processing priorities to the MMI issuers for which the IPA acts as agent.

[1] 15 U.S.C. 78s(b)(1).

[2] The references to maturity presentments are intended to cover, in addition to MPs, other payment obligations of MMI issuers, such as periodic principal payments and periodic interest payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under DTC's current procedures for the processing of MPs, early on the maturity date (generally around 2:00 a.m.) DTC initiates deliveries of the maturing paper from the accounts of participants having positions in the maturing paper to the MMI participant account of the IPA. Each MP is processed as the equivalent of a book-entry delivery-versus-payment transfer. As such, MPs may ''recycle'' just as any delivery would if the net debit cap or collateralization controls applicable to an IPA's account prevent the delivery from updating. Recycling MPs would update once additional funds (*e.g.*, from intraday settlement progress payment (''SPPs'') or from new issuances) are credited to the IPA's account. With the exception of a recent change enabling an IPA to target settlement credits from an SPP to a specific issuer's maturity presentments, MPs update on a random basis.[3] There is no provision in DTC's current procedures enabling an IPA to assure that the recycling MPs of a specific issuer update by allocating to that issuer's MPs all or a specified portion of the IPA's net debit cap or by applying to that issuer's MPs settlement credits derived from the new issuance of its paper. By the same token, because of the random nature of MP processing, the IPA is unable to prevent a portion of its net debit cap as well as any ''excess'' or ''residual'' credits from being used to update the MPs of an issuer to which the IPA would prefer not to extend credit.[4]

The proposed rule change would provide for the application of new issuance settlement credits to the MPs of the same issuer on a best efforts basis and would give IPAs the option to prioritize the order and manner in which MPs are processed, including the option to designate an issuer as self-funding.[5] Systemically, DTC would attempt to align activities within the MMI system so that monies from Issuer A's credits are generally applied to Issuer A's MPs, subject to existing collateral monitor and net debit controls.

Under the alignment approach, once an IPA has incurred a net debit up to its applicable net debit cap (or the IPA's collateral is fully used), subsequent MPs presented to the IPA's account will still recycle as they do today. When an IPA processes a new issuance of an MMI into the system and the issuance transaction updates into the receiving participant's account, the resulting credit them becomes available in the IPA's account to fund a recycling MP. At this time, the revised MMI system would inquire against the queue of recycling MPs to determine if there is an MP for the same issuer with the same base CUSIP that could be processed against the available credit. Once the appropriate MP is identified, that MP would be taken off the recycle queue and would be processed into the IPA's account. As further issuances for that issuer occur, additional MPs for the issuer would be processed so that MP processing would remain in rough alignment with the related issuance activity. If no offsetting MP is available on the recycle queue, the credit would be applied to an MP from another issuer, as is the case today, to make use of the available liquidity in the IPA's settlement account.

Although the current procedures have worked well, since the events of September 11, 2001, participants in DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. The proposed IPA rule change would address concerns that IPAs have raised about the random nature of DTC's process for updating maturity presentments by providing IPAs with the means to exercise greater control of their intra-day liquidity requirements and credit risk.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[6] and the rules and regulations thereunder because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The subject proposals were developed in consultation with participants in the MMI market and are included as recommendations in a Discussion Paper issued jointly by The Bond Market Association and The Depository Trust & Clearing Corporation on March 31, 2003. DTC advised participants of the proposed modifications in Important Notice 5336 (October 10, 2003).[7]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in **Federal Register**, or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC 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

[3] Securities Exchange Act Release No. 48145 (July 9, 2003), 68 FR 42442 (July 17, 2003) [File No. SR–DTC–2003–03] (proposed rule change allowing DTC to modify its settlement progress payment procedures to allow DTC participants to direct proceeds from a specific SPP be used to fund a particular transaction).

[4] ''Excess'' credits refer to credits resulting from an issuer's new issuances that exceed that issuer's offsetting MPs, SPPs that are not targeted to a specific issuer's MPs, as well as any unallocated net debit cap. ''Residual'' credits refer to credit balances from new issuances and targeted SPPs that are not large enough to completely offset the same issuer's MPs.

[5] Under the proposed rule change, IPAs would be able to prioritize between issuers by using new Participant Terminal System (''PTS'') functions. IPAs logged into DTC's MMII PTS function would select ''Issuer Priority Control'' to access the main menu of IPA-issuer options. This new functionality would allow IPAs to select which issuers' MPs would recycle at the bottom of the ATP queue; perform an issuer control inquiry on selected issuers; maintain an audit trail for selected issuers; and inquire about MPs for selected issuers.

[6] 15 U.S.C. 78q(b)(3)(A).

[7] DTC advised participants of additional MMI system modifications in Important Notice 5311 on October 10, 2003. Those modifications are not within the scope of this rule filing.

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2003–12. This file number should be included on the subject line if e-mail is used to help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC. Copies of the proposed rule change and all subsequent amendments are also available at *www.dtc.org/impNtc/mor/index.html.* All submissions should refer to File No. SR–DTC–2003–12 and should be submitted by December 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28851 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48756; File No. SR–ISE–2003–03]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange, Inc., Relating to Market Maker Obligations

November 7, 2003.

I. Introduction

On February 19, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 803 to clarify the obligations of the ISE's Primary Market Makers (''PMMs'') when handling orders from persons who are not brokers or dealers in securities (''Public Customers'') when there is a better price available on another exchange. On September 15, 2003, the Exchange amended the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 1, 2003.[4] On October 1, 2003, the Exchange amended the proposed rule change.[5]

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended. In addition, the order approves, on an accelerated basis, Amendment No. 2.

II. Discussion

The Commission 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 exchange.[6] In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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.

The Commission finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends because it clarifies the obligations of a PMM when addressing a Public Customer order when there is a better price displayed by another market. Given the intermarket linkage between the ISE and the other options exchanges (''Linkage''), this clarity should provide guidance to PMMs in the satisfaction of their best execution obligations with respect to Public Customer orders.

The Commission notes that the proposed rule change, as amended, would require specifically that, upon receiving a Public Customer order, a PMM must, as soon as practical, either execute the order at the best available price or send a Principal Acting as Agent Order through Linkage to obtain the best price for the order. The proposed rule change, as amended, also would require that a PMM must act with due diligence in handling Public Customer orders and must accord such orders priority over the PMM's principal orders. The Commission believes that the proposed rule change, as amended, should protect investors and the public interest by providing additional safeguards designed to ensure that PMMs handle Public Customer orders appropriately. Moreover, the Commission believes that the proposed rule change, as amended, should enhance competition and increase liquidity in the options markets by affirmatively requiring that PMMs react to an incoming order as soon as practical by either executing the order or routing it through Linkage.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–ISE–2003–03), as amended, be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 12, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48539 (September 25, 2003), 68 FR 56660.

[5] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposed to amend the proposed rule change to correct a typographical error in the rule text and to renumber the new Supplementary Material. The Commission notes that the technical changes to the proposed rule change, as amended, contained in Amendment No. 2 were included in the notice published for public comment. *See* note 4, Securities Exchange Act Release No. 48539 (September 25, 2003), 68 FR 56660 (October 1, 2003) (SR–ISE–2003–03).

[6] In approving the proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28894 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48769; File No. SR–NYSE–2003–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Increase Its Fingerprint Processing Fee

November 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NYSE. The Exchange amended its proposal on August 29, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2003 Price List to increase its fingerprinting processing fee.[4] Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

NYSE 2003 PRICE LIST—REGULATORY FEES

Fingerprint Processing ..	—new	$35.00 [$25.50]

* * * * *

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 28, 2003, replacing NYSE's original Form 19b–4 filing in its entirety (''Amendment No. 1''). In Amendment No. 1, the NYSE converted the proposed rule change from a filing made pursuant to Section 19(b)(3)(A) to a Section 19(b)(2) filing.

[4] *See* 17 CFR 240.17f–2.

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, as amended. 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

The NYSE proposes to amend its 2003 Price List to increase its fingerprint processing fee. Rule 17f–2 of the Act[5] requires the fingerprinting of, among others, every partner, director, officer, and certain specified employees of a national securities exchange member, broker, and dealer. Further, such fingerprints must be submitted to the U.S. Attorney General's Office or its designee for processing and review.

Pursuant to a plan filed with and approved by the Commission in accordance with paragraph (c) of Rule 17f–2[6] (''Plan''), the Exchange acts as a processor of fingerprints whereby it forwards fingerprint cards (and attendant payments) to the Federal Bureau of Investigation (''FBI'').

The Exchange performs this service for non-registered employees of members, member organizations, and a limited number of others[7] pursuant to Rule 17f–2[8] (*e.g.*, transfer agents). Further, the Exchange processes some fingerprint checks on behalf of both prospective NYSE members not associated with a member organization and current members seeking to change firms. In any instance where the Exchange provides FBI fingerprint processing services to a registered person, the results are forwarded to the National Association of Securities Dealers, Inc. (''NASD'') by the member or member organization for posting to the registered person's central registration depository record.

The current total fee charged by the Exchange per fingerprint card is $25.50, which amount consists of a $24.00 processing fee charged by the FBI (of which $2.00 is returned to the NYSE) and a $1.50 processing fee charged by the Exchange. The Exchange is proposing to raise the processing fee to $11.00, an increase of $9.50. This increase would bring the total processing fee per card to $35.00. The most recent fee increase occurred in January of 1994 when the FBI raised its processing fee from $23.00 to $24.00. The fee of $1.50 charged by the Exchange has not increased since the Plan's inception in 1976.

The proposed fee increase is directly related to costs incurred from the Exchange's transition from a manual to an electronic method of submitting fingerprint cards to the FBI.[9] This transition has resulted in a significant improvement in client service. Upgrades to the Exchange system have reduced processing time per card from an average of three weeks to a current turnaround time of 24 to 48 hours.

In addition to recouping consulting and programming expenses incurred during the system upgrade, the increase would offset the cost of maintaining the service. The Exchange also believes that the increase would bring the Exchange's processing fee more in line with similar services provided by NASD.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] because the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(5)[12] of the Exchange Act in that it enables the Exchange to recover its costs with respect to fingerprint card processing.

[5] 17 CFR 240.17f–2.

[6] 17 CFR 240.17f–2(c).

[7] The NYSE has represented that it has contacted the affected group of non-members and that none of the contacted non-members has objected. According to the NYSE, the number of interested persons that are not associated with a member or member organization is a very small percentage of the total number of persons who utilize the Exchange's fingerprint processing service. Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Christopher B. Stone, Special Counsel, Division, Commission (September 23, 2003).

[8] 17 CFR 240.17f–2.

[9] The NYSE has represented that it intends to amend its Plan to reflect this change. Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Ronesha A. Butler, Attorney, Division, Commission (November 10, 2003).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change, as amended, will not 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 on the proposed rule change, as amended, 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 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, 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 NYSE. All submissions should refer to SR–NYSE–2003–21 and should be submitted by December 10, 2003.

[13] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28895 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48767; File No. SR–PCX–2003–48]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Imbalance Indicator on the Archipelago Exchange

November 10, 2003.

I. Introduction

On September 22, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the Archipelago Exchange facility (''ArcaEx''), the equities trading facility of PCX's wholly-owned subsidiary, PCX Equities, Inc. (''PCXE''), in order to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt auction display. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 16, 2003.[4] The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change on an accelerated basis.

II. Description

PCX proposes to amend PCXE Rule 1.1(q) and PCXE Rule 7.35(c) and (d) to add a new order imbalance indicator to the information that is displayed during the ArcaEx Market Order Auction[5] and during the Trading Halt Auction.[6] The new Total Imbalance Indicator would display the total net imbalance of market and limit orders at the ''Indicative Match Price.''[7] This imbalance indicator will be in addition to the existing market order Imbalance indicator that exclusively displays the imbalance of unmatched market orders.

Currently, PCXE Rule 1.1(q) defines the term ''Imbalance'' as the number of buy or sell shares that cannot be matched with other shares at the Indicative Match Price at any given time. The PCX proposes to amend PCXE Rule 1.1(q) to define two types of order imbalances, Total Imbalance and Market Imbalance. ''Total Imbalance'' would be defined as the net imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the Market Order Auction or the Trading Halt Auction. ''Market Imbalance'' would mean only the imbalance of any buy (sell) Market Orders that are not matched for execution during the applicable auction.

The PCXE's current rules governing the publication of imbalances associated with its Market Order Auction and Trading Halt Auction are set forth in PCXE Rule 7.35. During the Market Order Auction and the Trading Halt Auction, the PCX currently publishes only the unmatched portion of market orders (and not limit orders) as the Imbalance display. The PCX proposes to amend PCXE Rules 7.35(c) and 7.35(d) to establish an indicator that would display the Total Imbalance in addition to the Market Imbalance during the Market Order Auction and Trading Halt Auction.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5) of the Act.[9] The Commission believes that the proposal is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.[10]

The Commission believes that the dissemination of the aforementioned imbalance Indicators will provide ETP

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 48603 (October 8, 2003), 68 FR 59661 (SR–PCX–2003–48). The 21-day comment period expired on November 6, 2003.

[5] *See* PCXE Rule 7.35(c).

[6] *See* PCXE Rule 7.35(d).

[7] *See* PCXE Rule 1.1(r).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Holders and Sponsored Participants (collectively ''Users'') with additional information with which to make trading decisions during Market Order Auctions and Trading Halt Auctions. Accordingly, this enhancement should facilitate improved order interaction and foster price competition. The Commission believes that the proposed rule change will provide a more transparent and efficient market operation, and will enhance the information available to investors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed rule change will enhance the information available to ArcaEx Users to assist them in making investment decisions during the Opening Session and prior to the re-opening of trading in a security following a trading halt. The Commission further notes that PCX has represented that ArcaEx has already developed the capability to publish the new Total Imbalance indicator.[11]

IV. Order Granting Accelerated Approval

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (SR–PCX–2003–48), is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28892 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

[11] Telephone conversation between Peter Bloom, Regulatory Policy, PCX and Tim Fox, Attorney, Commission on October 30, 2003.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48768; File No. SR–PCX–2003–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. to Amend PCXE Rule 7.37(d) Relating to Routing Orders Away

November 10, 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 September 25, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCXE Rule 7.37(d) relating to the routing of orders to away market centers or market participants. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

PCX Equities, Inc.

Rule 7

Equities Trading

Order Execution

* * * * *

Rule 7.37. (a)–(c) No change.

(d) Step 5: Routing Away.

(1)–(2)—No change.

(A)(i) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order *equal to the price and no greater than the size* [priced at] *of* the quote published by the market center or market participant. *The remaining portion of the order, if any, shall be ranked and displayed in the Arca Book in accordance with the terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.*

(ii)—No change.

(B) The *order that is routed away shall remain outside the Archipelago Exchange for a prescribed period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant market center or market participant.* [Archipelago Exchange shall attempt to match the part of the order that has not been routed away against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above.]

(i) While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book.

(ii) Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.

(C) [Orders routed to other market centers or market participants shall remain outside the Archipelago Exchange for a prescribed time period during which they may be executed (in whole or in part) or declined. While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.]

[(D)] *Where an* [In the event that a marketable] order *or portion of an order is* routed *away* [from the Archipelago Exchange to another market center or market participant] *and* is not executed *either in whole or in part* [in its entirety] at the other market center or market participant['s quote] (*i.e.*, all attempts at the fill are declined or timed-out), *the order shall be ranked and displayed in the Arca Book in accordance with the terms of such order under Rule 7.36 and such order shall be eligible for execution under Rule 7.37.* [the Archipelago Exchange shall attempt to match the residual or declined market order against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above. Any remaining unmatched trading interest shall be re-routed to another market center or market participant at the next available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

displayed price level pursuant to this paragraph (d)(2) above.]

[(E) When routing an order in an Eligible Security away to another market center, the Corporation shall utilize such electronic intermarket linkages and order delivery facilities as may be approved by the Board of Directors from time to time, subject to such applicable requirements as may be agreed to with the relevant market center.]

[(e) If an order has not been executed in its entirety after following Steps 1–5, the order shall be ranked in the Arca Book pursuant to Rule 7.36.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

(1) Purpose

To clarify language with respect to order execution on the Archipelago Exchange (''ArcaEx'') facility, the PCX proposes to modify PCXE Rule 7.37(d) relating to the routing of orders to away market centers or market participants.[3] This modification does not seek to change ArcaEx's current functionality, but rather to clarify its existing functionality.

Currently, PCXE Rule 7.37(d) describes the process for orders that are routed outside the Archipelago Exchange. The rule states that orders will be routed to the extent they have not been executed in their entirety subject to PCXE Rules 7.37(a) through (c) and are not designated as a certain order type.[4] The proposed rule change would clarify the size and price of the routed order. Specifically, the proposed rule change designates that orders would be routed at the price and at a size no greater than the size of the quote published at the away market center or market participant. Furthermore, the proposed rule change would clarify that in the case where the order is (i) greater than the away market center's quote size, or (ii) is unexecuted or canceled by the away market center, the remaining portion of the order will be displayed in the ArcaEx Book pursuant to PCXE Rule 7.36 and eligible for execution under PCXE Rule 7.37.

(2) Statutory Basis

The PCX believes that this proposal is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6], in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–54 and should be submitted by December 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28896 Filed 11–18–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The fifth step of the ArcaEx execution algorithm involves routing orders away to other market centers or market participants. This will occur if there are no opportunities to match an order within ArcaEx, or to access the best price available in the market. Routing is available only to those ETP Holders who have entered into a Routing Agreement. *See* PCXE Rule 7.37(d).

[4] PCXE Rule 7.37(d) states that orders designated as Fill-or-Return, Fill-or-Return Plus, or Post No Preference (''PNP'') will be canceled without being routed to another market participant.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3556]

State of Texas

Hidalgo County and the contiguous counties of Brooks, Cameron, Kenedy, Starr and Willacy in the State of Texas constitute a disaster area due to excessive rain and flooding that occurred September 18 through October 20, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 12, 2004 and for economic injury until the close of business on August 12, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	

	Percent
Homeowners With Credit Available Elsewhere	5.125%
Homeowners Without Credit Available Elsewhere	2.562
Businesses With Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.100

The number assigned to this disaster for physical damage is 355606 and for economic injury the number is 9X8300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 12, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–28867 Filed 11–18–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3546]

Commonwealth of Virginia (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 13, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 8, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–28866 Filed 11–18–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 183–35K, Airworthiness Designee Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular AC 183–35K, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular, Advisory Circular (AC) 183–35K, Airworthiness Designee Information, that announces a new Function Code 49, Aging Airplane: Inspection and Records Review. Function Code 49 will allow a Designated Airworthiness Representative (DAR) or the Organizational Designated Representative (ODAR) to conduct ''* * * structural spot inspections and focused records reviews. * * *'' required by the Aging Airplane Safety Rules (14 CFR parts 121, 129, and 135, sections 121.368, 129.33, 135.422, or 135.423). (For more information regarding Function Code 49, *see* the paragraph entitled ''Qualifications.'') This AC also provides information regarding Internet access for FAA directives, a designee directory, and the Designee Web Site. This AC also provides guidance concerning designee application, authorized functions, and initial and subsequent certificates of authority for Designated Manufacturing Inspection Representatives (DMIR), Designated Airworthiness Representatives (DAR), Organizational Designated Airworthiness Representatives (ODAR), Data Management Designated Airworthiness Representatives (MDAR), Designated Alteration Stations (DAS), manufacturing organizations with a Delegation Option Authorization (DOA), and organizations authorized under the provisions of Special Federal Aviation Regulations (SFAR) No. 36.

Qualifications

DAR and ODAR applicants must meet applicable general and specialized experience listed below.

General Requirements

a. Applicants must be proficient in and have current and thorough working knowledge of Title 14 of the Code of Federal Regulations (14 CFRs), FAA Directives, and other related materials.

b. Applicants must have unquestionable integrity, a cooperative attitude, and the ability to exercise sound judgment.

c. Applicants must have the ability to maintain the highest degree of objectivity while performing authorized functions on behalf of the FAA.

d. These applicants must have 5 years of experience as a quality auditor involved in airplane structural inspections and records review.

e. A good command of the English language, both oral and written is required.

f. Applicants applying for this new function code must be thoroughly familiar with the appropriate chapters of FAA Order 8300.10, Airworthiness Inspectors Handbook, and have satisfactorily completed on-the-job training from the local Certificate Holding Office.

g. Selected applicants must have specific knowledge in airplane structures and airplane corrosion. Other training will be required through the FAA Directives system as determined by the Administrator.

Specialized Requirements

A DAR or ODAR applicant for the Aging Airplane: Inspection and Review function code 49 must meet the following specialized experience. Individuals who are to perform authorized functions under an ODAR need only meet the specialized experience required for the specific function to be performed.

DAR Applicants

(1) DAR applicants must have 5 years of Structural Spot Inspection and Air-Carrier Records Review experience as an FAA airworthiness maintenance inspector. These applicants must have experience on the same type and complexity of airplane for which the authorization is sought, a current airman certificate with both Airframe and Powerplant ratings, or

(2) The applicants must possess advanced airplane maintenance experience at the level of supervisor/lead in structural inspections and airplane records review leading to an ''approval for return to service.'' (Examples would include Chief Inspector or Director of Maintenance at an FAA-approved repair station or at the facility of the holder of an air-carrier certificate.) The applicant must hold a current airman certificate with Airframe and Powerplant ratings or an appropriate repairman's certificate with the proper qualifications and skills, and the ability to determine maintenance, repairs, alterations, and operational checks on airplanes are in accordance with FAA regulations.

ODAR Applicants

An ODAR applicant must be:

(1) The holder of a Certified Repair Station under part 145 with the appropriate class ratings, or

(2) An air-carrier certified under parts 121, 129, or 135. Both must have person(s) certificated under part 65 in its employ that meet the qualifications

specified in paragraphs ''a.'' through ''g.'' under General Requirements. The collective technical and management experience of the authorized representatives must pertain to the type of authorizations sought.

DATES: Comments must be received on or before December 1, 2003.

ADDRESSES: If possible, please submit your comments electronically to John M Rice/AMC/FAA. Otherwise, send all comments on the proposed AC to: FAA, Attention: Mr. John M. Rice, AFS–640, P.O. Box 25082, Oklahoma City, OK 73125. Comments may be inspected at the above address between 7:30 and 4 p.m. weekdays, except Federal holidays. All comments should contain the name and telephone number of the individual or company making the comment, the paragraph and page number that the comment references, the reason for comment, and the recommended resolution.

FOR FURTHER INFORMATION CONTACT: FAA, Attention: Mr. John M. Rice, AFS–640, PO Box 25082, Oklahoma City, OK 73125, telephone (405) 954–6484, fax: (405) 954–4748.

SUPPLEMENTARY INFORMATION: Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 183–35K and submit comments, in duplicate, to the address specified above. All communications received on or before the closing data for comments will be considered by the Regulatory Support Division before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://av-info.faa.gov/dst/reference.htm* and taking the following steps: Select ''Advisory Circulars,'' next scroll down to and select ''Draft AC 183–35K.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Oklahoma City, Oklahoma, on November 12, 2003.

Joseph K. Tintera,

Manager, Regulatory Support Division.

[FR Doc. 03–28819 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 9, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590-001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on November 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16072.

Petitioner: Alaska Air Carriers Association.

Section of 14 CFR Affected: 14 CFR 61.3(a) and (c), 121.383(a)(2), and 135.243.

Description of Relief Sought: To permit air carriers that are members of the Alaska Air Carriers Association to issue its flight crewmembers written confirmation of an individual FAA-issued crewmember certificate based upon information in that air carrier's approved record system.

[FR Doc. 03–28817 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–65]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on November 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–14013.

Petitioner: EMBRAER Empresa Brasileira de Aeronáutica S.A.

Section of 14 CFR Affected: 14 CFR 25.841(a)(2)(ii), Amendment 25–87.

Description of Relief Sought/Disposition: To permit EMBRAER, for the Model ERJ–170 series airplanes, to be relieved of the requirement that the airplane cabin altitude during a decompression be limited to 40,000 feet for any duration.

Grant, 10/24/2003, Exemption No. 8160.

Docket No.: FAA–2003–15575.

Petitioner: Associated Air Center.

Section of 14 CFR Affected: 14 CFR 25.785(d) and 25.813(e).

Description of Relief Sought/Disposition: To provide relief from the requirements of § 25.785(d), amendment 25–32, that requires a firm handhold be provided in the aisles and § 25.813(e), amendment 25–46, to allow installation of interior doors between passenger compartments, on the Boeing model 767–200, serial number 33685.

Grant, 10/17/2003, Exemption No.8157.

[FR Doc. 03–28818 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–AOO To Impose, and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Altoona-Blair County Airport, Martinsburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose, and impose and use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 19, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Charles E. Pillar, Jr. C.M. of Blair County Airport Authority at the following address: 2 Airport Drive, Martinsburg, Pennsylvania 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Blair County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose, and impose and use the revenue from a PFC at University Park Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 3, 2004, the FAA determined that the application to impose, and impose and use the revenue from a PFC submitted by Blair County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 2, 2004.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: January 31, 2008.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $232,460.

Brief description of proposed project(s):

Impose Only

Extend Runway 12–30 Phase I, Design, and Conduct Environmental Assessment Study, Phase II.

Impose and Use

Develop PFC Program and PFC Application.

Construct Aircraft Rescue and Fire Fighting Building.

Rehabilitate T-hangar Taxilane and Terminal Apron.

Acquire Snow Removal Equipment.

Security Enhancements.

Acquire Land for Runway 2–20 Primary Surface, Phase I and Phase II.

Improve Snow Removal Building.

Improve Runways 2–20, Runway Safety Areas, Phase I, Environmental & Design.

Expand South Hangar Apron, Phase I Environmental & Design.

ARFF Gear, Fire Retardant Clothing/SCBA's.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Charter Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Place, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Blair County Airport Authority.

Issued in Camp Hill, PA, on November 5, 2003.

Lori Ledebohm,

PFC Coordinator, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 03–28826 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34410]

Buffalo & Pittsburgh Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting a petition for exemption from the prior approval requirements of 49 U.S.C. 10902 for Buffalo & Pittsburgh Railroad, Inc. (BPR), a Class II carrier, to acquire from CSX Transportation, Inc. (CSXT) and to operate a 16.82-mile line of railroad between Creekside and Homer City, PA.

DATES: The exemption will be effective on December 19, 2003. Petitions to stay must be filed by December 1, 2003. Petitions to reopen must be filed by December 9, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34410 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–

0001. In addition, one copy of all pleadings must be served on petitioner's representative, Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Suite 200, Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: November 12, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28754 Filed 11–18–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the ''Pay.gov User Agreement.''

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Donald James, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Room 8002, Cincinnati, OH 45202; phone 513–684–3531.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Donald James, Alcohol and Tobacco Tax and Trade Bureau, 550 Main Street, Room 8002, Cincinnati, OH 45202; 513–684–3531.

SUPPLEMENTARY INFORMATION:

Title: Pay.gov User Agreement.

OMB Number: New Collection.

Recordkeeping Requirement ID Number: To be determined.

Abstract: The Pay.gov User Agreement will be used to identify, validate, approve, and register qualified users to allow for submission of electronic forms using the Pay.gov System.

Current Actions: This is a new collection.

Type of Review: New collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5800.

Estimated Total Annual Burden Hours: 483.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 5, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–28897 Filed 11–18–03; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the Tobacco Products Manufacturers—Notice for Tobacco Products, TTB REC 5210/12 and Records of Operations, TTB REC 5210/1.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005, 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Notice for Tobacco Products, TTB REC 5210/12 and Records of Operations, TTB REC 5210/1.

OMB Number: 1513–0091.

Recordkeeping Requirement ID Number: TTB REC 5210/12 and TTB REC 5210/1.

Abstract: Tobacco products manufacturers maintain a record system showing tobacco and tobacco product receipts, production and dispositions which support removals subject to tax; transfers in bond; and inventory records. These records are vital to tax enforcement.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 108.

Estimated Total Annual Burden Hours: One (1).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 5, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–28898 Filed 11–18–03; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau, within the Department of the Treasury, is soliciting comments concerning the Recordkeeping for Tobacco Products and Cigarette Papers Brought from Puerto Rico to the U.S.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005; phone 202–927–8210.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sandra L. Turner, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20005; 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Tobacco Products and Cigarette Papers Brought from Puerto Rico to the U.S.

OMB Number: 1513–0108.

Recordkeeping Requirement ID Number: None.

Abstract: The prescribed records apply to persons who ship tobacco products or cigarette papers or tubes from Puerto Rico to the United States. These records verify that the amount of taxes to be paid and if required, that the bond is sufficient to cover unpaid liabilities.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Total Annual Burden Hours: One (1).

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 5, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–28899 Filed 11–18–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Planet Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 3 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6775.

SUPPLEMENTARY INFORMATION: PLANET INDEMNITY COMPANY, an Illinois corporation, has formally changed its name to RLI Indemnity Company, effective October 1, 2003. The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39216, July 1, 2003.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to RLI Indemnity Company, Peoria, Illinois.This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $3,054,000 established for the Company as of July 1, 2003, remains unchanged until June 30, 2004.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, at page 39217 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and

Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: November 12, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–28871 Filed 11–18–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–57–94]

Proposed Collection: Comment Request for Regulation Project; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Monday September 22, 2003 (68 FR 55101). This notice relates to a comment request on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

FOR FURTHER INFORMATION CONTACT: Allan Hopkins, (202) 622–6665 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This notice and request for comments that is the subject of the correction is required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506 (c)(2)(A)).

Need for Correction

As published, the comment request for Regulation Project (IA–57–94) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Regulation Project, (IA–57–94), which was the subject of FR Doc. 03–24137, is corrected as follows:

On page 55101, column 2, under the caption **SUPPLEMENTARY INFORMATION:**, line 2, the language ''OMB Number: 1545–14499'' is corrected to read OMB Number: 1545–1449''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–28922 Filed 11–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, December 16, 2003, at 1:30 p.m., Eastern standard time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, December 16, 2003, from 1:30 to 3 pm Eastern standard time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: November 4, 2003.

Sandy McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–28923 Filed 11–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 6 Taxpayer Advocacy Panel (including the states of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, December 15, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

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 an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, December 15, 2003 from 2 pm Pacific Time to 4 pm Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: November 6, 2003.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–28924 Filed 11–18–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 223

Wednesday, November 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128203–02]

RIN 1545–BA81

Partnership Transactions Involving Long-Term Contracts

Correction

In proposed rule document 03–18484 beginning on page 46516 in the issue of Wednesday, August 6, 2003, make the following corrections:

§ 1.460–4 [Corrected]

1. On page 46523, in § 1.460–4(k)(5)(iv), in the third column, in Example 11, in the first paragraph, in the 27th line from the bottom,''(ii)'' should be the beginning of a new paragraph.

2. On the same page, in the same section, in the same column, in the same paragraph, in the 14th line from the bottom,
''$800,000 xx $1,000,000''
should read,
''$800,000 x $1,000,000''.

[FR Doc. C3–18484 Filed 11–18–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 426

[CMS–3063–F]

RIN 0938–AK60

Medicare Program: Review of National Coverage Determinations and Local Coverage Determinations

Correction

In rule document 03–27742 beginning on page 63692 in the issue of Friday, November 7, 2003, make the following corrections:

§426.410 [Corrected]

1. On page 63719, in the third column, under §426.410(a), the fifth line should read, ''(1) Dockets the complaint.''

2. On the same page, in the same column, in the same section, the sixth line should read, ''(2) Determines whether the complaint is—.''

[FR Doc. C3–27742 Filed 11–18–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
November 19, 2003

Part II

Postal Rate Commission

39 CFR Part 3001
Periodic Reporting Rule; Final Rule

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–3; Order No. 1386]

Periodic Reporting Rule

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule that updates the periodic reporting regulations. These regulations identify the data and information the Postal Service is to file with the Commission on a regular, ongoing basis. The final rule differs from the proposed rule in several important respects. The Commission has narrowed or eliminated some filing requirements and has incorporated some flexibility in meeting other requirements. Adoption of these changes should facilitate the public's ability to more readily grasp the quantitative basis and support for Postal Service proposals.

DATES: Effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 2272 (Thursday, January 16, 2003)

Executive Summary

When the Postal Service requests a general rate increase it supports the request with estimates of how much each of its products costs, and how much revenue it needs. The validity of these estimates are central issues in the hearings that the Commission holds to review the request. Tens of thousands of pages of economic testimony and documentation, most of it highly technical, are offered to support raising almost $70 billion in annual revenue from over 200 postal products.

The Postal Service and interested members of the public have the right to present a case in support of the rates that they advocate, and the right to challenge the cases presented by others. The Commission must develop recommended rates based on the record within a ten-month statutory deadline. Most participants agree that this severely compressed process strains their resources to the limit. The Commission also reviews Postal Service requests for experimental rates or classifications in even more compressed time frames.

The Commission has a Periodic Reporting Rule to facilitate this process. It requires the Postal Service to provide certain relevant financial and operating reports prepared for Postal Service management. The process will be further streamlined by promptly providing the Commission and the interested public with access to the standard, routinely prepared cost and revenue data that serve as the basis for rate and classification requests.

One of the key reports that the Postal Service currently submits each year is the Cost and Revenue Analysis (CRA). It contains the Postal Service's cost, volume, and revenue estimates for the most recently completed fiscal year, both in total, and by individual product. Because the postal system has a high proportion of shared costs, it is difficult to estimate the costs that each product causes. The CRA that the Postal Service submits under the current rule estimates unit costs caused by each product, but does not provide documentation showing how those estimates were derived. Consequently, it is of limited value in identifying trends in product costs, or in analyzing their causes, which are core issues in rate and classification cases.

Under the existing Periodic Reporting Rule, the Postal Service has been providing some information about how it derives unit product costs (primarily in the mail processing and transportation areas.) The updated Periodic Reporting Rule adopted in this order asks the Postal Service to do this for all of its 20 cost segments.

For each cost segment, the updated Periodic Reporting Rule asks the Postal Service to provide the basic datasets that it uses to estimate unit product costs, and identify any new estimating technique it applies to those data to derive the unit cost estimates in the CRA. Having this information filed each year, rather than waiting for the Postal Service to provide it in a general rate case, should produce the following benefits:

- When the Postal Service files a general rate case, litigants and the Commission will already be familiar with the standard cost and revenue reports on which much of the case is based. This should reduce the need for discovery, and make it possible to shorten hearings.
- When the Postal Service files requests for experimental classifications, market tests, or negotiated service agreements, litigants and the Commission should be able to evaluate them more quickly.
- Between general rate cases, the Commission and the public will be able to analyze the accuracy of the cost, volume, and revenue projections on which current rates are based.
- Between general rate cases, if the CRA shows that cross-subsidy or other rate inequity exists, affected parties will have a basis for asking the Commission to hold a hearing to investigate the matter and fashion a remedy under § 3662.
- Between general rate cases, if the CRA shows that costs are shifting in ways that call current classifications into question, the Commission will have a basis for initiating a classification hearing to investigate the matter and fashion a remedy under § 3623.
- Between general rate cases, parties looking to propose alternative models of postal cost behavior in future rate cases will be able to analyze data that reflects current postal operations.

Seven parties filed comments in response to the Commission's proposal to update the Periodic Reporting Rule. All but the Postal Service support the rule. They note that a general rate filing typically consists of thousands of pages of highly technical testimony and computer material. They complain that the Postal Service takes whatever ''lead time'' it needs to prepare such filings, whereas they have no lead time to react to it and prepare alternatives. They argue that this makes it extremely difficult for them to comprehend the Postal Service's case and to present alternatives in the brief hearing time available. They argue that having access to a more thoroughly documented CRA will help to ''level the playing field'' in rate litigation.

The Postal Service objects that by requiring it to provide some supporting documentation for the CRA reports that it issues between rate cases, the updated Periodic Reporting Rule would impose a burden equivalent to a rate case presentation every year. It also argues that by requiring it to disclose the costs of its various products each year, the updated Rule would jeopardize the competitiveness of its products.

The update is consistent with the main purpose of the current rule, which has always been to expedite the processing of general rate cases, and to allow research into postal cost, volume, and revenue behavior to continue between rate cases. The information required by the updated rule also will facilitate the Commission's statutory duties to hear complaint cases and to initiate classification cases, regardless of whether a Postal Service rate request is pending.

The Commission finds that complying with the updated rule should not add significantly to the Postal Service's regulatory burden, since the Postal Service annually prepares almost all of this material for its own purposes. The

Postal Service's own estimates indicate that under normal circumstances complying with the updated rule would involve only a tiny fraction of the resources that it devotes to preparing a general rate filing.

With respect to potential competitive harm, the Commission believes that history shows that there is little cause for concern. The Postal Service annually disclosed the information required by the updated rule for six years (FY 1995 though FY 2000) with no indication that competitive harm resulted.

The revised rule also is consistent with recent reports by the President's Commission on the Postal Service and the General Accounting Office that conclude that greater Postal Service financial transparency is necessary.

I. Introduction

On January 8, 2003, the Commission issued a notice of proposed rulemaking (NPR) in this docket proposing to update its Periodic Reporting Rule (39 CFR § 3001.102). PRC Order No. 1358; 68 FR 2272–2275, Thursday, January 16, 2003. Rule 102 contains a list of reports and documentation that the Postal Service is required to provide on an ongoing basis to the Commission on its financial condition and operating results. Since its inception in 1976, the objective of the Periodic Reporting Rule has been to ensure that the Commission and the interested public have access to current financial data and operating results that are routinely reported to Postal Service management. This brings a number of important benefits to the ratemaking process. These benefits were mentioned briefly in the NPR, and are discussed in more depth in this notice.

The NPR observed that the list of financial reports covered by the Periodic Reporting Rule has not changed since the mid-1980s, even though the nature of the reports that the Postal Service routinely produces to inform management of its financial and operating results have evolved substantially over that time. This final rule updates the list of required periodic reports and documentation to reflect the increasingly sophisticated financial information [1] regularly produced by the Postal Service and the improved ability of the Commission and the public to understand and benefit from such reporting. The final rule is consistent with the goal of greater financial transparency for the Postal Service that has recently been recommended by the General Accounting Office and the President's Commission on the Postal Service.

Joint comments on the NPR were received from the American Bankers Association and the National Association of Presort Mailers (ABA/NAPM). Comments were also received from American Business Media (ABM), the Greeting Card Association (GCA), the Office of the Consumer Advocate (OCA), United Parcel Service (UPS) and the Postal Service. The OCA and UPS proposed additional changes that the Commission has decided not to include in the final rule.

The Purposes of the Final Rule

The final rule calls for the periodic submission of financial information that is routinely prepared for postal management between omnibus rate cases. This information does not relate directly to a particular revenue requirement or set of proposed rates, and none of the information that it seeks about the Postal Service's financial estimation process relates to the justification for or merits of that process. The data and the estimation-process information that the rule requires shed light on the ratemaking process in a generic sense, and will improve the ability of the Commission to process future rate, classification, and complaint cases within the tight deadlines imposed by the Postal Reorganization Act and the Commission's own administrative rules. The information sought will also help the affected public to participate more meaningfully in such cases. The rule seeks routinely generated reports that disclose the Postal Service's current financial condition, allow operating and financial trends to be identified as they unfold, and allow the Commission and the public to test the validity of methods by which the Commission estimated the costs, volumes, and revenues upon which current rates are based. If the Commission and the affected public have evaluated this financial background information prior to the filing of a case, it is likely that they will not have to spend a substantial part of the brief time allotted for litigating the case trying to ''get up to speed'' on the issues related to the Postal Service's routine financial reports.

The rule also seeks to permit the Commission to stay informed on the ''state of the art'' procedures by which the Postal Service currently attributes costs. Under the current regulatory scheme, the Commission is the expert body with the ultimate say on what methods should be used to attribute postal costs to classes of mail. See *National Association of Greeting Card Publishers* v. *USPS* (NAGCP IV), 462 U.S. 810, 833 (1983). As a practical matter, however, most of the methods used to attribute postal costs to the classes of mail originate with the Postal Service. This is because it controls the cost, volume, and revenue data and determines for itself what estimating techniques it will use to compile its periodic financial reports. It also controls almost all of the data that will be used in rate, classification, and complaint cases. Between cases it decides for itself what techniques will be applied to the data and incorporated into its Cost and Revenue Analysis (CRA) report. Its CRA has become a massively intricate, partially documented, automated cost attribution engine that most interested participants cannot fathom, duplicate, or develop realistic alternatives to, in the narrow litigation window available to them. The difficulty in deciphering the CRA in the time allotted has profound due process implications, since the CRA inevitably provides the methodological baseline for Postal Service rate and classification requests.

Because the data sources and estimating techniques that the Postal Service incorporates into its CRA change unpredictably, the ''state of the art'' is a moving target to the outside world. Neither the Commission nor the interested public can competently interpret the results presented in the Postal Service's routine financial reports, because they have no way to distinguish between what appear to be changes in cost, volume, and revenue behavior, from changes in the methods that the Postal Service uses to measure that behavior. Changes in data sources, or changes in estimation technique can have large impacts on the attributable cost estimates in the CRA, as the recent history of carrier street time attribution demonstrates. The Commission's rules require the Postal Service to provide detailed documentation in rate cases of the changes that it proposes in cost estimating procedures, and allows for discovery. Between rate cases, however, there is no way for the outside world to know what the state of the art in cost attribution is.

To overcome this problem, the Periodic Reporting Rule will now require the Postal Service to identify all changes made since its most recent omnibus rate request to the data sources and estimation techniques used to produce the CRA, and to provide enough supporting material to allow the Commission and the affected public to understand these changes. This provides at least some basis for

[1] Throughout this order references to ''financial information'' include cost, volume, and revenue information in aggregate, and for individual products, unless a narrower meaning is indicated.

understanding and evaluating the estimates summarized in the CRA, and provides some insight into the likely causes of the trends discerned in these summary figures.

The Commission will be able to use the information contained in adequately documented periodic reports to decide whether it should institute a classification case. Likewise, a customer or a competitor will be able to use information gained from adequately documented periodic reports to determine whether rates are in violation of the policies of the Act and whether a complaint should be filed with the Commission. Both are functions that the Act authorizes the Commission and the public to perform whether or not the Postal Service is litigating an omnibus rate request. The Commission, customers, and competitors of the Postal Service cannot make adequately informed decisions to invoke these provisions of the Act between omnibus rate cases if they cannot competently interpret or evaluate the Postal Service's routine financial reports.

More important, the partial documentation of periodic reports that the rule requires facilitates the processing of future rate, classification, or complaint cases because it gives the Commission and the affected public some hope of keeping current with the ''state of the art'' by which the Postal Service attributes costs to the classes of mail. The rule does not require the Postal Service to explain or justify the changes that it has made to its cost attribution engine, but it requires the Postal Service to disclose changes to the mechanical process by which that engine attributes costs. This will allow the Commission and the interested public to identify what the Postal Service's current CRA does, if not why it does it. By staying informed of what the Postal Service's current cost attribution engine actually does, the Commission and the interested public will be able to respond more quickly to an omnibus rate request, or to a case filed by the Postal Service under expedited rules, because they will not have to spend a substantial portion of the available litigation window reacquiring this necessary expertise.

The Periodic Reporting Rule requires the Postal Service to provide the basic datasets that it uses to produce its financial estimates in the CRA between cases. Public access to current datasets between rate cases is needed because they are the raw material that others must have if they are to develop their own cost attribution, volume forecasting, or revenue forecasting techniques that reflect current operations. Providing these datasets between omnibus rate cases facilitates the functioning of the Act because it allows potential intervenors sufficient time to develop alternative techniques.

In omnibus rate cases, and in the various proceedings that are litigated under the Commission's expedited rules, intervenors are generally unable to develop alternative models of postal cost or volume behavior within the compressed litigation window provided. Because the Postal Service has custody of virtually all of the relevant data, it has an unlimited opportunity to develop such models. This imbalance is a basic flaw in the functioning of the Act, which presumes that all interested parties to a hearing will be afforded adequate due process and procedural fairness. If intervenors do not have the basic data with which to develop models between rate or classification cases, their right to present an opposing case in a rate hearing is unnecessarily limited and more theoretical than real. By requiring that the basic datasets used to produce the Postal Service's routine financial reports be made available to others between rate cases, the updated rule helps restore basic due process rights to intervenors who wish to develop alternative cost, volume, and revenue estimating procedures on which to base rates.

Differences Between the Proposed Rule and the Final Rule

The Postal Service argues that releasing enough information between omnibus rate cases to allow its routine financial reports to be evaluated, or enough data to allow others to develop alternative models of cost or volume behavior, subverts, rather than facilitates the intended functioning of the Act. It seems to interpret the Postal Reorganization Act to grant it immunity from such activity between omnibus rate cases. The Postal Service is primarily concerned about documenting its annual CRA report, complaining that the rule would require it to provide as much supporting documentation for it as it provides in support of an omnibus rate case. In order to meet the Postal Service objections to the additional burden that the updated rule would impose, the Commission has pared back its requirements to the minimum that will still serve the basic purposes of the rule. The Commission has also incorporated some additional flexibility in meeting the requirements of the rule.

The proposed rule required the Postal Service to provide three general classes of files used to produce the current year's CRA—(1) all input datasets, (2) all processing programs used to attribute mail processing costs, and (3) all other processing programs that have changed since the most recently completed omnibus rate case. See proposed Rule 102(a), Attachment to the NPR, at page 1 of 4. The final rule narrows the first general class of files to input datasets that have changed since the last general rate case. It deletes the second general category of files, and retains the third general category. Under the final rule, datasets that have not changed, such as those from already-documented special studies, need not be provided. Similarly, under the final rule, processing programs used to attribute mail processing costs that have not changed need not be provided. See final Rule 102(a)(1).

The final rule is more flexible than the proposed rule with respect to datasets and processing programs that have been used for the first time to produce the CRA. If the Postal Service uses an estimation technique based on a new special study, the Postal Service may, under the final rule, choose to provide the Commission and the interested public with a short written narrative, or an oral briefing on that technique. The narrative or briefing should describe the data, the variables, and the analytical method used (such as the regression equation used). The purpose of the presentation would be to explain how the method was applied. The Postal Service may reserve its right to discuss the merits of its new method relative to alternative methods in the context of a formal hearing. After the written or oral presentation, the Postal Service may request a waiver of the requirement that input data and processing programs used to apply the new method be provided. If the presentation is sufficient to allow others to understand how the estimates affected by the new method were obtained, the requirement that the Postal Service provide the input data and processing programs used may be waived. See final Rule 102(a)(1)(ii).[2]

In its NPR, the Commission noted that there are significant differences between the methods used by the Commission and the Postal Service to attribute mail processing costs to subclasses of mail. It also noted that the methods that the

[2] The Postal Service did not analyze specific language of the proposed rule in its substantive comments. It complained generally, however, that the proposed rule is ''broadly worded,'' and cited this as one ground for concluding that it would require it to provide documentation that is comparable to an omnibus rate case in its ''scale and scope.'' Substantive Comments of the United States Postal Service (July 2, 2003) at 4, 22. Presumably it was referring to proposed paragraph 102(a)(1), since the remaining language in the rule is quite specific.

Postal Service uses to attribute mail processing costs are in greater flux than in other segments. The Commission felt that this made it harder to determine whether the Postal Service has correctly applied PRC-approved methods in updating the Cost and Revenue Analysis-PRC Version. Accordingly, in its NPR, the Commission proposed that the Postal Service include with the CRA all of the processing programs that it used to attribute mail processing costs. NPR at 4–5. Despite these complicating factors, the Commission has decided not to require more complete documentation of the attribution of mail processing costs than of other costs, in order to reduce the Postal Service's burden in complying with the Periodic Reporting Rule.

In addition to requiring the Postal Service to provide input data and processing programs that have changed since the most recently completed general rate case, the final rule requires that the Postal Service provide the spreadsheet workpapers (the ''B workpapers'') that show how the CRA was developed. See final Rule 102(a)(1)(i). There are so many links and interactions built into these spreadsheets that an effort to separately identify portions that have changed from portions that have not is impractical. They are so essential to understanding how the summary estimates in the CRA were obtained that they need to be provided as an integrated whole.

Therefore, under the final rule, given current costing methods, documentation of the CRA should include the following:

(1) Spreadsheets supporting the CRA. (The ''B'' workpapers. In Docket No. R2001–1 these were found in USPS–LR–J–57. These should include the workpapers for Segment 14, and the Alaska Air Adjustment, that have customarily been provided under the rule.)

(2) The CRA model. This should include the files usually provided during an omnibus rate case to allow for the replication of all of the operations used by the Postal Service's COBOL CRA/Rollforward programs. These include the Manual Input Matrix, the ''A'' report matrix, and the ''C'' report matrix. The files that contain the operating ''control strings,'' that is, the instructions to the computer model that distribute the indirect costs to classes and subclasses of mail, should be included. These files are usually named ''A,'' ''B,'' ''C,'' ''D,'' and ''F.'' They represent the instructions to the model for the development of the ''A'' report and the ''B'' report (Factor Development Report). Title files containing the categories of mail and special services that are reported in the CRA, and the titles of all 1,600 components in the USPS CRA cost matrix, should be provided. (All of this material was provided in just eight of the over 100 files that made up USPS–LR–J–6 in Docket No. R2001–1.) The printouts of the CRA and the Cost Segment and Components report should be included, as has been customary under the rule.

(3) The output data file for the In-Office Cost System (IOCS). (This was found in file PRC00.SD2 in USPS–LR–J–10 in Docket No. R2001–1).

(4) The Segment 3 accrued cost pools. (These were found in USPS–LR–J–55, Table 1, in Docket No. R2001–1).

(5) Equipment and facility-related cost spreadsheets. These three spreadsheets show the equipment variabilities for equipment maintenance labor costs, equipment parts and supplies, and capital interest costs by type of mechanized operation. The spreadsheets also develop the inputs for the components that determine the space and space-related separations for some facility-related costs, such as custodial, fuel and utilities, and rents. The inputs are data from the special facility studies and other maintenance databases. (In Docket No. R2001–1, these files were identified as FY00equip.xls, Facilt.xls, and equipvar.xls, and were sponsored by witness Smith.)

(6) Output data file for the City Carrier Cost System (CCCS). (This was identified as ''cityz.sd2'' in USPS–LR–J–12 in Docket No. R2001–1.)

(7) Output data file for the Rural Carrier Cost System (RCCS). (This was provided as the ''z'' folder in USPS–LR–J–13 in Docket No. R2001–1).

(8) The National Mail Count for rural carriers.

Procedural History of the Rule

This rulemaking has had an unusual procedural history. The NPR was issued on January 8, 2003. It allowed approximately a month for filing public comments and two weeks to file reply comments—the standard period for these procedures. The NPR proposed that part of the required information be provided in a PC-compatible format, and suggested that an informal technical conference be held if the Postal Service anticipated problems complying with this requirement. At the Postal Service's request, a technical conference was held on March 11, 2003. Afterward, the Postal Service was given three weeks to file substantive comments on the proposed update that reflected the information gained at the technical conference. See PRC Order No. 1363. At the end of that period, the Postal Service then requested an additional five weeks to file its substantive comments so that its staff could confer with its Board of Governors.

Toward the end of that period, the Postal Service urged that it not be required to file its comments until well after July 31, 2003, the date on which the report of the President's Commission on the Postal Service was due. It asserted that the proposed update had major ramifications for the Postal Service and Commission, its prerogatives as a litigant in rate cases, and the confidentiality of its commercially sensitive information. It argued that these issues should not be addressed until after the recommendations of the President's Commission were made public. The report of the President's Commission, it said, would provide the appropriate context for discussing these issues. Motion of the United States Postal Service for Further Extension of Time to File Comments, June 6, 2003, at 2–3.

General Views of the Commenters

Apart from the Postal Service, all of those commenting on the NPR have participated as intervenors in omnibus rate cases. They agree that the proposed updates would improve their ability to understand and respond to an omnibus rate filing in the time allotted. They argue that with the increasing complexity of the Postal Service's omnibus rate filings, the ''playing field'' has become tilted heavily in favor of the Postal Service. They argue that they have so little time to understand and react to the tens of thousands pages of data and documentation that support the Postal Service's rate filing that they cannot digest it all and respond to it in the time allowed. They say that by having access to enough data and documentation to understand how the Postal Service's routine financial reports are put together each year, they will be less likely to be overwhelmed when the Postal Service files an omnibus rate request that employs similar types of information. The intervenors also point out that under the regulatory structure of the Postal Reorganization Act, the Commission is required to make independent recommendations on postal rates under the severe time pressures imposed by the Act. To be adequately prepared to process an omnibus postal service rate filing under these difficult conditions, they argue, the Commission must maintain its expertise on postal cost systems and financial forecasting between rate cases. In order to do this, they say, the

Commission must have enough information to determine what data and methods the Postal Service is currently using to produce its routine financial reports.

The Postal Service does not deny that providing the routinely compiled financial information called for by the updated rule would give the Commission and the intervenors the ability to respond to Postal Service rate filings more quickly and more competently. In fact, this appears to be its main objection to the updated rule. It contends that this would upset the statutory ''balance'' between it and the remaining players in the postal regulatory scheme.

The Postal Service understands that when it withholds this information until it files a rate case, participants must spend so much of the 10-month period that is available to litigate a rate case reading and comprehending it that they have little time to prepare alternative rate proposals in response. The Postal Service does not consider this to be inconsistent with the Act. It emphasizes that the Act makes it the sole initiator of rate cases. In its view, this allows it to take all the time that it needs to prepare for litigation, and allows the Commission and the intervenors none. It insists that this procedural advantage is intended by the Act, and that it may withhold whatever financial information it wishes between rate cases in order to preserve it. It denies that it has any obligation to provide information between cases that would facilitate the Commission's performance of its functions during those cases, or would make it easier for intervenors or the public to comprehend or respond to its filings within the time constraints imposed by the statute. Substantive Comments at 15–17, 33–36.

The Postal Service argues that since the Act does not give the Commission any meaningful function to perform between rate cases, the Commission has no legitimate need for financial information during these interim periods. Therefore, it reasons, the Commission has no legitimate motive for seeking access to financial information between rate cases. It concludes that the Commission can only have ulterior motives for seeking information between rate cases, *e.g.*, to conduct annual audits and investigations of the Postal Service, to gain ''oversight responsibility,'' and to indulge in ''day-to-day monitoring of [its] detailed operations and finances.'' Id. at 7, 11, 19, 22.

Besides serving ulterior motives, the Postal Service complains that the updated rule would force it to prepare rate-case style documentation between rate cases. It argues that this will infringe upon management's statutory right not to concern itself with rate issues between rate cases, and will infringe on management's duty to manage. Id. at 21–23. It contends that most of the CRA documentation required by the rule has commercial value which the Commission would be unwilling or unable to protect from public disclosure. Id. at 31–32. Finally, it argues, by seeking basic information needed to understand and analyze the CRA, the Commission is seeking to preempt the legislative reform process that the President entrusted to the Commission on the Postal Service. Id. at 20.

As the Postal Service now interprets the Act, between the rate cases that it files, the intervenors must avoid actions or thoughts that might relate to future rate or classification cases. Otherwise, the argument goes, they will nullify the litigation advantages that the Postal Service enjoys under the Act. Similarly, the Postal Service argues, the Commission must refrain from actions and thoughts that might help it prepare for future rate or classification cases. Otherwise, its collective mind will become contaminated. The updated rule, the Postal Service contends, seeks to circumvent these constraints that it infers from the structure of the Act. Id. at 15–17.

The Postal Service's portrayal of the updated rule as a newly-hatched plot by the Commission to circumvent the Act disregards the history of the Periodic Reporting Rule. As explained in more detail below, the updated rule meets the same standards, and is designed to accomplish the same objectives, as the original rule adopted 27 years ago by the Commission. At that time, the Commission explained that the rule had two main objectives: (1) to accelerate the discovery process during future rate and classification hearings, and (2) to enable all those in the postal regulatory arena, including the Commission and the intervenors, to study postal cost behavior between rate cases in order to improve the attribution of costs during rate cases.

What is novel with this rulemaking is the Postal Service's interpretation of the Act as mandating that the flow of financial information cease between rate cases. This runs counter to the Postal Service's historic view that periodic reporting of financial data between rate cases, while not mandated by the Act, is a legitimate way to make the processing of future cases more efficient by reducing the need for discovery. Docket No. RM76–5, Postal Service Response to PRC Order No. 141 (December 7, 1976) at 2. For 27 years, the Postal Service supplied the type of information called for by the rule without suggesting that its objectives were in violation of the Act.

The vast majority of the information previously required by the Periodic Reporting Rule has been willingly provided by the Postal Service. It accepted the modest additional burden of providing such information if it was likely to provide useful background information for processing future cases. It raised objections to only a few items, sometimes arguing that an item should not be included in the rule because it was *not* information ''which could be employed for rate purposes.'' Id. at 4. The views that the Postal Service has expressed in this rulemaking are the converse of its traditional view of the rule. Where it had traditionally considered items to be appropriate for inclusion in the rule only if they ''could be employed for rate purposes,'' it now considers items to be inappropriate for inclusion in the rule precisely because they ''could be employed for rate purposes.''

The Commission did not include an elaborate justification for the update of the Periodic Reporting Rule in its NPR because it did not think that one would be necessary. The Commission assumed that the additional burden on the Postal Service of complying with the rule would be minor because the updated rule asks for only a small fraction of the information that the Postal Service provides with an omnibus rate filing. Of that small fraction, most is prepared each year by the Postal Service anyway, either to produce its own CRA, or to comply with rule 103. The Postal Service's right to litigate the merits of its procedures in a formal hearing is not infringed by the rule because the information required by the updated rule does not address the merits of, or justification for, the procedures that the Postal Service uses to produce its CRA. The Commission assumed that the commercial sensitivity of the information would not be a significant issue because the updated rule would require the types of information that the Postal Service has, in the past, freely disclosed to the public, both during and between omnibus rate cases. Because the Postal Service now challenges these assumptions, and misinterprets the Commission's motives for proposing these updates, the Commission will provide a detailed justification of the updated rule.

II. The Relationship of the Updated Periodic Reporting Rule to Legislative Reform

The Relevance of the President's Commission on Postal Service

The Postal Service has chosen to depict the update to the Commission's Periodic Reporting Rule as an attempt to fundamentally alter the ''balance of power'' that the Act strikes between the Postal Service and the Commission, focusing almost all of its arguments on the CRA documentation that the rule requires. Substantive Comments at 20. The other commenters share the Commission's view that the updated Periodic Reporting Rule is a legitimate, restrained exercise of its § 3603 authority under the Act whose effect is to only modestly increase the regularity with which the Postal Service would otherwise disclose this information.

Based on the false premise that the rule attempts to rewrite the Act, the Postal Service criticizes the Commission's decision to go ahead with the update, rather than wait for the dust from the President's Commission on Postal Service to settle. The President's Commission was organized in December, 2002, and was charged with recommending a solution to what appeared to be the Postal Service's stagnating volumes and mounting losses. The Postal Rate Commission proposed to update its rule in January 2003, one month after the President's Commission began its work. At that time, nothing was known about the direction that the recommendations of the President's Commission might take.

Due to a series of Postal Service requests for extensions of time to comment on the proposed updates, the rulemaking was still pending in June of this year. At that time, the Postal Service asked the Commission to suspend this rulemaking until after the report of the President's Commission was due to be issued, apparently so that the recommendations in that report could guide the deliberations of this rulemaking. With the unanimous support of all of the other commenters, the Commission declined the Postal Service's request for such a lengthy, additional delay, and ordered the Postal Service to file its substantive comments. The Postal Service responded with some indignation, accusing the Commission of, in effect, attempting to trump the legislative reform effort. Id. at 19–20.

One of the dominant themes in the report of the President's Commission is the need for greater transparency of Postal Service operations and finances. Its proposed regulatory scheme would allow the Postal Service to retain its monopoly over letter mail, at least initially, and give it great flexibility to set rates for competitive products. The President's Commission, however, made it clear that the price for combining monopoly power with pricing discretion over competitive products would be greatly strengthened regulatory oversight and accountability, entrusted to a new Postal Regulatory Board. First on the list of duties entrusted to the new Board would be the duty to ''ensure the financial transparency of the Postal Service.'' Report of the President's Commission on Postal Service, issued July 31, 2003, at 53. The report elaborates, at page 66:

> The Commission believes that the Postal Service has a responsibility to the public to be transparent in its financial reporting. Given its important public mission and central role in the nation's economy, changes in Postal Service economic health should not come as a surprise to those responsible for or impacted by its performance.
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> * * * * *
>
> As a unifying force in American commerce and society, and as a customer-financed government endeavor, the Postal Service should be setting *the* standard for financial transparency by which all other Federal entities are judged. While the Postal Service does, in many respects, conduct financial reporting over and above what is required of Federal agencies, it remains behind the level of disclosure offered by its corporate peers. [Emphasis in original.]

And at page 68:

> In addition to SEC-like reporting, the Commission recommends that the Board of Directors be required to submit annually a detailed report to the Postal Regulatory Board on the financial viability of the institution, providing both significant financial insights as well as adequate explanation of related trends. The report should adhere to the 'no surprises' rule, ensuring that any major changes to the fiscal health of the institution are widely understood in advance, so appropriate responses can be anticipated and generated. The Commission further recommends that this report be made available to the public.

The new Postal Regulatory Board would be empowered to set baseline rates and price caps for non-competitive services, and empowered to review rates for competitive products to ensure that they are not cross-subsidized by non-competitive products. The Board would complete reviews of competitive product prices in 60 days. In order to make this streamlined rate regulation possible, the report recommends, at page 69:

> For the Postal Regulatory Board to ensure financial transparency and make fully informed determinations on issues from rate ceilings to cross-subsidies, it must have access to the most reliable and current information possible. For this reason, the Commission recommends that the Postal Regulatory Board have the authority to request accurate and complete financial information from the Postal Service, including through the use of subpoena powers, if necessary, to obtain a thorough and reliable snapshot of Postal Service operations.

At page 67, the report concludes:

> Where the Postal Service participates in markets also served by private industry, effective oversight is essential to ensure that monopoly revenues are not manipulated to the benefit of the Postal Service's competitive offerings. *For this reason, the Commission recommends that the Postal Service periodically report on the allocation of costs among all products and services in accordance with form, content and timing requirements determined by the Postal Regulatory Board.* [Emphasis added.]

The guidance provided by the President's Commission could hardly be more direct in its support of the approach taken by the updated Periodic Reporting Rule. Indeed, the report of the President's Commission recommends going much further in mandating transparency both in general, and in the area of rate regulation. The Commission, however, is aware that the report of the President's Commission is only relevant to the extent that its recommendations are enacted into law. This may never happen, or may take years to accomplish. The Postal Rate Commission's proposal to update its Periodic Reporting Rule was conceived independently of the President's Commission, whose recommendations had not yet been formulated. The Commission's motive in persevering with its proposal was not to steer the legislative reform effort in any particular direction, or to trump it. The Commission motive was, and is, to make the existing regulatory regime more effective in achieving the objectives Congress set out for it.

The Report of the General Accounting Office

On November 13, 2002, the General Accounting Office issued a report entitled ''U.S. Postal Service Actions to Improve Its Financial Reporting.'' GAO–03–26R Postal Financial Reporting. The report found that the Postal Service's financial reporting lacked the necessary transparency in general, and that its periodic reporting, in particular, was inadequate. At page 12 of the report, it states:

> * * * it is clear from recently publicized problems in financial reporting that more detailed information and transparency are called for by both Congress and the public. Such transparency is critical for the Service because of the importance of its financial situation and the implications for

stakeholders in making their own financial plans. These factors help support stakeholders' need for timely, accurate, and complete financial information that is provided on a consistent basis.

At page 14, it continues:

We acknowledge that the Postal Service provides a significant amount of information in its rate case filings; however, this information is provided only for rate-setting purposes, and rate cases are not filed on a regular cycle. Thus, rate case information does not provide stakeholders timely information about the Service's current financial condition and changes to its expected outlook.

* * * * *

As we noted, however, these periodic financial reports do not clearly explain changes in its financial condition, outlook, and results of operations, and have not always been readily available to the public.

Apart from the Postal Service, there appears to be a public consensus on the need for more complete periodic financial disclosure.

III. The Need for Updating the Periodic Reporting Rule

A. The History of the Rule

Historically, during omnibus rate cases, the Postal Service has attempted to support its rate requests with input data, spreadsheets, and documentation that is sufficiently detailed and complete to allow the behavior of postal costs, revenues, and volumes to be evaluated and understood by the interested public. Typically, several years elapse between rate cases. During those intervals, the Postal Service has provided the Commission and the public with summary financial reports that it generates at regular intervals for use by postal management. It has included documentation of significant portions of those reports in response to the Periodic Reporting Rule. The portion provided has been a small subset of the kind of documentation that the Postal Service provides during an omnibus rate case.

As noted, most of the Postal Service's objections to the updated rule are to the requirement that the Postal Service provide the input data and documentation that it uses to prepare its annual CRA report. Substantive Comments at 2. Each year this report summarizes, at the most general level, the results of the Postal Service's procedures that estimate the amount of costs caused by each subclass of mail, and the amount of revenue that each subclass earned. The process that produces the estimates in the CRA takes dollars from hundreds of subaccounts in the Postal Service's Books of Account and assigns them to one of hundreds of ''functional'' cost components. (Functional costs are viewed as economic costs). Costs in the various functional components are analyzed to see how they vary with mail volume. The volume variable part is then distributed to subclasses according to piece counts or other ''distribution keys'' that imply subclass causation.

The Postal Service's estimates of the costs and revenues generated by each subclass of mail are derived from the intricate rules that it uses to convert its accounting costs to functional costs, apply variability percentages to functional costs, and distribute the variable portion to subclasses. When submitted in rate cases, these are the baseline estimates underlying the rate proposals made by the Postal Service. With some adjustments, CRA estimates also provide the basis of the rate proposals of the intervenors, and the rate recommendations of the Commission.

When the Postal Service files an omnibus rate request, it includes spreadsheets and computer programs that contain the CRA's conversion, attribution, and distribution rules. This is its ''cost attribution engine'' described earlier in this order. These rules and their interactions are exceedingly complex. The input data, and the processing programs and spreadsheets showing how such rules are applied to the data, occupy the equivalent of tens of thousands of printed pages. Documentation of the myriad component parts of the process by which the CRA is produced is fragmentary. There is no single, coherent narrative explanation of the process to which an outside analyst could turn to understand, evaluate, and offer alternatives to the Postal Service's CRA. An outside analyst must rely primarily on a detailed study of processing program code and spreadsheet algorithms in order to discover how the CRA is developed. The analyst must make test runs replicating this largely automated process to confirm that his or her preliminary understanding of it is correct. The expertise necessary to evaluate the methods by which the Postal Service produces the CRA, or to develop alternatives to it, must be accumulated over many years. Despite attempts over the more than 30 years that the Commission has been processing omnibus rate requests, no outside party has been able to replicate the full CRA upon which the Postal Service bases its rate requests, or develop a comprehensive alternative to it, within the 10-month window that the Act provides for litigating a rate case. Under these circumstances, even with the voluminous documentation provided by the Postal Service during omnibus rate cases, much of the process by which it produces its CRA has, of necessity, been accepted on faith by intervenors and the Commission.

Since the methods that the Postal Service uses to produce the CRA continually evolve in minor, and sometimes major, ways, the CRA presents a ''moving target'' for outside analysts. Each time an omnibus rate request is filed, those on the outside of the CRA development process (the Commission and affected public) struggle to grasp these procedures and track their evolution. Even though this task can consume a majority of the 10-month period that the Act allots for processing a rate case, it must be completed before the intervenors and the Commission can effectively evaluate or respond to the Postal Service's rate proposals.

To mitigate this problem, the Commission implemented its Periodic Reporting Rule in 1976. At that time it explained the purposes of the rule and the policies underlying its decision about what the rule should contain as follows:

Currently, a majority of the data which the Commission receives from the United States Postal Service (Postal Service) is obtained only when a rate request is pending before the Commission. The present requirements of rule 54 (39 CFR 3001.54) and the Commission's regulations relating to interrogatory procedures and the discovery process have enabled the Commission and the participants in rate proceedings to obtain much of the data required to evaluate a request for increased postage rates and fees. However, the existing method of obtaining data, especially as regards discovery and the interrogatory process, is necessarily conducted on an ad hoc basis and is subject to all the pressures and exigencies of a rate case environment. If the Commission is to better fulfill its statutory responsibilities-particularly with respect to the Postal Reorganization Act's directive that we expedite our proceedings consistent with procedural fairness to the parties appearing in them [39 U.S.C. 3624(b)]—it must be continually and fully familiar with these data. To do this the Commission believes that it must improve the present method of obtaining data from the Service.

At the present time, the Commission is aware of the existence of a number of reports routinely compiled by the Postal Service. The Postal Service also compiles manuals and handbooks which are necessary to understanding and analyzing such reports. It would appear that these documents would be useful for the purpose of evaluating Postal Service operations which are the subject of cost analyses presented in proceedings before the Commission. If these documents were to be obtained by the Commission as they were

completed (and were made publicly available at the Commission's offices) it is anticipated that the Commission and the numerous interested parties appearing in our formal proceedings would then have an opportunity to evaluate the data contained in the documents on an ongoing basis rather than solely during a rate proceeding.

In addition to providing the Commission with a better opportunity for keeping abreast of the changing factors which will affect the execution of its regulatory functions, other benefits are likely to result if these reports were to be made available to the Commission. Since these data are necessary for evaluating a rate request, their early accessibility may aid in expediting rate proceedings. Relying solely on interrogatories and the discovery process to obtain information consumes time, both because data must initially be requested of the Service and, thereafter, additional time is expended while the Service responds. If the data which are the subject of this rulemaking were on file with the Commission, the time needed by the Commission and the parties would likely be reduced because of the ready availability of information.

Notice of Proposed Rulemaking issued April 5, 1976, in Docket No. RM76–5 at 2–4.

If the data currently made available to the Commission and interested persons were made available on an ongoing basis, rather than solely during the course of a rate proceeding, substantial benefits would inure to the Commission and the parties. The proposed rules will provide current data which will assist the Commission in keeping fully apprized of developing circumstances having an effect on its regulatory functions. Additionally, continued access to the data will assist interested members of the public in more thoroughly evaluating a filing of the Service and making alternative presentations within the time constraints imposed by the statutory directive that Commission proceedings be conducted with the ''utmost expedition consistent with procedural fairness to the parties.'' (39 U.S.C. § 3624). The reports, documents, and other data sources which are being made a part of the Commission's periodic reporting system will aid in achieving these objectives.

The data sources which the Commission is now including in this amendment to the rules of practice have been evaluated on the basis of (1) the demonstrated utility of the data source, and (2) the burden imposed on the Service in filing the particular information. Although the information sources covered by our new rules do not include all the reports and documents proposed by the parties, the Commission is not foreclosing the possibility of the later inclusion of some or all of these items. As additional information is demonstrated to be useful, the underlying sources of information will be included in the data reporting system except where inclusion would impose an undue burden on the Service. So that interested parties may have the opportunity to analyze and experiment with additional information, even when there is no case in progress, the Service should provide access to these additional information sources. The Commission believes that where the information is available, its use on an experimental basis will be very helpful in determining its utility. [Footnote omitted.]

PRC Order No. 141 (October 21, 1976) at 3–4.

The initial version of the Periodic Reporting Rule emphasized accounting and other types of financial information that were likely to be useful in analyzing the behavior of the Postal Service's revenue requirement over time. It did not emphasize information on attributing costs to mail classes because analysis of Postal Service costs was still in its infancy. The process for attributing accounting costs to mail classes did not approach the complexity of the current CRA. Cost data collection systems and models of postal cost behavior were in considerable flux. Most of them were being developed on an arcane data processing platform that made it technically difficult for the Commission and the affected public to decipher and analyze. Primarily because attribution analysis was considered to be inadequate, the Postal Service, the Commission, and the affected public were all exploring ways to improve attribution methods. Facilitating such research with a view to speeding up the resolution of cost attribution issues in rate cases was among the primary goals of the Periodic Reporting Rule. Id. at 3–4, 15.

In contrast to its current attitude, the Postal Service's response was accommodating. It did not challenge the legitimacy of providing basic financial data and documentation to facilitate independent research of postal cost behavior between rate cases. It did not assert the commercial sensitivity of the cost data that the Commission or the intervenors proposed to include in the rule, except where data were facility-specific or customer-specific. (The Commission readily accommodated this concern in its initial version of the rule.)

From the beginning, the Commission's explicit policy has been to minimize the burden of the Periodic Reporting Rule on the Postal Service by limiting it to information that the Commission or the affected public was likely to use. With respect to cost information, the initial version of the rule asked primarily for summary-level cost reports [the precursors of the Cost and Revenue Analysis (CRA) and the Cost Segments and Components (CSC) reports] [3] since the technical obstacles referred to above made it difficult for the Commission or the public to use the input data and documentation underlying the Postal Service's standard cost attribution reports.

By the mid-1980s, some Postal Service cost data collection systems had matured, and cost attribution analysis had grown more complex, notably in the method by which attributable costs were distributed to mail classes in the mail processing and transportation areas. Adjusting to these developments, the Commission updated its Periodic Reporting Rule to require supporting documentation of these methods (the LIOCATT in mail processing and workpapers 31 and 57 in transportation). See PRC Order No. 697 (June 27, 1986) at 7. The rule did not seek input data in these costing areas because technical problems still prevented the Commission from using input data in the form in which it was reported. In other major cost centers, such as carrier street time costs, ongoing data collection systems had not yet stabilized. Attribution of these costs depended primarily on ad hoc studies that had already been publicly documented in the course of rate hearings, rather than on the analysis of regularly-collected data. Because regularly-collected data on carrier street time cost played a lesser role in modeling carrier costs, the rule did not require that carrier cost data be periodically reported.

The Periodic Reporting Rule has not been modified in 17 years. Over that time, the Postal Service's financial reporting systems have undergone major changes. Updating of the Periodic Reporting Rule to reflect those changes is long overdue. The sophistication of cost attribution methods has grown dramatically since the rule was last modified. The Postal Service has introduced elaborate cost variability models in the mail processing, transportation, and carrier cost areas. Also in each area, it has developed new, more complex methods of distributing attributable costs to subclasses. The ongoing data collection systems that the Postal Service used to develop these new attribution models and distribution methods were not used for these purposes, or did not exist, when the rule was last updated. These include ''MODS'' in the area of mail processing costs, ''TRACS'' in the area of transportation costs, and ''CCCS'' and ''RCCS'' in the area of delivery carrier costs. As the complexity of the Postal Service's cost attribution methods has grown, the need to document them in order to competently interpret them has

[3] See PRC Order No. 141 (October 21, 1976) at 6–8.

grown.[4] Because these new models and methods use new data collection systems, the rule must be updated to include the new data systems if the Commission and the affected public are to understand how they are used to produce the CRA.

A primary reason that the Commission was slow to update its Periodic Reporting Rule to include this new cost data was that the capability to use this information only became available gradually. For much of this time, the Commission wrestled with Postal Service datasets and programs developed on a mainframe COBOL platform. Despite hiring a series of service bureaus and consultants who specialized in this data processing platform, the Commission and participants in rate hearings were generally not successful in reading, understanding, and using the datasets and programs that the Postal Service developed on this platform. It was not until the mid-1990s, when the Postal Service began providing some of this information in the mainframe SAS language, that the Commission's staff and some hearing participants were able to convert such information to PC-compatible versions that they could read, understand, and use.

Although the Commission, by the mid-1990s, was beginning to acquire the technical capacity to use the data and programs that underlie the Postal Service's periodic cost reports, it did not update the Periodic Reporting Rule to reflect its technical progress. This is because the Postal Service had been providing the information needed on an annual basis anyway, apart from the rule. It provided the basic data and documentation underlying the CRA each year from FY 1995 through FY 2000. Sometimes it provided this information in support of a rate or classification request. Other times it provided it voluntarily, simply to be helpful.[5]

Since the most recent omnibus rate case was settled, however, the prospect for continuing to get an adequately documented CRA each year has dimmed. Passage of Pub. L. 108–18, which dramatically reduces the Postal Service's contribution to the Civil Service Retirement Fund, led to a Postal Service promise not to increase rates until 2006. Consequently, the Postal Service is unlikely to file a documented version of the CRA in support of an omnibus rate request for four years—from FY 2001 through FY 2004. The Postal Service is signaling that it will not voluntarily submit such information in the future. Unless the Periodic Reporting Rule is updated to seek a moderate level of documentation of the Postal Service's CRA each year, the outside world will not be able to competently interpret the CRA for up to four years. The Commission and the intervenors do not believe that the regulatory scheme established by the Postal Reorganization Act can function as Congress intended if they are to be kept in the dark for up to four years. By updating its Periodic Reporting Rule, the Commission will eliminate long blackout periods of this kind.

B. The Postal Service's Scope and Burden Objections

The preceding discussion of the history of the Periodic Reporting Rule and the considerations that shaped the update to the rule respond to the Postal Service's speculations that the update was prompted by an array of improper motives. As the preceding discussion makes clear, the Commission's objective in adopting the rule has remained the same over the 27-year life of the rule—to help the Commission perform its statutory functions more quickly and efficiently.

To do that, the rule directs the Postal Service to provide current-year financial reports summarizing the Postal Service's financial results, with enough mid-level documentation to allow the Commission and the affected public to competently interpret them. The rule also directs the Postal Service to provide intermediate-level datasets that will allow outside analysis of postal cost and volume behavior to continue between omnibus rate cases. While the information sought is not case-specific, it facilitates the processing of future rate and classification cases by providing essential technical background for evaluating the kind of issues that typically arise in such cases.

The information provided under the rule makes the Commission and the interested public better prepared to process rate and classification cases. As explained above, the rule needs to be updated because the Postal Service has made major changes to the way it estimates its costs and revenues over the past 17 years, and the Commission and the public have developed the technical capability to interpret and use the information supplied. The rule strikes a reasonable balance between these benefits and the added burden on the Postal Service of providing this additional information. As in the past, the Commission is willing to make appropriate arrangements to protect information that the Postal Service believes to be commercially sensitive.

The Postal Service expresses concern that the Commission has ulterior motives for seeking to update the rule. These include a desire to change its institutional relationship with the Postal Service, to arrogate to itself auditing, supervisory, and managing functions reserved to others under the Postal Reorganization Act, and to hijack the legislative reform process. Substantive Comments at 2–3. This questioning of the Commission's motives proceeds from the premise that the amount of data that the updated rule would require the Postal Service to provide is far out of proportion to its needs. This premise reflects two beliefs—that the updated rule requires documentation of the CRA equivalent to that required in an omnibus rate case, and that the Commission has no need for financial information unless it is actively processing an omnibus rate request.

Scope Arguments Based on the Wording of the Rule

When the Postal Service asserts that the updated rule requires CRA documentation on the same scale and scope as it provides in an omnibus rate case it grossly mischaracterizes the requirements of the rule. It finds support for its assertion in the ''very broad'' wording of the rule, quoting the preamble to proposed rule 102(a)(1):

> All input data, all processing programs that have changed since the most recently completed general rate proceeding, and all computer programs used to attribute mail processing costs to subclasses, if they are used to produce the Cost and Revenue Analysis Report (CRA).

Without analyzing this language, it asserts that the proposed rule could

> potentially call for production of virtually all information used in the production of the CRA report, from secondary, tertiary, and lower inputs to the CRA model and its inputs to raw data collected by the Postal Service's data collection systems.

Substantive Comments at 3.

It should be made clear at the outset that the CRA deals with only half of the costing issues that are addressed in detail in an omnibus rate case. The CRA summarizes the Postal Service's estimates of attributable costs by cost segment and by subclass. Equally important to recommending a comprehensive set of rates, and equally

[4] In 1997, the Postal Service discarded the LIOCATT-based method of distributing mail processing costs in favor of the much more complex MODS-based method. In its recent submissions under the Periodic Reporting Rule it provides much less documentation of its new, complex method than it had been providing for the older, simpler method.

[5] For example, in 1998, the Postal Service voluntarily provided a fully documented CRA reflecting Commission-approved attribution methods for FY 1997.

detailed, are the Postal Service's cost avoidance estimates upon which hundreds of worksharing discounts are based. The Commission's Periodic Reporting Rule does not require any reports or documentation that relate to this half of the Postal Service's cost presentation in an omnibus rate case.

Focusing on the various levels of inputs into the CRA model, as the Postal Service has done, helps demonstrate how it has exaggerated the scope of the proposed rule compared to the costing documentation provided in omnibus rate cases. To organize the discussion, the Commission will characterize the Postal Service's CRA documentation as consisting of the following six layers, or levels:

Level One—the programs that derive distribution keys for indirectly attributable costs and distributes them to subclasses

Level Two—the spreadsheets that calculate directly attributable costs and distributes them to subclasses

Level Three—cost attribution models

Level Four—input datasets

Level Five—data assembling, editing, and structuring techniques

Level Six—raw data

Omnibus rate cases involve formal hearings governed by the rules of evidence. Under those rules, the Postal Service is required to ''lay a foundation'' for the results of statistical or scientific studies that it wants to use to support its proposed rates. To lay the required foundation, it must start with the raw data it used and describe how that information was collected, edited, and structured before an estimating technique was applied to it.

For sake of discussion, the Commission will label raw data as Level Six documentation and the various manipulations that convert raw data into input data as Level Five documentation. The Commission will label ''input data'' as Level Four documentation. Input data are generally understood to mean data to which an estimating technique or model has been applied, which is its intended definition in the Periodic Reporting Rule. By specifying ''input data,'' the rule eliminates foundational information of the kind described above (Level Six and Level Five documentation) from its scope. The final rule is further narrowed to input data that have changed since the most recent omnibus rate case was completed. This eliminates input data collected as part of special studies that have already been reviewed in an omnibus rate case.

Because Level Five and Level Six documentation are not required by the rule, it is substantially narrower in scope than full rate case CRA documentation. Level Five and Six documentation can make up a large part of the burden of documenting the CRA in an omnibus case.[6]

In the development of the CRA, input data are fed into spreadsheet, statistical, or econometric models of postal cost behavior to identify costs that are caused by particular classes of mail. The models themselves, including the theories upon which they are based, the definitions of the variables, the equations or other analytical techniques used, and the results, may be labeled Level Three documentation for purposes of this discussion. Typically, these models attempt to find the degree to which particular segment or component costs vary with volume, estimating a volume variability percentage or ''factor'' for those costs. Variable costs are distributed to subclasses of mail in proportion to their relative piece volume, cubic volume, or other cost-driving characteristic. The Postal Service calls the relative subclass shares of a given cost characteristic a ''distribution key.'' Level Three documentation sometimes shows how distribution keys were applied to volume variable costs to distribute them to subclasses. The updated rule requires the Postal Service to provide only a small subset of the Level Three documentation that it would provide in an omnibus rate case, *i.e.*, the processing programs that have changed since the last general rate case.

In an omnibus rate case, Level Three documentation is by far the most burdensome and time-consuming kind to produce. It usually requires a narrative explanation and defense of the theory, the variables, the equation specification, the research of alternative estimation procedures and the reasons for rejecting them, and the validity of the results. The fact that the Periodic Reporting Rule requires only input data and processing programs means that it altogether avoids the need to justify and defend any aspect of the CRA development process. Furthermore, because the final rule applies only to processing programs that have changed since the most recently completed general rate case, most Level Three documentation is eliminated from the scope of the rule. This is because most attribution models and distribution techniques do not change from one rate case to the next. These two considerations are the most important reasons that, with respect to documenting the CRA, the burden of complying with the rule is a small fraction of the burden that the Postal Service bears in an omnibus rate case.[7]

Level Two documentation consists of a workbook called ''I-Forms'' and Excel spreadsheets called the ''B workpapers.'' In Level Three documentation, component costs are modeled to see what portion varies directly with volume.[8] The Postal Service typically collects these variability factors in a workbook known as ''I-Forms.'' Excel spreadsheets known as the ''B workpapers'' take variability factors from the ''I-Forms'' and apply them, in proper sequence, to the accrued costs of the appropriate components to obtain attributable costs for those components. Typically, the B workpapers also distribute a component's attributable costs to subclasses of mail, according to subclass shares of piece volume or some other cost-causing factor.

The development steps documented in Level Two are key steps in producing the CRA. The rules that the B workpaper spreadsheets apply summarize the Postal Service's cost attribution methods, and provide insight into the causes of trends in postal cost behavior. These rules are exceedingly intricate, and are continuing to evolve. This makes it difficult for an outside analyst to remain expert on this phase of the production of the CRA without current Level Two documentation. The Postal Service prepares Level Two CRA documentation each year when it produces the CRA–USPS Version. It

[6] For example, the Postal Service spent a major portion of the most recent fully-litigated omnibus rate case (Docket No. R2000–1) producing and defending Level Five and Level Six documentation for the Engineered Standards data on which the Postal Service based its attribution of carrier street time labor costs.

[7] Historically, the Postal Service has rarely incorporated major new attribution models or distribution techniques into its interim-year CRAs, because they have not been scrutinized in an omnibus rate case. In its FY 2002 CRA, the Postal Service apparently has departed from this traditional practice by incorporating major new attribution models in the areas of carrier street time labor and in facilities costs in the FY 2002 CRA before they have been presented in an omnibus rate case. This coincides with significant shifts in subclass attributable cost shares of the effected cost components. There is no way for the outside world to interpret these shifts, however, because the undocumented FY 2002 CRA provides no way of distinguishing between shifts in attributable costs, and shifts in the techniques that the Postal Service uses to measure attributable costs. If the outside world had the ability to replicate the Postal Service's cost attribution model, it could run the model with FY 2002 data using the established method, and again using the new method. This would provide a reasonable basis for separating changes in underlying economic activity from changes in the methods by which they are measured.

[8] Sometimes this is a two-step process where component costs are modeled to see what portion varies with an intermediate cost driver, then that portion is modeled to see how much of it varies with volume.

prepares the same Level Two documentation when it produces the CRA–PRC Version as part of its obligation to facilitate production of the international mail study. Because it prepares Level Two documentation for both versions anyway, and preparing it can be done automatically with little effort, providing Level Two documentation for the Periodic Reporting Rule should not impose an additional burden on the Postal Service of any significance. For these reasons, the Periodic Reporting Rule requires the Postal Service to provide essentially the same Level Two documentation of the CRA each year that it provides in an omnibus rate case. See Rule 102(a)(1)(i).

Level Two documentation shows primarily how the Postal Service estimates subclass shares of costs that vary directly with volume. These estimates become direct inputs (what the Postal Service calls the ''Manual Inputs'') into the ''CRA model.'' The CRA model is a mainframe COBOL program that distributes indirectly attributable costs to subclasses in the same proportions as the Manual Inputs to which they relate.[9] The Level One CRA documentation shows how the CRA model does this.

The subclass shares of directly attributable costs embodied in the Manual Inputs are fed into the CRA model to estimate total attributable costs and cost coverages by subclass. If outside analysts do not have access to the B workpapers that show how the Manual Inputs were calculated, they are unable to interpret or analyze the Postal Service's estimates of subclass attributable costs and cost coverages. They must simply take these summary estimates ''on faith.''

In the Level One CRA documentation, the Manual Inputs perform roughly the same function that the ''I-Forms'' perform in Level Two. In Level One CRA documentation, ''control strings'' perform roughly the same function that the spreadsheets perform in Level Two. The control strings apply intricate relationship rules to the Manual Inputs to construct hundreds of distinct keys for distributing indirectly attributable costs to subclasses. The CRA model then aggregates these subclass shares of directly attributable, and indirectly attributable costs.

With respect to space-related costs, such as rent, fuel, and utilities, the CRA model does more comprehensive calculations, calculating subclass shares of directly attributable, as well as indirectly attributable costs. Directly attributable space-related costs are not calculated in the B workpaper spreadsheets. There are distinct variability factors for many finely disaggregated activities that drive space costs, and there are many keys constructed from other keys that are used to distribute these costs. Because of this complexity, the Postal Service has used computer programs, rather than spreadsheets, to perform these calculations.

Like the B workpaper spreadsheets in Level Two, the CRA model is essential to understanding how the Postal Service arrived at its estimated subclass shares of attributable costs. Because of the numerous links and interrelationships embodied in its control strings, the CRA model needs to be provided as an integrated whole. Like the B workpaper spreadsheets, the intricate rules that the CRA model applies are continually being refined. These rules are exceedingly intricate, and evolve continually in minor, and sometimes major ways. For example, in its comments, the Postal Service announced that it has incorporated the results of a special facilities cost study into the FY 2002 CRA that would take it a year to document. Substantive Comments at 22. For an outside analyst to remain expert on the CRA model, current-year Level One (and Level Two) documentation of the model must be provided.

Each year, the Postal Service produces Level One documentation (the Manual Inputs and the Control Strings) for its own purposes when it produces the CRA–USPS Version. Each year, it produces Level One documentation for the CRA–PRC Version as part of its obligation to facilitate the international mail study. The CRA model is almost entirely automated. Because it prepares Level One documentation for both versions anyway, and preparing it can be done automatically with little effort, providing Level One documentation for the Periodic Reporting Rule should not impose an additional burden on the Postal Service of any significance. For these reasons, the rule requires the Postal Service to provide Level One CRA documentation each year that is comparable to that provided for the base year in an omnibus rate case.

Of the six levels of CRA documentation that the Postal Service provides in an omnibus rate case, the Periodic Reporting Rule will, in a typical year, require Level One, Level Two, and Level Four documentation, almost exclusively. Level One and Level Two documentation is not burdensome for the Postal Service to provide, since its production is almost entirely automated, and the Postal Service produces it each year anyway, for reasons apart from the rule. The burden of providing Level Four documentation should be minor, too. The input databases have already been produced, since they are an indispensable step in producing the CRA, and their production is automated. In providing some Level Four data, the Postal Service faces the extra task of masking the identifying label for data that are facility specific or customer specific. This, however, should not be significant, since it, too, is easily automated.

The only significant burden of complying with the rule that the Postal Service would not otherwise bear is that involved in providing Level Three documentation (the processing programs used in its component cost variability models). But it only needs to provide a minority of those programs used to produce the CRA (those that have changed since the last rate case), and it need not provide narrative explanations or justifications. The Postal Service thereby avoids most of the burden that it would encounter providing Level Three documentation in an omnibus rate case.

For all of the above reasons, the Postal Service grossly mischaracterizes the Periodic Reporting Rule when it asserts that it will require CRA documentation on the ''scale and scope'' of an omnibus rate case. Id. at 4.

Scope Arguments Based on the List in the NPR

As noted earlier, the Postal Service's principal support for this gross mischaracterization is an entirely non-analytical reference to the ''very broad'' language of the rule. It also cites a list of information at page 5 of the NPR, apparently to prove that the rule would require CRA documentation equal to that submitted in an omnibus rate case. Ibid. Here, too, it offers no analysis that explains how the contents of the list might support this assertion.

The 11 items on the list do not support the Postal Service's assertions that the requirements of the rule are open ended and comparable to an omnibus rate case in scope and scale. The list illustrates the Level One documentation required by the proposed rule (the ''CRA Model'' itself) with item 2. It illustrates the Level Two documentation required by the proposed rule (B workpaper

[9] This may be described as ''piggybacking'' the indirect costs on the direct costs. For example, the CRA model spreads the costs of supervising city carriers to subclasses in the same proportion as the B workpapers distribute the cost of city carrier direct labor to subclasses. It does this separately for each of the numerous in-office and street time components of city carrier direct labor costs.

spreadsheets and their equivalent) with items 1, 5, 10 and 11. It illustrates the Level Four documentation required by the proposed rule (input datasets) with items 3, 6 and 9. As noted above, the Postal Service would have to produce all of these items anyway for reasons apart from the rule, and their production is almost entirely automated, and therefore not a significant burden to provide.

The Level Three documentation required by the rule (analytical studies supporting variability estimates or distribution techniques) potentially would require some significant *additional* burden in the rare case that a special study was used to produce the CRA before being vetted in an omnibus rate case. Even then, the documentation would be much less burdensome to provide than the documentation required in an omnibus rate case because the Postal Service need not include a narrative explanation and defense of the study, such as that which it would submit as sponsoring testimony in an omnibus rate case. The final version of the rule gives the Postal Service additional flexibility that it would not have in the context of an omnibus rate case. The Postal Service may provide an abbreviated written or oral description of the study, which should include a description of the theory, the data, and estimation technique used. It may then ask for a waiver of the requirement that it provide the underlying dataset and processing programs. If the description is sufficient to allow others to evaluate the resulting estimate at a general level, the Commission could grant a waiver. If the Postal Service concludes that an abbreviated narrative description would be burdensome to provide, it may provide the input data and the processing programs, and let them speak for themselves. In its length and its scope, the narrative presentation might resemble the kind of informal technical conference that is occasionally used in a rate case to acquaint litigants with the basic outlines of a complex new study. It would not, however, involve testimony, discovery, or cross-examination, which are the significant burdens associated with litigating a rate case. It should be borne in mind that the *additional* burden of documenting a special study this way for the Periodic Reporting Rule would be zero, since the study would eventually have to be fully explained in an omnibus rate case.

Three items on the list on page 5 of the NPR (items 4, 7 and 8) illustrate the kind of Level Three CRA documentation that the proposed rule would require. These are special studies whose theory, variable definitions, and estimating techniques haven't changed from the most recent general rate case, but the accuracy of their results requires the use of updated input from routine data collection systems.[10] Therefore, the Commission needs documentation related to these special studies that allows it to determine whether current data have, in fact, been used to produce the current-year CRA. This need relates primarily to the CRA–PRC Version, since the Postal Service does not audit that version as carefully as it audits the CRA–USPS Version. The Service's outside auditors do not review this document.

Item 7 on the list indicates that under current circumstances, where Docket No. R2000–1 serves as the most recent fully-litigated rate case, the proposed rule would extend to the spreadsheets and programs used to estimate load-time variabilities in the CRA. To get accurate estimates of variable load-time costs, it is necessary to calibrate the Load Time Variability model with current-year data from the City Carrier Cost System (CCCS). The Postal Service purported to estimate variable load time costs according to Commission-approved methods in the FY 2001 International CRA–PRC Version, which it provided to help the Commission produce its FY 2001 international mail report. (In such reports, the Commission must determine if the Postal Service's attributable cost estimates for international mail categories accurately reflect Commission-approved methods.) Because the Commission could not replicate the estimates using the methods approved in the last full rate case, it asked for the processing programs to see if it could determine why. The Postal Service provided new spreadsheets in place of the SAS programs it had been using in prior rate proceedings.

The Commission could not decipher the undocumented spreadsheets. Because the Commission did not have access to current-year CCCS data, it could not run the established programs to diagnose the problem itself.[11] Consequently, the Commission could not determine whether the Postal Service had used current-year data to produce the current-year CRA. Later, through cumbersome trial and error procedures, the Commission was able to decipher the Postal Service's new spreadsheets, and determine that the Postal Service had simply plugged in an obsolete variability factor instead of using current data to update the load time variability model. This illustrates why the Commission needs access to input data and processing programs that have changed since the most recently completed rate case, if it is to be able to evaluate the CRA.

Item 8 on the list indicates that the Postal Service should provide ''the underlying route-type data'' needed to produce the in-office worksheets in the B workpapers. In the past, the Postal Service used the IOCS tally information compiled in the LIOCATT to distribute mixed mail sorting costs incurred at delivery units to subclasses. Because the Postal Service changed the processing programs that it uses to perform this task, this item was included in the list. The Commission recognizes, however, that the changes were documented in the most recently completed rate proceeding. As a result, the Periodic Reporting Rule need not extend to this item. If the Commission receives the IOCS input data, it will not need these processing programs to competently evaluate the distribution of in-office mail sorting costs to subclasses.

Item 4 on the list would require the Postal Service to provide the MODS-based costing spreadsheets needed to produce output for the B workpapers. While the processing programs used to attribute mail processing costs to subclasses were specifically required under proposed Rule 102(a)(1), they are not included in the final version of the rule. Many of those programs, however, change from year to year due to additions or deletions of activity codes or finance numbers. Also, because some programs use hard-coded numbers to compute distribution keys, they need to be updated each year. Consequently, the final rule would still require the Postal Service to provide many of the MODS-based programs in item 4. It may be more practical for the Postal Service to submit them all, rather than to attempt to segregate out the ones that have changed. The final rule allows the Postal Service this option.

The relatively recent switch from the LIOCATT-based system to the MODS-based system is a fundamental shift of methods governing a major portion of the Postal Service's overall operations. The Postal Service is apparently still making adjustments to the estimation methods that it uses to produce the CRA

[10] The Van-Ty-Smith SAS programs that construct mail processing labor cost distribution keys from current-year IOCS tally data, stop coverage in the CAT/FAT study of coverage variability, and pieces-per-delivery in the Load Time Variability study are examples of studies whose accuracy depends upon using updated input data.

[11] One way to diagnose a failure to update a special study is to compare the Postal Service's results to those obtained by rerunning the program with old data. This diagnostic tool is available to an outside analyst only if he or she is able to replicate the program.

in related areas to bring them into conformity with the fundamental shift. For these reasons, the Commission is likely to need the programs implementing the MODS-based method for distributing mail processing costs to subclasses if it is to stay abreast of these developments in cost attribution, and retain its ability to competently interpret the CRA.

Scope Arguments That Assume Improper Commission Motives

The Postal Service seems to be aware that neither the wording of the Periodic Reporting Rule, nor the list of examples of what it would cover, supports its assertion that it would require as much CRA documentation as would be required in a full-blown rate case. The main support that it offers for this assertion is its hypothesis that the Commission has an array of improper motives for updating the rule (*e.g.*, to supplant the Postal Service's auditors, to take day-to-day monitoring away from postal management, to conduct rate cases off the record, to upset the legislative balance, etc.). Given such motives, it claims, it is ''inevitable'' that the Commission will ignore the limits of its rule and seek the full-blown rate case documentation. Substantive Comments at 22.

As an example of the full-blown rate case documentation the Postal Service says the rule will require, it cites two special studies that it says it has relied on to develop the CRA, neither of which has been publicly disclosed. One estimates attributable carrier costs, the other facility-related attributable costs. It argues that ''[u]nder the proposed rule, any such study would need to be extensively documented in order for its new data and methods to be understandable to, and usable by the Commission.'' Id. at 22. It estimates that it would take 6 person-months to adequately document the carrier cost study, and 12 person-months to adequately document the facility costs study. Ibid.

The Postal Service does not attempt to explain why it would take this much *additional* time to document such studies, and no plausible explanation is readily apparent. These studies, presumably, have already been documented sufficiently by their authors to convince upper management that they provide a sound basis for one of its most important routine financial reports. The rule, however, only requires that the Postal Service provide the input data and processing programs used to perform the study. It is not plausible that a study could have received this level of scrutiny and acceptance unless there was already in existence a set of input data and processing programs that the author could locate and provide in less than six (or twelve) months. Similarly, it is not plausible that it would take six (or twelve) months for the author of the study to prepare a morning's briefing on the study for interested parties, if the Postal Service were to choose that option.

In order to have any credibility, these burden estimates have to assume that the Commission will ignore the limits of the rule and seek full rate case documentation of the study, including detailed narrative testimony that establishes a foundation for study results and defends the theory, the estimating techniques, and the robustness of the results. It can be seen that, with respect to Level Three CRA documentation especially, there is an enormous gap between the relatively insignificant additional burden of complying with the rule and what the Postal Service spends its time and energy opposing.

The Postal Service contends that if it did not use any new special studies in the CRA, complying with the rule would require 78½ additional person-days. It does not explain why it would take this much effort, since it already prepares this documentation for reasons apart from the rule, and its preparation is (or could be) almost entirely automated.

Even if this estimate were accurate, however, it should be kept in perspective. When the Postal Service prepares an omnibus rate request, by its own account, it produces tens of thousands of pages of documentation, data, and testimony, most of which is devoted to explanation of its cost, revenue, and volume estimates. The burden of producing this information is so heavy, according to the Postal Service, that it must begin its preparation approximately six months in advance in order to file by its target date. Substantive Comments at 21. Over that period, the Postal Service assigns a host of consultants and its own professional staff to this task. The hours that the Postal Service says it needs to comply with the CRA documentation requirements of the Periodic Reporting Rule (in the normal circumstance where it is not based on new special studies) is a tiny fraction of the burden of documenting an omnibus rate filing.[12]

[12] It should be borne in mind that the burden of documenting new cost studies is not increased by the Periodic Reporting Rule, since it is part of the burden of preparing an omnibus rate request.

Yet the Postal Service's comments are replete with assertions designed to leave the impression that the rule would impose a burden that is comparable to the burden of preparing additional omnibus rate filings. Id. at 4, 7, 15, 21. The Postal Service's arguments about the balance of powers between the Postal Service and the Commission being ''fundamentally altered'' due to a massive increase in the Postal Service's ''regulatory overhead,'' interference with postal management's ability to focus, conducting rate cases off the record, etc., evaporate when its gross mischaracterization of the burden of complying with the rule is exposed.

The Postal Service becomes particularly apocalyptic about the prospect of answering informal questions about the way it produces the CRA. It asserts that comments were made at the technical conference held on April 3, 2003, indicating that the Commission staff ''envisioned the establishment of a process'' whereby the Commission, and others, could direct questions to the Postal Service concerning the documentation that it provides under the rule. Id. at 7. According to the Postal Service, this raises ''the possibility of an open-ended, 'perpetual' rate-case.'' Id. at 15. In the Postal Service's mind, this possibility then morphs into the specter of

> year-round rate-making style data-production, documentation, and perhaps more significantly, ongoing inquiries by the Commission, Postal Service competitors, and any other interested party with the time and resources necessary to pursue such activities.

Id. at 18. This leads the Postal Service to warn

> [i]f such pseudo-discovery were similar to that encountered by the Postal Service in omnibus rate cases, one would expect the burden associated with responding to questions on new cost studies to be very large indeed. The very open-endedness of such extra-record questioning not only raises serious concerns regarding the potential burden involved, but reinforces the fundamental objection that the Postal Service and the Commission should not be spending their time and resources devising ratemaking procedures that not only are unsupported by our governing statue, but actually conflict with that statute.

Id. at 23–24.

Never, in recent memory, has the Postal Service tried to make such a grandiose mountain out of such an insignificant molehill. The Commission's staff entered the technical conference without having discussed, let alone taken a position, on the question of whether there should be informal questioning of the Postal Service staff under the rule. In the

memory of the Commission's staff, it was another attendee who asked whether such questioning would be compatible with the rule, and the response of the Commission staff was that it saw no incompatibility with the rule, and it had no objection.

The Commission sees no problem with continuing the same helpful practice that has been followed for decades by the staffs of both the Postal Service and the Commission. Between rate cases, on rare occasion, a member of one staff, for example, would spot what appears to be error in a spreadsheet, make a call to the other staff, and ask if it was, in fact, an error. Someone on the other staff would typically investigate and respond informally with a corrected spreadsheet, or some brief explanation of the apparent error. The Postal Service staff occasionally does this after reviewing the workpapers that the Commission provides to explain the technical aspects of its Recommended Decisions. The Commission's staff occasionally does this after the Postal Service provides a periodic report. The Commission's staff saw no reason not to continue this practice. The Commission has never suggested launching general ''procedures'' for ''pseudo discovery'' between rate cases under the auspices of the Periodic Reporting Rule. The option of providing a public briefing on special studies that the final rule provides in paragraph 102(a)(1)(ii) is one that the Postal Service is free to decline if it wishes.

C. The Need for Mid-Level Documentation of the CRA

Recognizing When There Are Grounds for Initiating §§ 3623 and 3662 Hearings

The Postal Service devotes the majority of its comments to impressionistic descriptions of the CRA documentation that the rule would require, followed by conclusory statements that the documentation ''far exceeds'' the Commission's ''legitimate'' needs. The Postal Service's conclusion that the CRA documentation required by the rule exceeds the Commission's needs rests heavily on the Postal Service's mischaracterizations of the documentation required as all information that the Postal Service uses to develop the CRA from raw data on up. Substantive Comments at 3, 21.

As explained above, the rule does not extend to raw data, the design of Postal Service data collection systems, or the processing programs that edit and structure data into input datasets (''Level Five'' and ''Level Six'' documentation). As the most recent fully-litigated rate case demonstrates, the design of data collection systems and the structure and editing of raw data into input datasets can be of fundamental importance in evaluating the soundness of a study. Even with the updated rule, analysts in interim years would have to assume that these aspects of the CRA are valid, and wait for an omnibus rate case for an opportunity to investigate them.

With respect to Level Four documentation, the revised rule requires that only input datasets that have changed since the last general rate case be provided. More significantly, the rule only requires minimal Level Three documentation (the input data and processing programs that implement new analytical models). The rule, therefore, is a balanced compromise, falling well short of everything that would help the Commission understand and evaluate the CRA results.

Narrative explanations of new studies are not required, so it may be difficult for the Commission and the affected public to evaluate their soundness. With the input datasets and the processing programs, however, the Commission and the interested public at least can run the CRA model with the established method, and then with new study inputs, to see the impact that the new study has on estimates of subclass attributable costs. Having the Level One and Level Two documentation required by the rule makes this crude level of diagnosis possible, as they are necessary to run the CRA model. Level One and Level Two documentation also make it possible to gain some insight into why the new study has the effect that it has on subclass attributable costs, because its effect on other inputs, and its effect on intermediate outputs, can be observed.

The Level One, Two, Four, and partial Level Three documentation that the rule requires falls well short of what will be needed in a rate case to fully evaluate the merits of a new study. But without it, the Commission and the affected public would have to simply accept the estimates of total subclass attributable costs reported in an interim-year CRA on faith. There would be no way to know if shifts in subclass attributable costs reflect true underlying economic effects, changes in data sources, or changes in estimation techniques. Similarly, if costs have not shifted, there is no way to tell if this reflects underlying economic stability, or the failure to update Level Three models with current-year data.

The Postal Service apparently believes that the regulatory scheme established under the Postal Reorganization Act functions perfectly well when this level of public ignorance prevails between rate cases. But the Act clearly anticipated that the hearings that the Commission conducts when the Postal Service files a rate case are not, by themselves, enough to ensure that the policies of the Act are carried out. That is why § 3623 of the Act authorizes the Commission to initiate classification hearings on its own. That is also why § 3662 of the Act empowers the Commission to review public complaints that current rates or classifications are in violation of the policies of the Act, in order to determine whether they warrant a hearing.

The CRA is the Postal Service's most important and fundamental report on subclass attributable costs, volumes, and revenues. Without any documentation, its estimates are effectively unreviewable. Under these circumstances, the Commission's ability to make an informed decision on the need to initiate classification reform or to hold a hearing on a complaint that current rates or classifications violate the Act is severely circumscribed. If, in the period between rate cases, the Commission cannot thoroughly interpret and understand the Postal Service's routine financial reports that bear on ratemaking, these remedies that the Act provides are undermined.

The following may help illustrate this point. In its comments, the Postal Service mentions the need for flexibility to respond to the ''fast moving markets in which it competes.'' Id. at 19. Over four years, the volume patterns and cost structure of these markets might change enough to invalidate the assumptions upon which current rates were based. If the affected public has access to the partial CRA documentation required by the rule, it would have a way to identify when key assumptions underlying rates are no longer valid, and a greatly improved opportunity to learn whether a petition for relief is warranted. If the public were to go four years without documented CRA estimates, and therefore could not learn how they were estimated or what influences they reflect, it might seriously misestimate the basis for a petition for adjusted rates or classifications.

An example of how key assumptions underlying a set of rates could become invalid over time without detection would be in Standard Mail. In the Enhanced Carrier Route (ECR) subclass of Standard Mail, seven IOCS-dependent discounts are offered. The size of the discounts is determined by IOCS tally data. There are instances in the past where appropriate cost-based

discounts, based on IOCS tally data, have abruptly and substantially increased or decreased in some of these presort levels but not others. If these abrupt, substantial shifts were sustained over several years, the disparity between the cost differences among density levels on which the discounts were based, and the cost differences reflected in current data, could become large, making the actual passthroughs of avoided costs so disparate that it might violate the fairness and equity criteria of the Act. See 39 U.S.C. § 3622(b)(1).

A mailer of presorted Enhanced Carrier Route mail could not know of the passthrough disparities that had emerged unless it had access to the kind of CRA documentation required by the rule. It could not make effective use of its right to ask for a hearing under § 3662 to show that ECR rates violate the policies of the Act, because it could not demonstrate to the Commission that the cost assumptions underlying these discounts were no longer valid. Although the Act provides the public with this alternative way to secure its rights under the Act, this alternative is of little value when facts that are basic to ratemaking and classification are unavailable to the public.

Being Adequately Prepared To Process Rate Requests

Beyond indicating when there are grounds for initiating § 3623 and § 3662 hearings, the Commission and the public need mid-level documentation of the CRA to be adequately prepared to process cases brought by the Postal Service. These include omnibus rate cases under § 3622, which must be processed within the severely compressed 10-month window allowed by the Act. They also include ''experimental,'' ''market test,'' ''negotiated service agreement'' and other special kinds of rate and classification cases for which the Commission has created even more compressed hearing procedures, at the Postal Service's request.

The reasons that such documentation is needed for these kinds of cases were previously explained in describing the history of the Periodic Reporting Rule. The first of these reasons is the fact that the Postal Service's CRA, which is the starting point for analyzing any set of proposed rates, is exceedingly complex, continually changing, and has proved to be extremely difficult to comprehend in the few months allotted for discovery in a general rate case. Providing partial documentation of the most recent versions of the CRA between rate cases is the minimum necessary to make this task feasible in the hearing time allotted.

In addition to keeping its technical expertise current in order to quickly process a rate case brought by the Postal Service, the Commission described a second reason that partial documentation of the CRA is needed between rate cases. See Docket No. RM76–5, Notice of Proposed Rulemaking, issued April 6, 1976, at 2–3. This is to narrow the scope of discovery and Presiding Officer's Information Requests needed in rate cases, and shorten this phase of the proceeding. The objective is to avoid, as far as possible, inquiries into technical costing issues that are background, or generic in nature, rather than tied to a specific set of proposed rates. This objective has not changed since the Periodic Reporting Rule was first issued 27 years ago.

Researching Cost Behavior Between Omnibus Rate Cases

A third reason that partial documentation of the CRA is needed between rate cases is to gain access to the basic datasets needed to develop models of cost behavior that can be presented in an omnibus rate case, so that less of the litigation window is consumed with such development work. See PRC Order No. 141 at 3. This objective, also, has not changed since the Periodic Reporting Rule was first issued. What has changed since the Periodic Reporting Rule was last updated are the new sources of data that the Postal Service uses to develop the CRA, and the increased capability of the Commission and the intervenors to work with those data.

To develop models of postal cost behavior, it is necessary to have two things—relevant data, and the time and resources to analyze the data. The Postal Service is in a unique position among all stakeholders in postal ratemaking in this regard. It has exclusive control of almost all of the data that could be used to model postal cost behavior. When it decides to study a particular area of postal cost behavior, it has well over 100 in-house analysts and consultants whose time and expertise can be enlisted in the effort. As the only initiator of rate cases, it has exclusive control over the timing of rate cases. Consequently, when the Postal Service wants to develop a model of postal cost behavior, it can decide for itself what data to access or what new data to collect, how long to spend developing its model, and when to initiate a hearing to present it.

Currently, a mailer or competitor that would like to develop an alternative model of cost behavior has little chance of doing so. Between omnibus rate cases it cannot get access to data that reflect current postal operations. When the Postal Service files an omnibus rate case, an intervenor will have about two months to digest the mammoth filing and determine what to investigate, and perhaps three months to find analysts, request relevant data, develop a model, and defend the results. It might have only a few weeks to do this in more abbreviated hearings, such as hearings on experimental services. It is almost impossible for intervenors in rate cases to plan, complete, and defend models of postal cost behavior in the narrow litigation window allowed. As a result, in over 30 years of Commission hearings, intervenors have almost never succeeded in developing significant alternative cost attribution models. During rate cases, intervenors are confined almost entirely to reacting to and criticizing the models developed by the Postal Service.

Due Process and the Need for Data

The Commission has explained why relevant data are an indispensable tool for researching, analyzing, or modeling postal cost, volume, or revenue behavior. In its comments, the Postal Service takes the position that, under the Act, no entity other than itself may possess this tool between omnibus rate cases. Substantive Comments at 6. It asserts that if the Commission or the intervenors make any use of the datasets or the programs underlying an interim-year CRA, they would be conducting a ''de facto rate case'' outside the confines of a formal hearing. Id. at 16–17. According to the Postal Service's logic, any activity that others do during a rate case—such as studying postal cost, volume, or revenue behavior—may not be done outside of a rate case; otherwise, the 10-month time limit on rate cases is violated. The Postal Service does not extend this logic to itself, however. It may devote whatever time it wants to studying and preparing for rate cases without violating the 10-month time limit for rate hearings under the Act. Bearing in mind that significant new studies of postal cost behavior almost never can be started, completed, and defended within the allotted portion of a 10-month rate case, the Postal Service's view of the Act means that only it has any realistic chance to develop analytical models for ratemaking, since only it may possess the required data between omnibus rate cases.

The Postal Service insists that if it is to have due process during rate cases, it must be able to withhold basic financial data between rate cases. Otherwise, it argues, it would lose what it believes to

be its statutory prerogative to surprise opponents with every element of its rate filing. It insists that its prerogative extends to the generic, background financial data summarized in its standard financial reports. Substantive Comments at 36. Its view that the statute grants it an unlimited right of surprise ignores the due process needs of the affected public that participates in rate cases.

When the Postal Service eventually decides to file a rate case, it may present numerous new models that it has had ample time to prepare. Since alternative models can rarely be developed and defended in the time available, the only effective alternatives to the Postal Service's new models are the Postal Service's old models on which existing rates are based. The Postal Service's models, new and old, are typically the only ones eligible for adoption, because they are typically the only ones that have been presented on the record.

The Postal Service thinks that the due process objectives of the Act are well served under these circumstances. But if intervenors are to ever have a realistic chance to develop alternative cost attribution models for consideration in an omnibus rate case, they will, at a minimum, need access between rate cases to the current Level Four datasets that are used to produce the CRA.

Expertise and the Need To Replicate the CRA

The Commission and the public also need Level Four datasets in order to replicate the various attribution and distribution techniques that the Postal Service uses to produce the CRA. The Postal Service doesn't appear to object to the Commission replicating its Base Year CRA model, and the various cost component analyses used to produce it, in the context of a rate case. As a practical matter, for reasons explained earlier, the Commission must use the Postal Service's ''state of the art'' attribution engine as the starting point for estimating the subclass attributable costs that will support the Commission's rate recommendations. The Commission must first replicate the Postal Service's CRA model in order to confirm that it understands how the model estimates subclass attributable costs, and that it can accurately reproduce the result that the Postal Service's version of the CRA produced. The Commission must then adapt the Postal Service's CRA model to produce Base Year subclass cost estimates that are consistent with the Commission's recommended attribution methods. Because developing a CRA model for a given year is a mammoth undertaking, even for the Postal Service, errors and inconsistencies are inevitable. Before it bases rate recommendations on the Postal Service's CRA, the Commission must ensure that errors and inconsistencies have been identified and corrected. To do this, the Commission issues Presiding Officer's Information Requests asking the Postal Service to explain or resolve apparent errors.

No thorough and coherent statement of the mechanics of producing the CRA has ever been provided by the Postal Service. Narrative descriptions of something as complex as the CRA, such as the Service provides in rate cases, are unlikely ever to be adequate to enable an analyst to thoroughly understand it. Therefore, replication is the primary tool available to the Commission and the public to diagnose errors in the Postal Service's CRA model, and isolate their sources. Running the model is also the only way that the Commission can test the forecasts on which its recommended rates were based to see if its forecasting assumptions are holding up in interim years, and if not, which ones are failing. The ability to undertake this exercise should significantly improve the Commission's forecasting expertise.

Replication makes diagnostic tests of various kinds possible. For example, to test whether the data that the Postal Service used in its CRA model were properly updated, this year's model could be run with this year's data, and then with last year's data, and the results compared. To test whether a processing program has changed, this year's data could be input into this year's CRA model, and then into last year's CRA model, and the results compared. Replication can also be done in stages, allowing intermediate outputs to be examined, to better isolate errors, or inconsistencies with earlier versions. And replication can be used to do sensitivity analyses, changing only selected inputs, or selected processing steps, to try to find reasons for unexpected results. To replicate the CRA model, or its components, the Commission and the public need the relevant input datasets and processing programs.

The Postal Service is skeptical that the Commission and the public have a need for partial documentation of the CRA. It comments that ''[t]he Commission has been carrying out [its] duties for decades without having routine and frequent access to such information.'' Substantive Comments at 11. In recounting the history of the Periodic Reporting Rule, the Commission has already described some of the compromises that it has been making during rate cases for decades. For decades, it has been unable to decipher and work with CRA-related databases and models that the Postal Service maintains on its mainframe COBOL computer platform. The Commission ultimately gave up this pursuit and developed its own PC-based CRA model that mimics the Postal Service's inaccessible model. During omnibus rate cases, the Commission most closely analyzes the Postal Service's ever-changing CRA model in areas that are in substantial dispute. Because so much of the available time is spent determining how the Postal Service arrived at its disputed estimates of attributable cost, the Commission's evaluation of undisputed estimation techniques is sometimes less thorough than is desirable. The Commission may not address less significant changes that the Postal Service makes in other costing areas, because there isn't sufficient time in a 10-month hearing to analyze it all.

Intervenors in omnibus rate cases, of course, have, for decades, had similar problems. To quote American Business Media:

> With data available on an on-going basis, not only would the Commission be better prepared for a rate filing, but the Postal Service's customers would not bear the burden of having the ten or twelve feet of papers, plus computer materials, dropped on them with the expectation that they can review, understand, question and refute those portions that are relevant in time for the Commission to issue a recommended decision in ten months.

ABM Reply Comments at 2. The OCA adds:

> As a participant in rate cases, the OCA has watched the complexity and sophistication of Postal Service presentations rise exponentially. The ''lead'' time required by the OCA (or any other participant) to match the level of the Service's evidence has also increased exponentially. But the Postal Service seeks to preserve its lead-time advantage of 'six months' while denying any lead time to participants. At some point (already passed, as far as the OCA is concerned), the advantage to the Postal Service becomes overwhelming, and due process evaporates.

OCA Reply Comments at 4–5 [footnote omitted]. The need for the updated Periodic Reporting Rule seems to be clear to everyone in the postal community except the Postal Service itself.

Replication and Bias

While the Postal Service does not deny that the Commission may use replication of its CRA as a legitimate diagnostic tool in the context of a rate

case, it recoils at the thought that this tool might apply to an interim-year CRA. It warns:

> as the Commission's staff confirmed, the new requirements are designed to allow the Commission to completely re-run the most recent, updated CRA model based on new or alternative inputs, and thereby give the Commission the capacity to develop anticipatory rate recommendations without any formal request or policy guidance from the Postal Service.

Substantive Comments at 10.

> If the very staff that are replicating, validating, and otherwise manipulating the fundamental financial and operating information sought in this rulemaking are inevitably forming impressions and conclusions from their investigations, what is to prevent those impressions and conclusions from influencing the outcome before anyone has had their opportunity to persuade? No safeguards exist which would prevent such contamination of the hearing process, and it is difficult to imagine how such safeguards could be implemented in a practical manner. The Governors are entitled to a recommended decision free from any hint of extra-record determinations, and which gives appropriate recognition to the respective statutory roles of the Governors, the Board of Governors, and the Commission.

Id. at 17 [footnote omitted].

It is important to understand what the Postal Service is expressing fear of in these comments. The CRA is the Postal Service's routine financial report that is most relevant to ratemaking because it estimates subclass attribution costs, volumes, and revenues each year. It has been examined by outside auditors, and undergone multiple layers of review by the Postal Service's staff to the point that it is accepted as the most reliable data that it can provide to postal management to guide it in matters of classification and pricing. In the Postal Service view, if the outside world understands little or nothing about how it obtains these estimates, it will not misinterpret them, or be biased, or be misled regarding the relative responsibility of the various subclasses for the Postal Service's financial condition. The Postal Service evidently believes that the more accurate an understanding the outside world gains about the data and estimation methods that produce the CRA results, the more likely that it will be misled, biased, and prejudiced by them.

As the OCA commented, knowledge is a lot less likely than ignorance to produce bias. OCA Comments at 2–3. This is especially true where competence to form an opinion is presumed to require a great deal of industry-specific statistical and economic expertise. GCA points out in its comments that Congress's primary objective in creating the Postal Rate Commission was to ensure that rates would be based on these kinds of expertise. GCA Comments at 4. Congress intended that issues of cost attribution, in particular, should be resolved by application of the Commission's expertise. *National Association of Greeting Card Publishers* v. *USPS,* 462 U.S. 810, 823 (1983). The Commission, however, is in a difficult position when it comes to maintaining that expertise.

As explained previously, the Postal Service controls all of the data, has almost exclusive access to field experts, and employs almost all of the analytical resources that are devoted to estimating postal cost, volume, and revenue behavior. For these reasons, when it comes to cost attribution, the Postal Service's cost attribution engine (the CRA) is the starting point for all analysis. Its most current CRA apparently is based on two major new studies of attributable carrier costs and facilities costs. Each study is a ''black box'' as far as the outside world is concerned, and is likely to remain so for several more years without an updated Periodic Reporting Rule. By imposing a 10-month time limit on the Commission for processing rate requests, the Postal Reorganization Act assumes that the Commission can process such requests with extreme expedition and still base its recommendations on a thorough understanding of all aspects of the record.

Once an omnibus rate request is filed, there isn't sufficient time in the 10-month statutory period to search and resolve issues relating to the mechanics of producing the CRA, and still address the major analytical and policy issues that are raised by a Postal Service omnibus rate request. The mechanics of producing the CRA are generic, background issues, that do not ordinarily depend on a particular time period, a particular revenue requirement, or a particular set of proposed rates. Therefore, documenting this aspect of the CRA should not compromise the right of participants to litigate rate-case-specific issues when a specific rate request is filed. Replication is the primary tool for understanding the technical aspects of estimates found in the CRA.[13]

The Postal Service suggests that at the technical conference held on March 11, 2003, the Commission's staff somehow signaled its intention to use the documentation required by the Periodic Reporting Rule to develop ''anticipatory rate recommendations''' outside of a rate case. Substantive Comments at 10. The Commission does not contemplate going to the considerable trouble to develop rate recommendations that have nothing to do with a particular rate case. This isn't because there would be anything wrong with it. It is because such an exercise wouldn't be very informative if it were not tied to a particular rate request, revenue requirement, and time period.[14]

With respect to any tendency of replicating the CRA to produce bias in the replicating party, the salient point is that the Periodic Reporting Rule requires only input datasets and the processing steps applied to those datasets—the minimum documentation that will disclose the mechanical process by which CRA estimates were obtained. The data used and the processing steps applied are facts that speak for themselves, devoid of argument, interpretation, spin, or nuance. Making facts available for analysis risks bias only to the extent that the facts made available are selective, or one-sided. If facts disclosed in the documentation of an interim-year CRA were to resemble facts included in the Base Year documentation in a future rate case, the Postal Service's opponents might be able to argue that the Commission was swayed by having an early look at the Postal Service's version of the facts without any alternative version to counterbalance it. If this is a potential source of bias, it works for, not against the Postal Service.

[13] The Commission has restricted the Periodic Reporting Rule to documentation of the mechanics by which the CRA is produced (datasets, processing programs, spreadsheets, etc.) rather than justifications of theories or policies that are likely to be contested in a rate case. In this respect, the documentation performs a function similar to an informal technical conference held off the record during a rate case. The purpose of such conferences is to gain an understanding of what was done mechanically to implement a particular analysis, and avoids questions touching on the merits of the analysis. Restricted in this way, the Periodic Reporting Rule strikes a reasonable balance among the Postal Service's right to ''surprise'' intervenors with every aspect of its support of proposed rates, the intervenors rights to comprehend the Postal Service's rate request and respond to it with alternatives in the brief time allotted, and the Commission's need to enter a rate case already understanding how the Postal Service prepares its routine financial reports. If the Postal Service believes that its reasons for making changes to the CRA should be explained in order to eliminate misconceptions, it is free to provide them. The Commission does not require such explanations, in order to minimize the burden of complying with the rule.

[14] The Commission disagrees that the rule seeks enough documentation to make it feasible to develop anticipatory rate recommendations. For example, two categories of inputs that would be needed to develop a realistic alternative rate schedule (if a test year and revenue requirement were known) are the appropriate DRI inflation factors, and details about the magnitude and timing of the Postal Service's cost reduction programs. Neither is required by the Periodic Reporting Rule.

The Postal Service has suggested that it should not have to disclose a set of facts similar to those that it might present in a future rate case without having an opportunity to persuade the outside world of the merits of the procedures that those facts reflect. Id. at 17. If the Postal Service would like to add to the documentation that is required by the rule a discussion of the merits of the procedures that it has used to produce an interim-year CRA, nothing in the rule would prevent it from doing so. Any bias that might result from this opportunity to persuade should benefit the Postal Service.

The Postal Service's main argument, however, is that if the Commission has an opportunity to view facts in an interim year that might resemble those that will be submitted in a future rate case, it will have more time to form opinions about them than it would otherwise have. Ibid. Contrary to conventional wisdom, the Postal Service apparently believes that the less time a staff has to think about a subject, the less likely its thoughts are to be biased. As the Greeting Card Publishers point out, the solution to bias in exercising a judicial function is not to obtain less knowledge, but to exercise the appropriate caution in the use of the knowledge obtained. GCA Comments at 2–3, n.1.

For example, the Postal Service expresses concern that an analyst that obtains an input dataset from the Postal Service could model it differently than the Postal Service modeled it. But this is not a reason to withhold the data. If an intervenor were to model the data differently, it would not affect the Postal Service unless the intervenor subsequently presented it for consideration in a formal hearing. In this way, the right of the Postal Service to debate or oppose it before it had an impact on recommended rates would be preserved. By the same token, if the Commission were to model data differently, it would not affect the Postal Service unless the Commission subsequently asked the participants in a formal hearing to comment on it in a Notice of Inquiry. The Commission could not affirmatively rely on any such model unless it were presented on the record. Here too, the right of the Postal Service to debate it or oppose it before it had an impact on recommended rates would be preserved.[15]

IV. The Legal Basis for the Periodic Reporting Rule

A. The Periodic Reporting Requirement Is Authorized by the Act

In discussing the legal basis for the Periodic Reporting Rule, the Postal Service argues that the Commission does not need the information required by the rule to perform any statutory function. It also argues that it conflicts with its right to decide when to file a rate case under § 3622, its implied right to decide when to reveal its evidence and argument in support of its proposed rates, and its implied right to have all analytical activity concerning postal rates confined to the 10-month litigation window allowed by the Act for rate cases. Substantive Comments at 15–17, 36.

The Postal Service asserts that the Postal Reorganization Act does not authorize the Commission to adopt periodic reporting requirements. It recognizes that § 3603 of the Act authorizes the Commission to ''promulgate rules and regulations and establish procedures * * * and take any other action they deem necessary and proper to carry out their functions and obligations * * *.'' In its view, the Commission's only role under the Act is to process a Postal Service request for changes in rates within the 10 months allotted by the Act. Outside of that 10-month litigation window, it reasons, the Postal Rate Commission has no functions or obligations, and therefore § 3603 does not imply any authority to carry them out. Id. at 8–14.

The Scope of § 3603 Is as Broad as Its Language

The Postal Service argues that the scope of § 3603 is much narrower than its broad language suggests. It contends that the following language in § 3624(b) of the Act, which deals with the conduct of formal Commission proceedings, ''specifies the type of rules that were contemplated'' by § 3603. It quotes:

In order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for—

(1) The advance submission of written direct testimony;

(2) The conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;

(3) Discovery both from the Postal Service and the parties to the proceedings;

(4) Limitation of testimony; and the conduct of entire proceedings off the record with the consent of the parties.

It then comments:

> [b]y the very nature of the examples enumerated, the Commission's rulemaking authority is shown to be simply that necessary to implement its limited statutory role: The efficient administration of a hearing after it has been appropriately initiated under sections 3622, and 3623. The rules now contemplated go far beyond this intended role.

Id. at 14.

In drawing this narrowing inference, the Postal Service makes no effort to account for the broad wording of § 3603, which authorizes the Commission not only to ''promulgate rules'' but to ''establish procedures'' and to ''take any other action'' it deems to be necessary and proper to carry out its functions and obligations. If § 3603 were meant to authorize only rules governing formal hearings, one wonders why Congress saw any need to include § 3603 in the Act, since the Act already specifies the kind of rules the Commission may adopt for that purpose in § 3624(b). The Postal Service's interpretation of § 3603 renders the section entirely unnecessary. It is a basic canon of statutory construction that statutory language will not be construed in such a way as to make another section of the same statute ''superfluous, void, or insignificant.''[16]

Section 3603 Extends to Commission Initiated Proceedings Under §§ 3623 and 3622

By authorizing the Commission not just to promulgate rules, but to ''establish procedures'' and to ''take any other action'' it is clear that § 3603 authorizes the Commission to do more than promulgate rules of only one narrow type. In characterizing the Commission's authority as ''the efficient administration of a hearing after it has been appropriately initiated'' the Postal Service glosses over the fact that Chapter 36 of the Act gives the Commission discretion to initiate classification hearings under § 3623, and complaint cases under § 3662. The Act authorizes the Commission to exercise its discretion and judgment as to whether there are good grounds for initiating such hearings. In doing so, the Act contemplates that the Commission will have access to relevant, reasonably

[15] In its Substantive Comments, at 12–13, the Postal Service mentions two instances in the Commission's 30 year history in which a reviewing court remanded a Commission Recommended Decision on the ground that it had employed an analytical technique without observing the full range of procedural safeguards required in formal hearings. This frequency of remand is probably among the lowest of any Federal regulatory body, and does not offer legitimate grounds for presuming that the Commission will ignore procedural safeguards that accompany formal hearings.

[16] *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1285 (D.C. Cir. 1983) quoting 2A C. Sands, Statutes and Statutory Construction § 46.06 (4th ed. 1973).

current financial data—before hearings are held—that would allow the Commission to make informed decisions as to whether such hearings were warranted.

The Commission's duty to determine if hearings are warranted potentially extends to hearings to reclassify rate categories as subclasses, or vice versa, depending, in part, whether they have enough common cost-driving characteristics. The Commission's duty to determine if hearings are warranted also potentially extends to complaints that certain rates or discounts are unfair because there have been major shifts in relative cost savings since rates were last approved. Determining whether such hearings are warranted requires the Commission to make informed judgements about subclass and rate category attributable costs. To exercise the discretion that the Act calls for, the Commission needs access to attributable cost estimates about which it can make some judgments, not just unreviewable, bottom-line estimates based on unknown data sources and estimation methods. The partial CRA documentation required by the Periodic Reporting Rule can fulfill this need.

Section 3603 Authorizes Measures That Make Processing Postal Service Requests More Efficient and More Fair

The more important need that partial documentation of the CRA fulfills relates to the omnibus rate cases that the Postal Service files, and the myriad minor rate and classification cases that it files under abbreviated hearing schedules. The ''efficient administration'' of those hearings, to quote the Postal Service, is not the Commission's only function. Its function is not just to conduct those hearings ''efficiently'' in a severely compressed time frame, but to conduct them fairly.

In order to conduct omnibus rate hearings initiated by the Postal Service efficiently, the Commission has to be able to read, comprehend, and in some respects, repair, the Postal Service's ''cost attribution engine'' before it can address the analytical and policy issues raised by a rate request. For this process not to swallow up the majority of the available hearing time, the Commission needs to begin the process with an understanding of the current CRA. This requires reasonable familiarity with the mechanics of the Postal Service's current cost attribution methods. If it has to devote a major portion of the litigation window to acquiring this familiarity, it may have to give the merits of the Postal Service's cost attribution methods, as well as basic volume and revenue estimation issues, short shrift. All of these considerations apply equally to intervenors in Commission proceedings. For them to have meaningful due process, they not only need a reasonable chance to understand and respond to the Postal Service's entire case in the time allotted, which they cannot do without the documentation required by the Periodic Reporting Rule, they need a reasonable chance to develop, propose, and defend alternative cost estimation techniques in the time allotted. This they cannot do without the datasets required by the Periodic Reporting Rule.

Section 3603 Authorizes Measures Designed To Expedite Minor Cases

Between omnibus rate cases, the Postal Service often files requests for changes in rates for individual mail categories. When it does, it usually seeks to expedite the case by seeking a waiver of the Commission's normal documentation requirements for rate and classification cases found in rules 54 and 64. These require the Postal Service to provide full documentation of its base year attributable cost, volume, and revenue estimates. The Postal Service usually files these requests under Commission rules that drastically shorten the 10-month period that the statute makes available to intervenors to litigate a rate case. These range from ''experimental'' cases, which have a 150-day litigation schedule, to Negotiated Service Agreements, for which a 60-day litigation schedule has been proposed.

These rules allow expedition when intervenors raise only issues of limited scope and complexity. The ability of the Commission and the intervenors to process such cases within severely compressed schedules also depends on their ability to do without a fully documented request. If a partially-documented CRA has been filed under the Periodic Reporting Rule for an interim year, the intervenors are much more likely to be able to do without a fully documented base year CRA, and the Commission is much more likely to grant the waivers that expedition requires, and allow cases to proceed under its expedited rules.

The abbreviated hearing schedules provided for by the Commission's expedited rules are Commission attempts to implement the ratemaking provisions of the Act in a manner consistent with modern needs of the Postal Service. The concept behind them is that there is not a need in every case to litigate every issue—including the mechanical structure of the CRA—from scratch. The Periodic Reporting Rule is based on that concept as well.[17]

Section 3603 Is Not Restricted to Measures Whose Need Is ''Compelling''

The Postal Service comments that certain information required by the Periodic Reporting Rule is not ''strictly needed to conduct rate and classification proceedings'' and ''not required by a compelling and legitimate function.'' Substantive Comments at 11, 13. It thereby implies that the statutory threshold for invoking the authority of § 3603 is that a regulation be an indispensable means of achieving a statutory purpose. This is a gloss on § 3603 that cannot be found in the legislative history or inferred from the structure of the Act. The provision authorizes actions that the *Commission* deems to be ''necessary and proper to carry out their functions and obligations * * *.''

As the Commission has explained, it has an obligation to competently address the full range of issues presented by a rate request in the short time allotted by statute or the even shorter time allotted by special rule. To help do this it must maintain a certain level of expertise in current methods of attributable cost, volume, and revenue estimation. The partial documentation of the CRA required by the Periodic Reporting Rule will help it to maintain this expertise. Maintaining the requisite expertise to do the Commission's job effectively is not a minor consideration in making sure that the Postal Reorganization Act functions as Congress intended. As the Supreme Court, in *National Greeting Card Publishers* v. *USPS,* observed:

Congress recognized that the increasing economic, accounting, and engineering complexity of ratemaking issues had caused Members of Congress, ''lacking the time,

[17] The Commission's expedited rules of practice incorporating abbreviated hearing schedules were adopted at the request of the Postal Service. They strain the due process protections that the Act provides to intervenors to the limit. So far, the intervenors have cooperated in this attempt to accommodate the Postal Service's need for speed and flexibility in ratemaking and classification procedures. The Commission's expedited rules ask the intervenors to assert all of the formal rights that they have under highly abbreviated record hearing procedures in order to meet the Postal Service's need for flexible ratesetting. It is ironic that after receiving the voluntary cooperation of the intervenors in foregoing some of rigidities of the statutory hearing process that benefit them, the Postal Service so adamantly seeks to retain all of the rigidities of the formal hearing process that benefit the Postal Service. These include its perceived right to surprise intervenors with all aspects of its rate requests, thereby maximizing the time pressure under which they must litigate, and minimizing their access to meaningful due process. See Substantive Comments at 36.

training and staff support for thorough analysis,'' to place too much reliance on lobbyists. House Report, at 18. Consequently, *it attempted to remove undue price discrimination and political influence by placing ratesetting in the hands of a Rate Commission, composed of ''professional economists, trained rate analysts, and the like,'' id., at 5, independent of Postal service management, id., at 13, and subject only to Congress' ''broad policy guidelines,''* id., at 12.

462 U.S. 810, at 822. [Emphasis added.] In its comment, the Greeting Card Association points out that—

> Since [the Commission's] duties centrally include acting as an expert decisionmaker on matters arising under ch. 36 of title 39, it seems clear that obtaining the information covered by this docket regularly and systematically, in usable form, and in a timeframe allowing it to be given mature consideration is a legitimate need.

GCA Comments at 4. UPS agrees. See UPS Comments at 2,4.

Similarly, the Commission is obligated to afford intervenors meaningful due process in its rate hearings. Making the information required by the rule available to prospective intervenors will help them comprehend the prodigious amount of technical information presented in an omnibus rate request, and to develop and present alternative estimation techniques, within the short time allotted by statute. As the OCA points out, ''providing due process to all participants within a ten-month time period is 'a compelling and legitimate Commission function.' '' OCA Reply Comments at 3–4 [footnote omitted].

The information required by the rule might not ''make or break'' the achievement of the legitimate statutory goals of maintaining the Commission's ratemaking expertise, and affording prospective intervenors due process, but it will greatly improve the odds. That is all that is required to come within the authority of § 3603.

Illegitimate Purposes Hypothesized for the Periodic Reporting Rule

Having identified the legitimate statutory functions that the Periodic Reporting Rule facilitates, it is helpful to identify what functions the rule is not designed to serve. The Postal Service suggests that the purpose of the rule is to allow the Commission to conduct ''day-to-day monitoring of [the Postal Service's] detailed operations and finances'' [Substantive Comments at 7], ''auditing of the Postal Service's books on a regular basis'' [Id. at 11] and obtain ''oversight,'' ''data collection,'' and ''investigatory powers.'' Id. at 19.

As UPS points out, the updated Periodic Reporting Rule does none of these things. UPS Comments at 1. The rule does not require the Postal Service to provide any backup data with which to audit its books of account, any documentation of its data collection activities, or any data that would make possible daily monitoring of operations or finances. No oversight is involved, and no investigation is involved. Nor does it involve any hearings, or any comments from the public. The rule simply requires the Postal Service to file some of the routinely prepared documentation that support its periodic financial reports that bear on ratemaking.[18]

In discussing the legal basis for the Periodic Reporting Rule, the Postal Service argues that the rule conflicts with its right to decide when to file a rate case under § 3622, and what it considers to be two corollary rights—the right to decide when to reveal its evidence and argument in support of its proposed rates, and the right to have all analytical activity concerning postal rates confined to the 10-month litigation window allowed by the Act. Substantive Comments at 15–17, 36.

The Rule Does Not Affect the Timing of Rate Filings

When the Postal Service files a rate request under § 3622 of the Act, a complex set of legal consequences attach. These include the right to receive a recommended decision on proposed rates from the Commission, the right to receive it within ten months, and a complex set of options that the Governors have to respond to the Commission's recommended decision, including acceptance, rejection, modification, and the right to appeal that recommended decision. The public's right to intervene, to present evidence, and to appeal the result, also attach when the Postal Service files a rate request.

No legal consequences that affect the Postal Service or the rates that it may charge attach to the filing of information under the Periodic Reporting Rule. When it complies with the rule, the Postal Service has no further legal obligation to do anything. Its complaints, therefore, can only be based on the effects that the rule might have, if any, on the way that its request is handled during a rate case.[19]

Section 410(c)(4) Is Not Relevant to the Rule

Section 410(c)(4) of the Act exempts ''[i]nformation prepared for use in connection with proceedings under Chapter 36 of this title'' from mandatory disclosure under the Freedom of Information Act. The Postal Service argues § 410(c)(4) protects information required by the Periodic Reporting Rule from public disclosure not just through Freedom of Information Act requests, but through any other mechanism, including Commission rules adopted under § 3603 of the Act. Id. at 26.

Whether § 410(c)(4) provides a general shield of protection for materials prepared for Chapter 36 litigation is not a question that needs to be decided as part of this rulemaking. There is a crucial distinction between standard financial reports that are routinely prepared for the benefit of management, and financial reports that have been adapted to support a specific proposed revenue requirement and a specific set of proposed new rates, to be implemented in a specific test period. The former class of reports are normal business records not prepared primarily for litigation. The Periodic Reporting Rule requires that some standard business records be provided. The principal effect of providing them is to allow the interested public to learn enough about the way that the Postal Service routinely estimates costs and revenues to comprehend an enormously complex omnibus rate filing in the narrow litigation window provided. Only the latter class of reports are prepared primarily for litigation purposes. The Periodic Reporting Rule

[18] It is worth noting that when outside auditors review the Postal Service's CRA, they perform a ''process audit'' that is designed only to confirm that the processing steps that are intended to be performed are in fact performed. It does not involve a conceptual audit that addresses the suitability of the estimation methods used or the reasonableness of the results obtained. Review of the CRA by the Office of the Inspector General, or by GAO, are generally not conceptual audits either. There does not appear to be any provision in the current regulatory regime for regular conceptual audits of the Postal Service's cost, volume, and revenue estimates like the ones that the Commission performs intermittently during omnibus rate cases.

[19] The existing Periodic Reporting Rule contains a long list of routinely gathered financial and operating information that is prepared for the benefit of postal management, but also gives the Commission and the interested public useful background information that will help them process a rate case when it is eventually filed. Almost any of the categories of information covered by the rule are the kind that could be expected to eventually be discussed and analyzed in a rate case. For example, for decades, the rule has included accounting period financial reports, reports on revenue, pieces, and weight for groups of mail (RPW), various management plans, and the CRA and the Cost Segments and Components report, with partial documentation. For decades the rationale for including these reports in the rule was that they help the Commission and the affected public understand the kind of information, but not the specific information, that will be used to support rates when a case is eventually filed. This helps the Commission process a rate case more efficiently and more fairly. This is the principal effect that the rule has on the way that a Postal Service rate request is handled.

does not apply to them. See GCA Comments at 5, n. 6. Therefore, the rule does not infringe on the Postal Service's right under § 410(c)(4) not to disclose attorney work product intended for Chapter 36 litigation, even if that provision were to apply outside of the context of Freedom of Information Act requests.

There Is No Statutory Ban on Evaluating Rate-Related Matters Between § 3622 Proceedings

Section 3624(c)(1) of the Act requires the Commission to transmit a recommended decision on the Postal Service's request for new rates within 10 months after receiving the request. The Postal Service argues that this provision entitles it to a respite from litigating rate-related matters outside of this 10-month period.[20] But the Postal Service goes further, and argues that this respite includes a right not to have to think about rate-related matters, and a respite from having others think about rate-related matters. The Postal Service argues that the Periodic Reporting Rule robs it of the respite to which it is entitled, because it provides others with information that would enable them, in the period between rate cases, to study how postal costs and revenues behave. Substantive Comments at 17.

Apparently, in the Postal Service's view, a ''rate case'' happens whenever, and wherever a person's thoughts turn to postal cost or revenue behavior, and if the Postal Service didn't ask them to do it, § 3624(c)(1) is violated. It is hard to take this proposition seriously. One obvious flaw in this logic is the fact that the Act contains a complaint procedure whereby the public may ask the Commission, at any time, to hold a hearing on whether current rates violate the policies of the act. See 39 U.S.C. § 3662. This cannot be reconciled with the Postal Service's ''respite'' theory. It should also be noted that there is nothing in the legislative history of § 3624(c) to suggest that it was motivated by a desire to give the Postal Service a respite from other Chapter 36 hearings, let alone give it a respite from others' rate-related thoughts.[21]

B. Disclosure Policy Under the Periodic Reporting Rule

The Postal Service expresses a deep-seated insecurity about the Commission's willingness and ability to afford confidential treatment to materials that it might provide under the Periodic Reporting Rule. The cause of this insecurity, it asserts, is its experience with Freedom of Information Act (FOIA) requests for information that it has provided to help the Commission prepare its report to Congress on international mail under 39 U.S.C. § 3663. Substantive Comments at 29–30.

The Postal Service emphasizes that it is exempt from a duty to disclose commercial information that ''under good business practice would not be publicly disclosed'' by § 410(c)(2) of the Postal Reorganization Act. It argues as though this section of the Act is a general-purpose exemption from the duty to disclose commercial information. Section 410(c)(2), however, is expressly limited to the Postal Service's duty to respond to FOIA requests. The Commission's authority to require the Postal Service to provide information on a periodic basis is not derived from FOIA, but from its authority under § 3603 of the Act to adopt procedures that are ''necessary and proper'' to carry out its ratemaking and classification functions.

More to the point, the stated concern about the potential need to afford confidential treatment to data provided to comply with the proposed rule changes appears to be largely a red herring. As discussed at some length above, all of the information called for by the proposed rules have been provided and made public in recent years, either as part of a rate case filing or as a courtesy to the Commission. Except for facility-specific data, the Postal Service has never seen fit to request confidential treatment for any of this information, and it does not now identify any competitive disadvantage it is likely to suffer as a result of public access to these historical operating results. Except for facility-specific data, it seems highly unlikely that the Postal Service will have justification to seek confidential treatment of the materials it will provide to comply with revised rule 102.

Furthermore, the Commission always has conscientiously dealt with requests for confidential treatment of data both during and outside of docketed cases. Existing procedures assure that both the Postal Service, and all others providing information to the Commission, have ample safeguards to assure that their concerns will be fully heard and evaluated in timely fashion, and their rights fully protected.

Protecting Commercially Sensitive Information Required by the Rule

In a rate case, a litigant occasionally will seek to discover information that another litigant considers to be commercially sensitive. The Commission resolves such issues by balancing one litigant's need for the information to support its case against the potential commercial harm that disclosure might cause to the other litigant. In such cases there is a general presumption that discovery should be granted in order to afford the discovering party its due process right to prove its case. The tension between the discovering party's need to prove its case and the opponents need to protect commercially valuable information is sometimes resolved by granting discovery subject to various protective conditions. For example, only temporary access may be granted, and only to specified persons or groups.

The CRA documentation that the rule requires is among the documentation that the Postal Service has consistently disclosed in rate cases without asserting that the documentation has commercial value and without seeking protective conditions. The minor exception to this Postal Service policy has been its consistent request that facility-specific data, and mailer-specific data, be coded so as to mask the identity of the facility or the mailer. The Postal Service has not explained why the same approach could not be satisfactorily applied to disclosure under this rule.

In its comments, the Postal Service strenuously objects to following the same disclosure policy with respect to the same documentation in the context of the Periodic Reporting Rule. It asserts that ''the majority of the information designated by the Commission's proposed rules consists of commercial information that would not be disclosed under good business practices.'' As part of its justification for this position, it notes that the material covered by the rule includes information specific to

[20] This argument, of course, ignores the various kinds of hearings that the Act authorizes the Commission to initiate between rate cases.

[21] Section 3624(c)(1) was adopted as part of the 1976 amendments to the Act. The legislative history of this provision indicates only two motives for adopting the 10-month time limit for completing rate cases. The overriding motive was the desire to shorten rate cases so that revenues could be increased more quickly, and the financial crisis that prompted the 1976 amendments would not reoccur. See Report of Committee on Post Office and Civil Service, House of Representatives, on H.R. 8603, Postal Reorganization Amendments of 1976, Pub. L. 94–421, 94th Cong., 2d Sess., October 1976, at page 334 (Remarks of Senator McGee). A secondary motive was to reduce the Postal Service's control over the ratesetting process by lengthening the period that the Postal Service must wait before it puts temporary rates into effect, from 90 days to 10 months after it files a rate request. Id. at 51. The OCA asserts that under the original statute, temporary rates, as a practical matter, became permanent rates, shortening the hearing time before de facto permanent rates were implemented to 90 days. It contends that the effect of the 1976 amendments was to greatly expand the opportunity of intervenors in rate cases to influence the selection of permanent rates. OCA Reply Comments at 4, n.9.

particular facilities. Substantive Comments at 31–32. The position that the Postal Service has taken appears to be based in part on the assumption that facility-specific data would somehow be at risk if it were disclosed under the rule. The Commission has no intention of affording less protection to the information obtained under the Periodic Reporting Rule than it has consistently afforded in the context of a rate case. The position that the Postal Service has taken also appears to be influenced by its overly-broad and inaccurate characterizations of the documentation that the rule requires.

Express Authority for the Rule Is Not Required

The Postal Service emphasizes that the Postal Reorganization Act does not expressly authorize the Commission to require the Postal Service to provide access to information outside the context of Chapter 36 rate hearings. Id. at 24. The Postal Service further emphasizes that § 410(c) of the Act exempts it from the obligation to disclose the following information in response to Freedom of Information Act requests:

> Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.

The Postal Service assumes that § 410(c) not only exempts such information from mandatory disclosure in response to requests filed under the Freedom of Information Act, but, by implication, exempts it from mandatory disclosure under any circumstance, other than pending Chapter 36 hearings. Id. at 26.

Although the Act does not expressly authorize the Commission to require the Postal Service to provide information outside the context of Chapter 36 hearings, express authority is not required, given the availability of § 3603. Because of its broad language, any exercise of § 3603 authority is necessarily an exercise of implied authority. The issue is whether it is plausibly and reasonably implied.

The Commission has already explained why it needs the documentation required by the rule if it is to effectively evaluate all of the issues presented in § 3624 hearings within severely compressed litigation windows. It has already explained why that information is needed if the Commission is to ensure that intervenors in future rate cases have a realistic opportunity to understand the immensely complex documentation supporting Postal Service rate requests, and to develop alternatives, in the severely compressed litigation window available. Having shown the need for the rule to carry out its functions under §§ 3622, 3623, and 3662 of the Act, the Commission has demonstrated that the rule is the kind of procedure that Congress meant to authorize by the general language of § 3603.

The Rule Does Not Conflict With the Policy Underlying § 410(c)

The Commission sees no conflict between the Periodic Reporting Rule, as authorized by § 3603, and the disclosure policy reflected in § 410(c) of the Act. Section 410(c) does not expressly apply in contexts other than Freedom of Information Act (FOIA) requests. There are special considerations that are likely to have led Congress to exempt the Postal Service from mandatory disclosure of commercially sensitive information in response to FOIA requests. The most significant of those considerations is that in deciding whether to comply with a FOIA request, an agency may not take into account the need of the requesting party for the information that it is requesting, *NLRB* v. *Sears, Roebuck & Co.,* 421 U.S. 132 (1975) at 143 n. 10, and it generally may not take into account its own burden in complying with such a request. See *Ruotolo* v. *Dept. of Justice,* 53 F.3d 4, 10 (2d Cir. 1995). Disclosure is mandatory unless the information falls within one of the narrow exemptions that the FOIA makes available. These simplifying procedures were thought necessary to make the FOIA effective, but they introduce a procedural arbitrariness that is not necessarily appropriate in all circumstances involving disclosure of sensitive materials. Aware that the FOIA does not allow a balancing of the public's need for information against the potential harm to the agency of providing it, Congress exempted the Postal Service from disclosing commercially sensitive materials in the FOIA context.

The Postal Service does not have express authority to withhold information that the Commission needs to effectively carry out its functions under the Act. Outside of the FOIA context, Congress did not expressly exempt the Postal Service from disclosure of commercially sensitive materials, or expressly make the Postal Service the arbiter of what materials should be considered commercially sensitive. What Congress intended where another Federal agency, such as the Commission, has demonstrated a substantial need for information from the Postal Service, and is willing and able to balance its need for that information against the burden and potential commercial harm of providing it, can only be surmised from the other provisions of the Postal Reorganization Act.

The Postal Service frequently points out that Congress, in adopting the Postal Reorganization Act, intended that the Postal Service function more like a private business than it had been functioning. Exemption from responding to some kinds of FOIA requests is one way in which the Postal Service resembles a private business.

At the same time, however, Congress gave the Postal Service special monopoly privileges and made it clear that these privileges carried with them special duties toward the public that a private business does not have. The first section of the Act, 39 U.S.C. § 101, is replete with these special duties. Chief among these are its obligation to provide the public with universal service [§ 101(b)] that is capable of binding the nation together [§ 101(a)].[22] The Postal Service is also required to charge rates that are based on principles of equity and other public policies, not just profitability. See § 101(d). The Postal Rate Commission has a key role to play in ensuring that rates comply with these policies.

Given the remarkable dissimilarities between the Postal Service and a private business with respect to its obligations to the public, it is implausible that Congress would have intended the Postal Service to have the power to decide for itself what the outside world may know about it, including what the outside world may know about its operations and finances that bear on ratemaking, except during rate litigation. The Commission is not aware of any government monopoly that has been granted absolute power to decide for itself what its disclosure policy will be. It is much more plausible to surmise that, apart from litigation, the Postal Service's power to decide what its disclosure policy will be is not absolute, but qualified. One of the respects in which it is qualified is where the

[22] Section 101(a), states:

> The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function, the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

Commission (which has primary ratemaking responsibility under the Act)[23] has demonstrated a need for a limited amount of documentation of routine financial reports to make the ratesetting process function properly.

The Commission's Periodic Reporting Rule is a restrained exercise of its authority to establish procedures that ensure that its hearings afford meaningful due process both to the Postal Service and to the affected public, and ensure that the Commission maintains the expertise that is required to make informed rate recommendations. As such, it is authorized under § 3603 of the Act.

In deciding whether the updated Periodic Reporting Rule is an appropriate exercise of the Commission's § 3603 authority, the questions to be answered are whether the need for the information identified by the Commission is real and substantial, and whether providing it would significantly impair the functioning of the Postal Service.

The Need of Litigants for Meaningful Due Process

If there is a common theme among the comments received in this docket from potential intervenors in rate cases, it is that, under current circumstances, the litigation ''playing field'' in omnibus rate cases is tilted so steeply in favor of the Postal Service that their basic right to due process is jeopardized. The causes are severe asymmetry in the time and resources available to prepare for a rate filing, severe asymmetry in access to relevant information, the immense scope and detail of the filing, and the short statutory deadline for digesting and reacting to it. As the American Bankers Association points out

> [m]uch of the complexity associated with omnibus rate cases for the Commission and intervenors arises from the fact that they cannot even begin to prepare for such a case until it is filed. The changes to the Commission's rules as proposed in Commission Order No. 1358, which would require the USPS to periodically file much of the basic information upon which requests for new rates are based, would greatly facilitate effective decision making by the Commission and effective participation by intervenors in omnibus rate cases.

ABA Comments at 1–2. American Business Media concurs:

> [w]ith data available on an ongoing basis, not only would the Commission be better prepared for a rate filing, but the Postal Service's customers would not bear the burden of having the ten or twelve feet of papers, plus computer material, dropped on them with the expectation that they can review, understand, question, and refute those portions that are relevant in time for the Commission to issue a recommended decision in ten months.

ABM Reply Comments at 2. The OCA summarizes the dilemma of intervenors:

> [a]s a participant in rate cases, the OCA has watched the complexity and sophistication of Postal Service presentations rise exponentially. The ''lead'' time required by the OCA (or any other participant) to match the level of the Service's evidence has also increased exponentially. But the Postal Service seeks to preserve its lead-time advantage of ''six months'' while denying any lead time to participants. At some point (already passed, as far as the OCA is concerned) the advantage to the Postal Service becomes overwhelming, and due process evaporates. Whatever may have motivated the Commission to propose the new periodic reporting rules, the effect of their implementation will be to level the litigation field for participants other than the Postal Service.

OCA Reply Comments at 4–5. [Footnote omitted.]

That the playing field is tilted is not merely the self-serving perception of intervenors in rate cases. The Federal court of appeals in *Association of American Publishers, Inc.* v. *Governors of the United State Postal Service,* 485 F.2d 768, 779 (D.C. Cir. 1973) has commented on the problem as well:

> [The Postal Service] alone takes in the full scope of Postal Service operations when presenting its proposals. And it alone is in a position to influence the Postal Service's day-to-day accounting procedures and record keeping. Outsider challenges to the fundamental approach the Postal Service takes to ratemaking are unlikely to meet with stunning success under these circumstances [footnote omitted].

The problem of securing meaningful due process for intervenors in rate cases is real and substantial, and the information required by the updated Periodic Reporting Rule is reasonably designed to partially solve that problem. The remaining question is whether providing that information would significantly impair the functioning of the Postal Service. The Commission has explained earlier that the burden of complying with the rule is a tiny fraction of the burden of documenting a full-blown rate case, primarily because the Postal Service produces almost all of this information routinely anyway, for reasons apart from the rule.

The Postal Service's Assertions of Commercial Sensitivity Are Unexpectedly Broad

The Postal Service, unexpectedly, asserts that the majority of the information required by the rule is commercially sensitive. It is very difficult to evaluate this assertion because it is made at such a general level. The Postal Service makes almost no effort to identify which of the diverse information required by the rule it now believes falls in this category.

There are a number of reasons that this broad assertion of commercial sensitivity is unexpected. One is because the subject matter of the information required by the rule is information that the rule has required for decades, and the Postal Service has provided for decades, without suggesting that it is commercially sensitive. Another reason that this assertion is unexpected is because the information required by the rule is information that the Postal Service has routinely provided in omnibus rate cases without asserting that it is sensitive and without seeking to file it under protective conditions. Furthermore, on several occasions, the Postal Service has voluntarily disclosed much of the CRA documentation that it now seeks the most strenuously to withhold. In 1998, for example, after the Docket No. R97–1 omnibus rate case was concluded, the Postal Service voluntarily provided the Commission with an extensively documented interim-year CRA that was calculated according to Commission attribution methods. The documentation included the B workpaper spreadsheets and some of the input datasets that the updated Periodic Reporting Rule now requires. There was no assertion that this information was commercially sensitive, and no request that it be maintained under protective conditions. Similarly, on May 30 of this year, the Postal Service voluntarily included with its CRA submitted under the prior version of the Periodic Reporting Rule, the B workpaper spreadsheets for the major costs segments (Segments 3, 6, 7, and 14).[24]

Taken together, this history adds up to a shift in the attitude of the Postal Service toward the commercial sensitivity of the CRA documentation that the updated rule requires. This new attitude is not satisfactorily justified by the Postal Service. Once facility identifiers are removed from the required datasets, there is no apparent commercial use to which any of this

[23] *See National Association of Greeting Card Publishers* v. *USPS,* 462 U.S. 810, 821 (1983) quoting S. Rep. No. 91–912 at 4 (1970).

[24] See Letter of May 30, 2003, from Daniel J. Foucheaux, Chief Counsel, Ratemaking, to the Hon. Steven W. Williams, Secretary, Postal Rate Commission. This was apparently done on the assumption that the B workpapers for these cost segments are the current counterpart to the CRA documentation that it had provided in past years under the Periodic Reporting Rule.

documentation could be put, and the Postal Service has suggested none.

The commenters argue that the Postal Service's main motive in opposing the update to the Periodic Reporting Rule is not its new-found concern for the commercial sensitivity of this data, but the loss of the tactical advantage that it has entering rate cases fully prepared while the intervenors play a desperate game of catch up in the short litigation window available. See ABA Comments at 3–4, OCA Reply Comments at 1, UPS Reply Comments at 6. American Business Media's comments are representative

> American Business Media submits that what the Postal Service fears is actually the loss of the enormous advantage it obtains by springing mountains of data, new costing methodologies, and hundreds of proposed rates upon the Commission and other parties a mere ten months before a heavily litigated case with dozens of active parties must be resolved.

ABM Reply Comments at 5. [Footnote omitted.]

The comments in this docket from those who have participated in past rate hearings agree that the Postal Service's assertions of the commercial sensitivity of the information required by the Periodic Reporting Rule are indiscriminately broad. The American Bankers Association, for example, argues that

> * * * virtually no other enterprise, including those that compete with the Postal Service in the small area where there is direct competition, has a cost structure that even remotely resembles the cost structure of the USPS. Thus, the sort of data the proposed rule changes would require the Postal Service to produce does not seem to be the sort of data that would give competitors in the small area where there is competition information of value.

ABA Comments at 4.

These commenters point out that only a few of the Postal Service's products are provided in competitive markets (Express Mail, Priority Mail, and parcel post), and that their commercial significance is minor. (They accounted for only 7 percent of net postal revenue in FY 2002.) They argue that this competitive ''tail'' should not wag the dog in matters of information disclosure. They note that if there is sensitive information about these services in the materials required by the rule, the Postal Service could identify it with specificity and seek appropriate protective conditions to prevent any perceived harm. ABA Comments at 4, GCA Comments at 6–7, UPS Reply Comments at 6.

Commercial Sensitivity Objections Involve Only the Frequency of Disclosure Required by the Rule

As already noted, the Postal Service has consistently disclosed the CRA documentation required by the updated Periodic Reporting Rule to the public in its omnibus rate requests and has voluntarily disclosed most of this documentation in some interim years as well. It has not asked that it be treated as commercially sensitive in either context. The Postal Service's objections to its disclosure under the Periodic Reporting Rule, therefore, have to be based almost entirely on the prospect that under the rule, these same materials would be disclosed more frequently than they otherwise would be. The logic of the Postal Service's position seems to be that disclosing these materials is not a significant commercial risk when their disclosure occurs at the frequency that it has in the past, but would become a significant risk if disclosed annually.

The Potential Harm of Annual Disclosure Has Already Been Tested

If annual disclosure were the true test of the dangers of disclosing these materials, the Postal Service has already conducted this test. Every year for a six-year period starting with FY 1995 (provided in Docket No. MC96–3), and ending in FY 2000 (provided in Docket No. R2001–1), the Postal Service has publicly disclosed the CRA documentation that the Periodic Reporting Rule now requires. Rather than suffer financially, this was by far the most prosperous period that the Postal Service has had since the adoption of the Postal Reorganization Act in 1970. The Postal Service's competitive services participated fully in this unprecedented prosperity. This should dispel the Postal Service's fears that annual disclosure of the information required by the Periodic Reporting Rule will adversely affect its financial prospects or its competitiveness. By the same token, it should also dispel the notion that the institutional calamities that the Postal Service warned would ensue from annual disclosure will, in fact, occur. Over this period there was no attempt by the Commission to monitor day-to-day management of the Postal Service, to audit its books of account, to supervise its data collection activities, or develop rate recommendations outside of a pending rate case. Nor did the Commission compromise any Governors' decision through interim-year research, or take any other action that ''fundamentally altered'' the institutional relationship between the Commission and the Postal Service.

What did happen over this six-year period of annual disclosure was that the Commission had a better opportunity to keep current on the ''state of the art'' of cost attribution as practiced by the Postal Service. It had a better opportunity to evaluate its forecasting models to see where their assumptions held up and where they didn't. The Commission was better able to waive some documentation requirements in minor cases, due to the availability of recent Base Year CRA documentation. And, finally, some of the pressure was taken off of the Commission and the intervenors to quickly digest the enormous amount of supporting material filed with omnibus rate requests.

Recent history with annual disclosure, therefore, confirms that it significantly improves the ability of the Commission to process rate hearings without causing any of the various forms of institutional harm that the Postal Service posits. The purpose of the updates to the Periodic Reporting Rule is to continue the successful pattern of the FY 1995–FY 2000 period, rather than to restructure the Postal Reorganization Act, as the Postal Service asserts.

V. Provisions of the Rule Not Related to Documentation of the CRA

In addition to updating the portions of the Periodic Reporting Rule that deal with documenting the CRA, the updated rule reduces the lag allowed for reporting billing determinants for Express Mail, Priority Mail, and parcel post to 12 months after the close of the fiscal year, [§ 102(a)(10)]; requires the Postal Service to provide its Integrated Financial Plan [§ 102(a)(11)]; requires it to provide the input data and calculations used to produce annual Total Factor Productivity estimates [§ 102(a)(12)]; requires it to provide a finer level of detail in its quarterly RPW reports [§ 102(b)(1)]; and requires it to provide On-roll and Paid Employee Statistics (OPRES) [§ 102(c)(4)]. The Postal Service indicates that it does not object to these changes in the updated Periodic Reporting Rule. Substantive Comments at 36–37.

The Postal Service does object to § 102(c)(5), which requires it to provide the ''HAT'' report, relating to the Postal Service's Active Employee Statistical Summary. It argues that the HAT report includes miscellaneous information about postal employees, most of which is not related to ratemaking. Id. at 37, n.22. While it includes miscellaneous information about employees, the HAT

report is very relevant to ratemaking because it lists the number of employees within each pay grade and step within the many different pay scales used by the Postal Service. This information, which can not be found in the On-Rolls and Paid Employee Statistics, is used to develop several estimates that are important in determining the revenue requirement in rate cases. For example, it is used to develop the average step increase for bargaining unit employees, as well as their attrition rate. The information in the HAT report cannot be associated with individual employees, and it is not reported by facility. The Postal Service does not contend that the availability of the data will have any specific detrimental effect on it or its employees. For these reasons, it is included in the updated rule.

VI. Suggestions of the Commenters

In the past, the Periodic Reporting Rule required billing determinants to be reported within two weeks of their presentation to postal management. Since FY 1995, billing determinants have been received from 6 to 16 months after the close of the fiscal year. In the past the Periodic Reporting Rule allowed billing determinants for Express Mail, Priority Mail, and parcel post to be delayed an additional year, causing them to be from 18 to 28 months ✕ old when received. In its NPR, the Commission proposed that the rationale for the distinction between billing determinants for competitive mail classes and other mail classes be reexamined. In order to focus the reexamination, the Commission proposed that billing determinants for competitive classes be provided within a year after the close of the fiscal year to which they apply. NPR at 7.

UPS is the only party to offer substantive comments on this issue. It argues that there has never been a reasoned justification for treating billing determinants for competitive classes differently than for other classes in the context of the Periodic Reporting Rule. It points out that the Postal Service provides all billing determinants at the same time in support of its omnibus rate requests, without suggesting that billing determinants for competitive classes are commercially sensitive. It argues that the Postal Service has never pointed to any instance in which providing current billing determinants for competitive services during a rate case has caused it competitive harm, nor identified any way in which a competitor could use current billing determinants to put the Postal Service at a competitive disadvantage. UPS Comments at 2–4. It also argues that all billing determinants should be provided on a date certain, shortly after the close of the fiscal year, rather than on a floating time table as they now are. It cites an example of the Postal Service voluntarily publicizing current volumes for parcel post rate categories at a recent National Postal Forum as evidence that the Postal Service itself does not consider them to be commercially sensitive. Id. at 5.

The Commission agrees that it would be desirable to receive billing determinant information at a consistent and shorter interval after the close of each fiscal year. The Commission has, however, tried to adhere to a policy of requiring reports under the Periodic Reporting Rule that do not add significantly to the burden that the Postal Service already bears when it prepares these reports for its internal purposes. For that reason, the Commission declines to require that most billing determinants be provided on a date certain.

The final Periodic Reporting Rule adopts the billing determinant provision as it was proposed in the NPR. It requires the Postal Service to provide billing determinants for competitive categories within one year of the close of the fiscal year to which they apply. UPS correctly notes that the Postal Service occasionally voluntarily discloses current volumes for competitive services by rate category. However, to the Commission's knowledge, the Postal Service does not voluntarily disclose other current billing determinant detail, such as weight and zone, for competitive categories. The updated rule should cut the delay in reporting billing determinant information for competitive categories from roughly two years to one year. The Commission is reluctant to go further in this regard, without a more thorough discussion of the ramifications than has been provided in this docket.

At the beginning of each fiscal year, the Postal Service prepares an operating budget that includes detailed operating expense and revenue projections for the coming fiscal year, broken out by accounting period. Under the Periodic Reporting Rule, the Commission receives the Postal Service's Financial and Operating Statements several weeks after the close of each accounting period. See rule 102(c)(1). These statements compare the detailed operating revenues and expenses projected in the Postal Service's operating budget with actual results. Under the updated Periodic Reporting Rule, the Postal Service would provide an annual Operating Plan as part of its Integrated Financial Plan. See rule 102(a)(11). This annual Operating Plan is less detailed than the operating plans contained in its accounting period reports.

The OCA proposes that the updated Periodic Reporting Rule require the Postal Service to provide its operating budget projections for all 12 accounting periods at the beginning of the fiscal year, rather than provide them shortly after each accounting period closes. The OCA's rationale for adding this requirement to the updated rule is that the Commission and the public should not have to wait until several weeks after each accounting period to find out the Postal Service's operating plan for that accounting period. OCA Comments at 4–5.

It is not clear that the Board of Governors approves the operating plan as an annual summary document or as a document that is as detailed as the OCA describes. It is, therefore, not clear that requiring accounting period operating budget projections would conform to the criteria that the Commission applies to the Periodic Reporting Rule that it be confined to reports that have already been presented for use by postal management. In view of this ambiguity, and the tenuous demonstration of need for altering the time at which the rule would obtain this information, the Commission declines to include this change in the updated rule.

The Postal Service is required to file a number of reports with Congress to meet the requirements of chapters 24 and 28 of the Postal Reorganization Act. One is the Comprehensive Statement of Postal Operations, which includes an Annual Performance Plan, and annual Program Performance Reports. Another is the five-year Strategic Plan. The OCA proposes that these and all other reports that the Postal Service is required by the Act to provide to Congress be provided under the Periodic Reporting Rule as well. Id. at 3–4. The Commission declines to add reports to Congress to its Periodic Reporting Rules. The Commission prefers to restrict the rule to reports prepared for postal management. The Commission notes that these reports are all readily accessible on the Postal Service's Web site.

VII. Conclusion

For the reasons discussed above, the Commission hereby amends 39 CFR part 3001 (the Periodic Reporting Rules) as set forth below in this order. Any suggestion or request to modify the Commissions rules raised by any participant not specifically addressed herein is denied.

It is ordered:

(1) The Commission adopts the provisions set forth below amending 39 CFR § 3001.102.

(2) The Secretary shall cause this notice of adoption of a final rule to be published in the **Federal Register**.

Issued November 3, 2003.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

■ For the reasons stated in the accompanying Order, the Commission adopts the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661; 3662; 3663.

Subpart G—Rules Applicable to the Filing of Reports by the U.S. Postal Service

■ 2. Revise § 3001.102 to read as follows:

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management, unless otherwise noted. Each report should be provided in a form that can be read by publicly available PC software. A processing program that was developed specifically to produce an accompanying workpaper must be provided in a form that can be executed by publicly available PC software. COBOL processing programs in use prior to FY 2003 are exempt from this requirement. The reports and information required to be provided by this subpart need not include matters that are exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually. If it is presented for use by postal management at more frequent intervals, it shall be filed at those intervals:

(1) All input data and all processing programs that have changed since the most recently completed general rate proceeding, if they are used to produce the Cost and Revenue Analysis Report (CRA). Each change in attribution principles or methods from the previous report will be identified. The Postal Service shall submit a CRA–USPS Version, followed within two weeks by a CRA–PRC Version. Documentation of both versions of the CRA shall include, but not be limited to, the following:

(i) Spreadsheet workpapers underlying the development of segment costs by cost component. These workpapers should include the updated factors, and data from the supporting data systems used, including the In-Office Cost System (IOCS), Management Operating Data System (MODS), City Carrier Cost System (CCCS), Rural Carrier Cost System (RCCS), and National Mail Count.

(ii) Documentation of any special study that has a substantial effect on estimated costs in any cost segment and was not documented in the most recently completed general rate proceeding.

(A) Documentation shall consist of all input data and all processing programs used to obtain the results of the special study.

(B) The Postal Service may elect to provide a written or oral presentation describing the data and the estimating techniques used, as well as the results of the special study, and to apply for a waiver of the requirement in paragraph (a) of this section.

(2) Cost Segments and Components Report. Documentation shall include, but not be limited to, the following:

(i) Cost segments and components reconciliation to financial statements and account reallocations.

(ii) The Manual Input Requirement, the ''A'' report, and the ''B'' report;

(iii) The control string commands for the ''A'' report, the ''B'' report (including the PESSA factor calculations), and the ''C'' report;

(iv) The master list of cost segment components, including the components used as distribution keys in the development of the ''B'' report and the ''C'' report.

(3) City delivery information, including the number of routes by type, the number of possible deliveries by type, the number of collection boxes, and the number of businesses served (120 days from the close of the fiscal year).

(4) Rural carrier information, including the number of routes by type and miles, stops, boxes served, and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (two weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report, including summary workpapers (two weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission, including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2, and 6 (coinciding with their submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(10) Billing Determinants, at the level of detail employed in the most recent formal request for a change in rates or fees. The provision of billing determinants for Express Mail, Priority Mail, and parcel post may be delayed up to 12 months from the close of the fiscal year to which they apply.

(11) USPS Integrated Financial Plan.

(12) Input data and calculations used to produce annual Total Factor Productivity estimates.

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces, and Weight, by rate category and special service.

(2) Origin/Destination Information Report National Service Index.

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Summary Financial and Operating Report.

(2) National Consolidated Trial Balances and the Revenue and Expense Summary.

(3) National Payroll Hours Summary.

(4) On-Roll and Paid Employee Statistics (OPRES).

(5) Postal Service Active Employee Statistical Summary (HAT report).

(d) *Miscellaneous reports.* The following information will be filed by the Postal Service:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Reports.

(3) A master list of publications and handbooks including those related to internal information procedures, when changed.

(4) Data collection forms and corresponding training handbooks, when changed.

(5) Notice of changes in data reporting systems, 90 days before those changes are implemented.

[FR Doc. 03–28643 Filed 11–18–03; 8:45 am]

BILLING CODE 7710–01–P

Federal Register

Wednesday,
November 19, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

Special Federal Aviation Regulation No. 36, Development of Major Repair Data; Direct Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

[Docket No. FAA–2003–16527; Amendment No. SFAR 36–8]

RIN 2120–AI09

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Aviation Administration amends and extends Special Federal Aviation Regulation No. 36 (SFAR 36). This final rule extends the SFAR 36 expiration date five years. Also, in this final rule, the FAA makes a technical amendment to Section No. 4 (Application) of SFAR 36. SFAR 36 allows holders of authorized repair station or aircraft operating certificates to approve aircraft products or articles for return to service after completing major repairs using self-developed repair data not directly approved by the FAA. Extension of the regulation continues to provide, for those who qualify, an alternative to gaining direct FAA approval of major repair data on a case-by-case basis. The technical amendment to Section No. 4 (Application) is necessary to accurately reflect the appropriate FAA office to which applications should be submitted.

DATES: This amendment becomes effective January 23, 2004. Comments for inclusion in the Rules Docket must be received on or before December 19, 2003.

ADDRESSES: You may send comments [identified by Docket Number FAA–2003–16527] using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ralph Meyer, Delegation and Airworthiness Programs Branch, Aircraft Engineering Division, AIR–140, Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25082, Oklahoma City, Oklahoma, 73125; telephone (405) 954–7072; facsimile (405) 954–4104, e-mail *ralph.meyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

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(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search);*

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Background

History

On January 6, 1999, the FAA published Special Federal Aviation Regulation (SFAR) No. 36, Development of Major Repair Data, in the **Federal Register** (64 FR 958). The rule became effective January 23, 1999. The rule provided a 5-year extension to an earlier version of SFAR 36 that was set to expire in January, 1999. The SFAR allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after completing major repairs. This is done using data developed by the holder and not directly approved by the FAA. Currently, 17 air carrier and domestic repair station certificate holders have SFAR 36 authorizations. Without an extension of SFAR 36, these authorizations will expire on January 23, 2004.

Absent SFAR 36, qualified certificate holders must obtain case-by-case approval for data they develop for major repairs. The only alternative to the time-consuming approval method is a formal exemption granting relief from this requirement. Historically, the number of such exemptions granted by the FAA indicated that revisions to the regulations were necessary. As a result, the Agency originally adopted SFAR 36 on January 23, 1978, as an interim rulemaking action. Adoption of the SFAR removed the need for petitions for exemption and gave us additional time to gather the information needed to develop a permanent rule change. However, most of the affected certificate holders did not use the provisions of SFAR 36 until it was well into its second year, nearing its original expiration date of January 23, 1980. Because we lacked the data necessary to create a permanent rule change, the Agency extended the termination date.

Related Activity

Development of a permanent rule change was delayed in anticipation of a recommendation on the subject from the Aviation Rulemaking Advisory Committee (ARAC). On October 22, 1998, the ARAC submitted a proposal for permanent regulatory change. The

proposal described an Organization Designation Authorization (ODA) program that would expand and further standardize the approval functions of the FAA designee system. It proposed that certain functions and procedures, including those covered by SFAR 36, be terminated and covered instead by an Organization Designation Authorization. In 1999, we extended SFAR 36 an additional five years to allow for the development and implementation of the ARAC proposal.

However, despite the progress made so far, we have delayed implementing the ODA delegation system. We did this to allow time to gain experience managing organizations under FAA Order 8100.9, DAS, DOA, and SFAR 36 Authorization Procedures, issued in August, 2002. The management principles incorporated by this Order serve as the basis for managing ODA holders. Even if an ODA proposal were published immediately, it would not be effective prior to the current expiration date of SFAR 36. The SFAR must be extended to continue the status quo and avoid significant economic and procedural disruption in returning to the earlier system of approvals.

Paragraph 4 of the SFAR currently requires that the application for authority be filed with the appropriate FAA Flight Standards District Office. The more appropriate office for the applications is now the FAA Certificate Holding District Office. A technical amendment is made to the SFAR to identify the correct office for applications.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This will be the sixth time the FAA has extended SFAR 36. When this rule was published as a notice of proposed rulemaking on November 2, 1998, the FAA received no comments. Because the Agency is simply extending the termination date of this SFAR, and failing to do so would have serious adverse economic consequences for both industry and government, the FAA asserts that publishing a direct final rule best serves the public interest. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this rule in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this rule, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) has no impact on international trade; and, (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Under the Department of Transportation Order DOT 2100.5 for regulations with an expected minimal impact, the above-specified analyses are not required. If it is determined the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that this rule does not warrant a full evaluation for the following reasons.

This final rule extends the existing provisions of SFAR 36 for five years. SFAR 36 allows authorized parties to use self-developed repair data to return products into service and to perform major repairs without the direct approval of this data by the FAA. A disruption of this current practice is likely to result in operational delays and increase approval costs. Thus, the benefit of this rule is the expense avoided of submitting such repair data for FAA approval. Extending SFAR 36 will not impose cost on the industry or the FAA. Because the final rule has positive, although not quantifiable benefits and no costs, the FAA has determined the benefits exceed the costs of the final rule. This extension of SFAR 36 will have a minimal impact, while not extending SFAR 36 will disrupt current business operations and raise approval costs both to industry and the FAA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities,'' as defined in the Act. If we find that the action will have a significant impact, we must do a ''regulatory flexibility analysis.''

This final rule extends the expiration date of SFAR 36. Its economic impact is minimal. Therefore, the FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule, and because this rule applies only to domestic firms, there will be no impact on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation).

This final rule contains no such mandate. Therefore, the requirements of Title II of the Act do not apply to this regulation.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

List of Subjects

14 CFR Part 121

Air carriers, Airworthiness directives and standards, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxis, Air transportation, Aircraft, Airmen, Airplanes, Airworthiness, Aviation safety, Helicopters, Safety.

14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 of the Code of Federal Regulations parts 121, 135, and 145 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 2. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

PART 145—REPAIR STATIONS

■ 3. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 4. Special Federal Aviation Regulation No. 36 is amended by revising paragraph 3(a)(1), paragraph 4 introductory text, paragraph 7 introductory text, and the termination date to read as follows:

SPECIAL FEDERAL AVIATION REGULATION No. 36

* * * * *

3. * * *

(a) * * *

(1) Has been issued an authorization under, and a procedures manual that complies with, Special Federal Aviation Regulation No. 36–8, effective on January 23, 2004;

* * * * *

4. *Application.* The applicant for an authorization under this Special Federal Aviation Regulation must submit an application, in writing, and signed by an officer of the applicant, to the FAA Certificate Holding District Office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

* * * * *

1. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until January 23, 2009, unless it is earlier surrendered, suspended, revoked, or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

* * * * *

This Special Federal Aviation Regulation terminates January 23, 2009.

Issued in Washington, DC, on November 13, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–28888 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
November 19, 2003

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–14766; SFAR No. 77]

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment.

SUMMARY: This action amends Special Federal Aviation Regulation (SFAR) No. 77 to allow certain limited overflights of Iraq, subject to the permission of the appropriate authorities in Iraq and in accordance with the conditions established by those authorities. The United States Government recently has determined that certain overflights may be conducted safely.

EFFECTIVE DATE: November 19, 2003.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3732 or 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information and advice about compliance statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.dot.gov.*

Background

SFAR 77, which was issued October 16, 1996, prohibits flight operations within the territory and airspace of Iraq by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for a foreign air carrier, or by a person operating an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The prohibition was issued in response to concerns for the safety and security of flights within the territory and airspace of Iraq. In the final rule, the FAA cited a threat made by then President Saddam Hussein who urged his country to ignore both the southern and northern no-fly zones and to attack ''any air target of the aggressors.'' The FAA was concerned that this threat could apply to civilian as well as military aircraft, and therefore issued SFAR 77 without an expiration date.

The United States Government has determined that certain limited overflights of Iraq now may be conducted safely. Therefore, the FAA is amending SFAR 77 to permit overflights of Iraq above Flight Level 200. This amendment also permits aircraft departing from countries adjacent to Iraq to operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200 if the climb performance of the aircraft will not permit operation above FL 200 prior to entering Iraqi airspace. Both types of operations must be conducted with the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

Immediate Adoption

Because this action lifts a prohibition on certain overflights of Iraq, I find that notice and public comment under 5 U.S.C. 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 533(d) for making this rule effective immediately upon issuance.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Iraq.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 91 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1.The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 2. Revise paragraph 2 of Special Federal Aviation Regulation No. 77 to read as follows:

Special Federal Aviation Regulation No. 77—Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

* * * * *

2. Flight prohibition. No person may conduct flight operations over or within the territory of Iraq except as provided in paragraphs 3 and 4 of this SFAR or except as follows:

(a) Overflights of Iraq may be conducted above flight level (FL) 200 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

(b) Flights departing from countries adjacent to Iraq whose climb performance will not permit operation above FL 200 prior to entering Iraqi airspace may operate at altitudes below FL 200 within Iraq to the extent necessary to permit a climb above FL 200, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Iraq.

(c) [Reserved]

* * * * *

Issued in Washington, DC, on November 13, 2003.

Marion C. Blakely,

Administrator.

[FR Doc. 03–28885 Filed 11–18–03; 8:45 am]

BILLING CODE 4910–13–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1442/P.L. 108–126

To authorize the design and construction of a visitor center for the Vietnam Veterans Memorial. (Nov. 17, 2003; 117 Stat. 1348)

H.R. 3288/P.L. 108–127

To amend title XXI of the Social Security Act to make technical corrections with respect to the definition of qualifying State. (Nov. 17, 2003; 117 Stat. 1354)

S. 677/P.L. 108–128

Black Canyon of the Gunnison Boundary Revision Act of 2003 (Nov. 17, 2003; 117 Stat. 1355)

S. 924/P.L. 108–129

To authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes. (Nov. 17, 2003; 117 Stat. 1358)

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