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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–74–AD; Amendment 39–12626; AD 2001–26–55]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–55, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters by individual letters. This AD requires, before further flight and thereafter at specified intervals, visually checking the tail rotor blade (blade) skin for a crack and replacing any cracked blade before further flight. This AD is prompted by the discovery of cracks in the skin of a blade. The actions specified by this AD are intended to prevent failure of the blade, which could result in severe vibration, loss of the tail rotor gearbox (TGB), and subsequent loss of control of the helicopter.

DATES: Effective February 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–55, issued on December 27, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–74–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 27, 2001, the FAA issued Emergency AD 2001–26–55 for ECF Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters which requires, before further flight and thereafter at specified intervals, visually checking each blade skin for a crack and replacing any cracked blade before further flight. That action was prompted by the discovery of cracks in the skin of a blade. This condition, if not detected, could result in failure of a blade, severe vibration, loss of the TGB, and subsequent loss of control of the helicopter.

The FAA has reviewed Eurocopter Alert Telex No. 05.00.40 and 05.00.38, dated December 17, 2001, which describes procedures for visually checking the blade for cracks on the blade pressure face and blade suction face and requires replacing the blade before further flight if a crack is discovered.

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on these helicopter models. The DGAC advises of a report where separation of a blade trailing edge section occurred due to crack growth in the blade skin. The unbalance caused by the loss of the blade section can cause the TGB to be torn off the tailboom. The DGAC classified the service telex as mandatory and issued AD No. T2001–640–089(A) and T2001–641–067(A), dated December 20, 2001, to ensure the continued airworthiness of these helicopters.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other ECF Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters of the same type designs. Therefore, the FAA issued Emergency AD 2001–26–55 to prevent failure of the blade, severe vibration, loss of the TGB, and subsequent loss of control of the helicopter. The AD requires, before further flight and thereafter before the first flight of each day or at intervals not to exceed 10 hours TIS, whichever occurs first, visually checking both sides (front and back) of each blade skin in the area of the trailing edge tab for a crack (see Area A of Figure 1 of this AD). Replacing any cracked blade is also required before further flight.

The visual check required by this AD may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with the visual check requirements of paragraph (a) of this AD. However, if the owner/operator (pilot) is in doubt about the existence of a crack, an inspection with a magnifying glass must be accomplished by a mechanic. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions described previously are required before further flight and at the specified time intervals, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice

and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 27, 2001, to all known U.S. owners and operators of ECF Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 653 helicopters of U.S. registry will be affected by this AD, that it will take approximately ¼ work hour per helicopter for each visual check, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9795 to inspect the helicopter blade on each helicopter once.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–74–AD." The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–26–55 Eurocopter France: Amendment 39–12626. Docket No. 2001–SW–74–AD.

Applicability: Model AS350B, AS350B1, AS350B2, AS350BA, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor blade (blade), which could result in severe vibration, loss of the tail rotor gearbox, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter before the first flight of each day or at intervals not to exceed 10 hours time-in-service (TIS), whichever occurs first, visually check both sides (front and back) of each blade skin in the area of the trailing edge tab for a crack as shown in Area A of Figure 1 of this AD.

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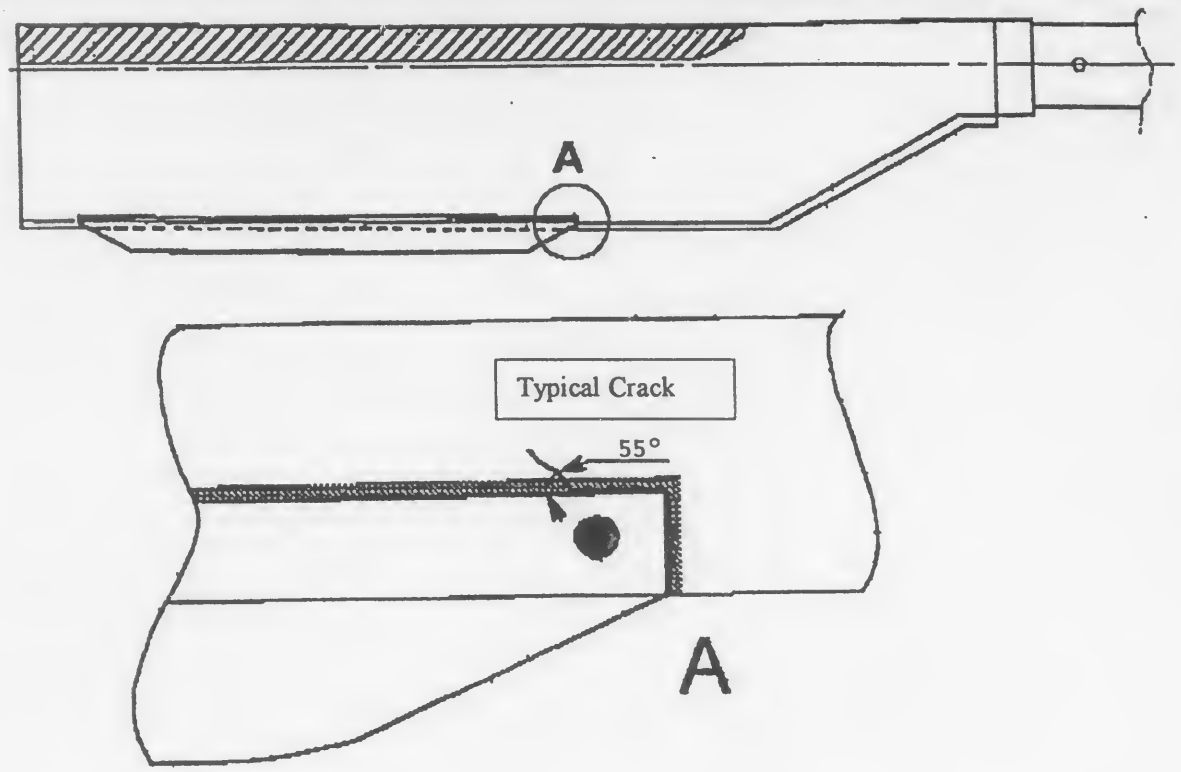

Figure 1

(b) The visual check required by paragraph (a) of this AD may be performed by an owner/operator (pilot) holding at least a private pilot certificate, with a maintenance record entry made in the aircraft records to include this AD number and paragraph (a) compliance date and aircraft TIS; time next due for paragraph (a) compliance; and name, certificate number, and type of certificate held by the person performing the visual check.

(c) If in doubt about the existence of a crack in the blade skin, clean the area and then inspect with a 6× or higher magnifying glass.

(d) If a crack is visible in the caulking, remove the caulking with 200-grit abrasive paper, taking care not to sand the skin. Inspect the blade skin for a crack using a 6× or higher magnifying glass.

(e) If a crack is found in the blade skin, replace the blade with an airworthy blade before further flight.

Note 2: Eurocopter Alert Telex No. 05.00.40 and 05.00.38, dated December 17, 2001, pertains to the subject of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(g) Special flight permits will not be issued.

(h) This amendment becomes effective on February 26, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–55, issued December 27, 2001, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France), AD No. T2001–640–089(A) and T2001–641–067(A), dated December 20, 2001.

Issued in Fort Worth, Texas, on January 17, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–2424 Filed 2–8–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–11180; Airspace Docket No. 01–AWA–6]

RIN 2120–AA66

Modification of the Washington Tri-Area Class B Airspace Area; DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Washington, DC, Tri-Area Class B airspace area. Specifically, this action renames one of the airports within the Washington, DC, Tri-Area Class B airspace area from (Washington National Airport to the Ronald Reagan Washington National Airport). The FAA is taking this action to accurately reflect the new name of the airport. This editorial modification does not involve a change to the dimensions or operating

requirements of the Washington, DC, Tri-Area Class B airspace area.

EFFECTIVE DATE: April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant or Janet Glivings, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1998, President William Jefferson Clinton signed into law the bill, introduced and passed by Congress (Public Law 105–154), that changed the name of Washington National Airport to Ronald Reagan Washington National Airport.

The Rule

This action amends 14 CFR part 71 by changing the name of the Washington National Airport to the Ronald Reagan Washington National Airport. This action is being taken, as mandated by Public Law 105–154, dated February 6, 1998, to accurately reflect the new name of the airport, within the Washington, DC, Tri-Area Class B airspace area, located in the District of Columbia and Virginia.

Since this action merely involves an editorial change to the name of the airport, and does not involve a change in the dimensions or operating requirements of the Class B airspace area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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. Therefore, 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) 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.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; 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 the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace.

* * * * *

AEA DC B Washington Tri-Area, DC [Revised]
Andrews AFB (ADW) (Primary Airport)
(Lat. 38°48′39″ N., long. 76°52′01′ W.)
Baltimore-Washington International Airport, MD (BWI) (Primary Airport)
(Lat. 39°10′31″ N., long. 76°40′09″ W.)
Ronald Reagan Washington National Airport, DC (DCA) (Primary Airport)
(Lat. 38°51′08″ N., long. 77°02′16″ W.)
Washington Dulles International Airport, DC (IAD) (Primary Airport)
(Lat. 38°56′39″ N., long. 77°27′25″ W.)
Armel VORTAC (AML)
(Lat. 38°56′05″ N., long. 77°28′00″ W.)
Fort Meade NDB
(Lat. 39°05′04″ N., long. 76°45′36″ W.)
Baltimore VORTAC
(Lat. 39°10′16″ N., long. 76°39′40″ W.)
Andrews VORTAC
(Lat. 38°48′26″ N., long. 76°51′59″ W.)
Washington VOR/DME
(Lat. 38°51′34″ N., long. 77°02′11″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Armel VORTAC; within a 7-mile radius of the Baltimore VORTAC; within a 7-mile radius of the Andrews VORTAC; and within a 7-mile radius of the Washington VOR/DME; excluding the airspace bounded on the north by an east/west line 1.5 miles north of the Fort Meade NDB, on the east by a north/south line 2 miles east of the Fort Meade NDB, and on the south and west by the 7-mile radius of the Baltimore VORTAC; excluding that airspace bounded to the north by an east/west line along lat. 38°46′20″ N., on the east by a north/south line along long. 76°54′24Prime; W., to the 7-mile radius of the Andrews VORTAC, and on the west by a north/south line along long. 76°59′29″ W., to the 7-mile radius of the Washington VOR/DME; excluding Prohibited Area P–56.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at lat. 38°41′35″ N., long. 77°01′18″ W., then counterclockwise along the 10-mile DME arc of the Andrews VORTAC to lat. 38°58′25″ N., long. 76°52′51″ W., then counterclockwise along the 10-mile DME arc Washington VOR/DME to lat. 38°57′08″ N., long. 77°12′50Prime; W., to lat. 38°46′29″ N., long. 77°13′13″ W., then counterclockwise along the 10-mile DME arc of the Washington VOR/DME to the point of beginning; and that airspace beginning at lat. 39°05′24″ N., long. 77°18′17″ W., then counterclockwise along the 12-mile DME arc of the Armel VORTAC to lat. 38°46′22″″ N., long. 77°18′58″ W., to the point of beginning; and that airspace beginning at lat. 39°07′19″ N., long. 76°54′38″ W., then clockwise along the 12-mile DME arc of the Baltimore VORTAC to lat. 38°58′23″ N., long. 76°37′28″ W., to the point of beginning; excluding that airspace designated as Area A, Area F, and Prohibited Area P–56.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at lat. 38°39′25″ N., long. 77°13′28″ W., then counterclockwise along the 15-mile DME arc of the Washington VOR/DME to lat. 38°36′36″ N., long. 77°03′46″ W., then counterclockwise along the 15-mile DME arc of the Andrews VORTAC to lat. 38°55′40″ N., long. 76°35′09″ W., then counterclockwise along the 15-mile DME arc of the Baltimore VORTAC to lat. 39°06′16″ N., long. 76°58′15″ W., then counterclockwise along the 15-mile DME arc of the Washington VOR/DME to lat. 39°04′27″ N., long. 77°12′03″ W., then counterclockwise along the 15-mile DME arc of the Armel VORTAC to lat. 39°05′02″ N., long. 77°12′34″ W., to the point of the beginning; and that airspace beginning at lat. 39°08′59″ N., long. 77°18′10″ W., then counterclockwise along the 15-mile DME arc of the Armel VORTAC to lat. 38°42′47″ N., long. 77°19′05″ W., to the point of beginning; excluding that airspace designated as Area A, Area B, Area F, Prohibited Area P–56, and

that airspace contained in Restricted Area R–4001B when active.

Area D. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL between the 15-mile radius and the 20-mile radius of the Andrews VORTAC, the Washington VOR/DME, and the Baltimore VORTAC beginning at lat. 38°40′21″ N., long. 76°28′36″ W., to lat. 39°02′10″ N., long. 76°16′11″ W., then counterclockwise along the 20-mile DME arc of the Baltimore VORTAC to lat. 39°21′20″ N., long. 77°01′08″ W., to lat. 39°16′32″ N., long. 77°20′50″ W., to lat. 39°08′59″ N., long. 77°18′10″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to lat. 39°04′27″ N., long. 77°12′04″ W., then clockwise along the 15-mile DME arc of the Washington VOR/DME to lat. 39°06′16″ N., long. 76°58′16″ W., then clockwise along the 15-mile DME arc of the Baltimore VORTAC to lat. 38°55′40″ N., long. 76°35′10″ W., then clockwise along the 15-mile DME arc of the Andrews VORTAC to lat. 38°36′36″ N., long. 77°03′47″ W., then clockwise along the 15-mile DME arc of the Washington VOR/DME to lat. 38°43′12″ N., long. 77°18′07″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to lat. 38°42′47″ N., long. 77°19′05″ W., to lat. 38°36′42″ N., long. 77°19′18″ W., then counterclockwise along the 20-mile DME arc of the Washington VOR/DME to lat. 38°31′47″ N., long. 77°06′10″ W., then counterclockwise along the 20-mile DME arc of the Andrews VORTAC to the point of beginning; excluding the airspace contained in Restricted Areas R–4001A and R–4001B when active.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL between the 15-mile radius and the 20-mile radius of the Armel VORTAC beginning at lat. 38°43′20″ N., long. 77°38′10″ W., to lat. 38°39′05″ N., long. 77°41′31″ W., then counterclockwise along the 20-mile DME arc of the Armel VORTAC to lat. 38°36′38″ N., long. 77°34′06″ W., then along the boundary of Restricted Area R–6608A to lat. 38°36′11″ N., long. 77°25′07″ W., then counterclockwise along the 20-mile DME arc of the Armel VORTAC to lat. 38°37′06″ N., long. 77°19′51″ W., then counterclockwise along the 20-mile DME arc of the Washington VOR/DME to lat. 38°36′42″ N., long. 77°19′18″ W., to lat. 38°42′46″ N., long. 77°19′06″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 39°08′56″ N., long. 77°37′57″ W., to lat. 39°13′13″ N., long. 77°41′15″ W., then clockwise along the 20-mile DME arc of the Armel VORTAC to lat. 39°15′49″ N., long. 77°23′45″ W., to lat. 39°16′32″ N., long. 77°20′50″ W., to lat. 39°08′58″ N., long. 77°18′11″ W., then counterclockwise along the 15-mile DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 38°42′46″ N., long. 77°19′06″ W., to lat. 39°08′58″ N., long. 77°18′11″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to lat. 39°05′02″ N., long. 77°12′35″ W., to lat. 38°39′25″ N., long. 77°13′29″ W., then clockwise along the 15-mile DME arc of the Washington VOR/DME to lat. 38°43′12″ N., long.77°18′08″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to the point of beginning.

Area F. That airspace extending upward from 1,900 feet MSL to and including 10,000 feet MSL beginning at the point along a line northeast of the Manassas Municipal/Harry P. Davis Field 1 mile parallel to Runway 16L localizer course and the 12-mile DME arc of the Armel VORTAC (lat. 38°44′09″ N., long. 77°29′55″ W.), then northwest along the line to Interstate Highway 66, then west along Interstate Highway 66 to U.S. Highway 29, then west along U.S. Highway 29 to the 12-mile DME arc of the Armel VORTAC (lat. 38°47′13″ N., long. 77°38′22″ W.), then counterclockwise along the 12-mile DME arc of the Armel VORTAC to the point of beginning.

Area G. That airspace extending upward from 4,500 feet MSL to and including 10,000 feet MSL between the 15-mile radius and the 20-mile radius of the Armel VORTAC beginning at lat. 39°08′56″ N., long. 77°37′57″ W., to lat. 39°13′13″ N., long. 77°41′15″ W., then counterclockwise along the 20-mile DME arc of the Armel VORTAC to lat. 38°39′05″ N., long. 77°41′32″ W., to lat. 38°43′20″ N., long. 77°38′11″ W., then clockwise along the 15-mile DME arc of the Armel VORTAC to the point of beginning; and that airspace beginning at lat. 39°02′10″ N., long. 76°16′11″ W., to lat. 38°56′51″ N., long. 76°12′19″ W., to lat. 38°44′15″ N., long. 76°16′04″ W., to lat. 38°40′21″ N., long. 76°28′36″ W., to the point of beginning.

* * * * *

Issued in Washington, DC, on January 31, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–3246 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30294; Amdt. No. 2092]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as January 1, 1982.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

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

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

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

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

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1976); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on February 1, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701;49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
01/02/02	VA	Roanoke	Roanoke Regional Woodrum Field.	2/0035	RNAV (GPS) Rwy 33, Orig
01/03/02	AZ	Scottsdale	Scottsdale	2/0079	NDB OR GPS–B, Amdt 3
01/03/02	MO	New Madrid	County Memorial	2/0090	VOR/DME OR GPS–A, Amdt 3
01/04/02	CA	Upland	Cable	2/0111	VOR Rwy 6, Amdt 7
01/07/02	CA	Upland	Cable	2/0152	GPS Rwy 6, Orig
01/08/02	CA	San Francisco	San Francisco Intl	2/0199	RNAV (GPS) Rwy 10L, Orig
01/11/02	IA	Ottumwa	Ottumwa Industrial	2/0299	VOR OR GPS Rwy 31, Amdt 14A
01/11/02	KS	Kingman	Kingman Muni	2/0313	GPS Rwy 18, Orig–A
01/14/02	FL	Tallahassee (Havana).	Tallahassee Commercial	2/0377	VOR OR GPS–A, Amdt 5A
01/15/02	MI	Menominee	Menominee-Marinette Twin County.	2/0413	VOR/DME RNAV OR GPS Rwy 21, Amdt 1A
01/15/02	IL	Galesburg	Galesburg Muni	2/0420	VOR OR GPS Rwy 21, Amdt 6B
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0429	NDB Rwy 26, Amdt 2
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0430	VOR/DME Rwy 33R, Amdt 14
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0431	ILS Rwy 33R, Amdt 11
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0432	ILS Rwy 27, Amdt 4
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0433	ILS Rwy 26, Amdt 16

FDC date	State	City	Airport	FDC No.	Subject
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0434	ILS Rwy 9, Amdt 5
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0435	ILS Rwy 8, Amdt 20
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0436	RNAV (GPS) Rwy 8, Orig
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0437	RNAV (GPS) 33R, Orig
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0438	RNAV (GPS) 26 Orig
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0439	RNAV (GPS) Rwy 9, Orig
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0440	RNAV (GPS) Rwy 27, Orig
01/15/02	TX	Houston	George Bush Intercontinental Arpt/Houston.	2/0441	RNAV (GPS) Z Rwy 9, Orig
01/16/02	WV	Beckley	Raleigh County Memorial	2/0454	ILS Rwy 19, Amdt 4A
01/16/02	OH	Willoughby	Willoughby Lost Nation Muni	2/0456	NDB OR GPS Rwy 9, Amdt 9B
01/16/02	OH	Willoughby	Willoughby Lost Nation Muni	2/0457	VOR Rwy 27, Orig–A
01/16/02	OH	Willoughby	Willoughby Lost Nation Muni	2/0458	NDB OR GPS Rwy 27, Amdt 12B
01/16/02	NY	Farmingdale	Republic	2/0462	GPS Rwy 19, Orig
01/16/02	MI	Bay City	James Clements Muni	2/0463	VOR OR GPS–A, Amdt 11A
01/16/02	FL	Miami	Miami Intl	2/0466	RNAV (GPS) Rwy 27L, Orig
01/16/02	FL	Miami	Miami Intl	2/0467	ILS Rwy 27L, Amdt 23A
01/16/02	FL	Miami	Miami Intl	2/0468	ILS Rwy 12, Amdt 4A
01/16/02	FL	Miami	Miami Intl	2/0471	RNAV (GPS) Rwy 30, Orig–G
01/16/02	FL	Miami	Miami Intl	2/0472	RNAV (GPS) Rwy 9L, Orig
01/16/02	FL	Miami	Miami Intl	2/0473	RNAV (GPS) Rwy 9R, Orig
01/16/02	FL	Miami	Miami Intl	2/0474	RNAV (GPS) Rwy 12, Orig–A
01/17/02	SD	Watertown	Watertown Muni	2/0486	ILS Rwy 35, Amdt 10
01/17/02	LA	De Ridder	Beauregard Parish	2/0492	LOC Rwy 36, Amdt 1A
01/18/02	NH	Berlin	Berlin Muni	2/0528	NDB Rwy 18, Orig–B
01/18/02	NH	Berlin	Berlin Muni	2/0529	VOR/DME Rwy 18, Amdt 1B
01/18/02	CT	New Haven	Tweed-New Haven	2/0530	ILS Rwy 2, Amdt 15B
01/18/02	NY	White Plains	Westchester County	2/0533	ILS Rwy 34, Amdt 3A
01/18/02	FL	Perry	Perry-Foley	2/0534	RNAV (GPS) Rwy 36, Orig
01/18/02	FL	Titusville	Space Coast Regional	2/0535	GPS Rwy 9, Orig–B
01/18/02	FL	Titusville	Space Coast Regional	2/0536	NDB OR GPS Rwy 18, Amdt 12
01/22/02	NY	Montgomery	Orange County	2/0568	ILS Rwy 3, Amdt 1
01/22/02	NY	Monticello	Sullivan County Intl	2/0569	ILS Rwy 15, Amdt 5A
01/22/02	IA	Des Moines	Des Moines Intl	2/0581	ILS Rwy 31, Amdt 21B
01/23/02	TX	El Paso	El Paso Intl	2/0592	Radar–1, Amdt 13A
01/24/02	TX	Falfurrias	Brooks County	2/0667	NDB Rwy 35, Amdt 1
01/25/02	SC	Orangeburg	Orangeburg Muni	2/0683	VOR Rwy 5, Amdt 4B
01/25/02	TN	Memphis	Memphis Intl	2/0688	LOC Rwy 17, Orig
01/25/02	TN	Memphis	Memphis Intl	2/0689	Radar–1, Amdt 39
01/25/02	TN	Memphis	Memphis Intl	2/0691	NDB Rwy 9, Amdt 27
01/25/02	TN	Memphis	Memphis Intl	2/0696	ILS Rwy 36C (CAT I,II,III), Amdt 2
01/25/02	TN	Memphis	Memphis Intl	2/0698	ILS Rwy 27, Amdt 2B
01/25/02	TN	Memphis	Memphis Intl	2/0699	ILS Rwy 18R, Amdt 12C
01/25/02	TN	Memphis	Memphis Intl	2/0700	ILS Rwy 18L, Amdt 1B
01/25/02	TN	Memphis	Memphis Intl	2/0701	ILS Rwy 18C, Orig–A
01/25/02	TN	Memphis	Memphis Intl	2/0703	ILS Rwy 9, Amdt 26A
01/25/02	TN	Memphis	Memphis Intl	2/0708	ILS Rwy 36L (CAT I,II,III), Amdt 13B
01/25/02	TN	Memphis	Memphis Intl	2/0725	ILS Rwy 36R, (CAT I,II,III), Amdt 2
01/25/02	TN	Memphis	Memphis Intl	2/0729	VOR/DME Rwy 18R, Orig
01/29/02	IA	Pella	Pella Muni	2/0797	RNAV (GPS) Z Rwy 34, Orig
01/29/02	IA	Pella	Pella Muni	2/0799	RNAV (GPS) Z Rwy 16, Orig
01/29/02	IA	Pella	Pella Muni	2/0800	NDB OR GPS Rwy 34, Amdt 7
01/29/02	PA	Meadville	Port Meadville	2/0825	LOC Rwy 25, Amdt 3B
01/29/02	PA	Meadville	Port Meadville	2/0826	GPS Rwy 25, Orig–A
01/29/02	PA	Meadville	Port Meadville	2/0827	VOR OR GPS Rwy 7, Amdt 6A

[FR Doc. 02–3243 Filed 2–8–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30293; Amdt. No. 2091]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4162.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 1, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA,

LDA/DME, SDF, SDF/DME;§ 97.27 NDB, NDB/DME;§ 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV;§ 97.31 RADAR SIAPs;§ 97.33 RNAV SIAPs; and§ 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 21, 2002*

Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Y RWY 12L, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Z RWY 12L, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Y RWY 12R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Z RWY RWY 12R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Y RWY 22, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Z RWY 22, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Y RWY 30L, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Z RWY 30L, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Y RWY 30R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, RNAV (GPS) Z RWY 30R, Orig
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, NDB RWY 30L, Amdt 24A
Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, NDB RWY 30R, Amdt 12A
Springfield, MO, Springfield-Branson Regional, ILS, RWY 14, Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 14, Orig
Springfield, MO, Springfield-Branson Regional, RNAV (GPS) RWY 32, Orig
Springfield, MO, Springfield-Branson Regional, VOR/DME RNAV OR GPS RWY 14, Amdt 4A, CANCELLED
Springfield, MO, Springfield-Branson Regional, VOR/DME OR TACAN RWY 2, Orig
Raleigh-Durham, NC, Raleigh-Durham International, ILS RWY 5L, Amdt 4
Raleigh-Durham, NC, Raleigh-Durham International, ILS RWY 5R, Amdt 26
Raleigh-Durham, NC, Raleigh-Durham International, ILS, RWY 23L, Amdt 6
Raleigh-Durham, NC, Raleigh-Durham International, ILS RWY 23R, Amdt 9
Raleigh-Durham, NC, Raleigh-Durham International, RNAV (GPS) RWY 5L, Orig
Raleigh-Durham, NC, Raleigh-Durham International, RNAV (GPS) RWY 5R, Orig
Raleigh-Durham, NC, Raleigh-Durham International, RNAV (GPS) RWY 23L, Orig
Raleigh-Durham, NC, Raleigh-Durham International, RNAV (GPS) RWY 23R, Orig
Raleigh-Durham, NC, Raleigh-Durham International, RNAV (GPS) RWY 32, Orig
Kanab, UT, Kanab Muni, RNAV (GPS) RWY 1, Orig

** * * Effective March 21, 2002*

Warren, MN, Warren Muni, RNAV (GPS) RWY 30, Orig
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt 1A
Lancaster, PA, Lancaster, VOR/DME RWY 8, Amdt 4A

** * * Effective April 18, 2002*

Manila, AR, Manila Muni, RNAV (GPS) RWY 18, Orig
Manila, AR, Manila Muni, GPS RWY 18, Orig, CANCELLED
Morrilton, AR, Petit Jean Park, RNAV (GPS) RWY 3, Orig
Morrilton, AR, Petit Jean Park, GPS RWY 3, Orig-B, CANCELLED
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, VOR RWY 12, Amdt 14
Santa Maria, CA, Santa Maria Public/Captain G. Allen Hancock Field, RNAV (GPS) RWY 12, Orig
Willits, CA, Ells Field-Willits Muni, RNAV (GPS) RWY 16, Orig
Willits, CA, Ells Field-Willits Muni, RNAV (GPS) RWY 34, Orig
Middletown, DE, Summit, RNAV (GPS) RWY 17, Orig
Middletown, DE, Summit, VOR/DME RNAV RWY 35, Amdt 3B, CANCELLED
Weno Island, FM, Chuuk International, RNAV (GPS) RWY 4, Orig, CANCELLED
Weno Island, FM, Chuuk International, GPS RWY 4, Orig, CANCELELD
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 9L, Orig
Bartow, FL, Bartow Muni, RNAV (GPS) RWY 27R, Orig
Bartow, FL, Bartow Muni, GPS RWY 27R, Orig, CANCELLED
Bartow, FL, Bartow Muni, GPS RWY 9L, Amdt 1, CANCELLED
Kaunakakai, HI, Molokai, RNAV (GPS)–B, Orig
Bloomfield, IA, Bloomfield, Muni, RNAV (GPS) RWY 36, Orig
Bloomfield, IA, Bloomfield, Muni, NDB RWY 36, Amdt 3
Eagle Grove, IA, Eagle Grove Muni, RNAV (GPS) RWY 31, Orig
Eagle Grove, IA, Eagle Grove Muni, GPS RWY 31, Orig, CANCELLED
Fort Dodge, IA, Fort Dodge Regional, RNAV (GPS) RWY 6, Orig
Fort Dodge, IA, Fort Dodge Regional, RNAV (GPS) RWY 24, Orig
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV OR GPS RWY 6, Amdt 6A CANCELLED
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RNAV OR GPS RWY 24, Amdt 5B, CANCELLED
Manhattan, KS, Manhattan Regional, RNAV (GPS) RWY 3, Orig
Manhattan, KS, Manhattan Regional, RNAV (GPS) RWY 21, Orig
Manhattan, KS, Manhattan Regional, RNAV (GPS) RWY 31, Orig
Frenchville, ME, Northern Aroostook Regional, GPS RWY 32, Orig, CANCELLED
Battle Creek, MI, W.K. Kellogg, VOR OR TACAN RWY 5, Amdt 19A
Holland, MI, Tulip City, VOR/DME RNAV RWY 26, Amdt 5B
Bowling Green, MO, Bowling Green Muni, RNAV (GPS) RWY 13, Orig
Bowling Green, MO, Bowling Green Muni, RNAV (GPS) RWY 31, Orig
Bowling Green, MO, Bowling Green Muni, VOR/DME–A, Amdt 2
Cabool, MO, Cabool Memorial, RNAV (GPS) RWY 21, Orig
Cabool, MO, Cabool Memorial, GPS RWY 21, Orig, CANCELLED
Chillicothe, MO, Chillicothe Muni, RNAV (GPS) RWY 32, Orig
Chillicothe, MO, Chillicothe Muni, GPS RWY 32, Orig, CANCELLED
Mosby, MO, Clay County Regional, RNAV (GPS) RWY 36, Orig
Mosby, MO, Clay County Regional, GPS RWY 36, Orig, CANCELLED
Mosby, MO, Clay County Regional, NDB RWY 18, Amdt 1
Osage Beach, MO, Grand Glaize-Osage Beach, RNAV (GPS) RWY 14, Orig
Osage Beach, MO, Grand Glaize-Osage Beach, RNAV (GPS) RWY 32, Orig
Osage Beach, MO, Grand Glaize-Osage Beach, VOR RWY 32, Amdt 5
Bassett, NE, Rock County, RNAV (GPS) RWY 13, Orig
Bassett, NE, Rock County, RNAV (GPS) RWY 31, Orig
Bassett, NE, Rock County, NDB RWY 31, Amdt 3
Lincoln, NE, Lincoln Muni, RNAV (GPS) RWY 14, Orig
Lincoln, NE, Lincoln Muni, GPS RWY 14, Orig-A, CANCELLED
Manchester, NH, Manchester, NDB OR GPS RWY 35, Amdt 13B, CANCELLED
Manchester, NH, Manchester, ILS RWY 35, Amdt 20A, CANCELLED
Kutztown, PA, Kutztown, VOR–A, Amdt 1
Kutztown, PA, Kutztown, RNAV (GPS)–A, Orig
Kutztown, PA, Kutztown, GPS RWY 17, Amdt 1, CANCELLED
Sterling, PA, Spring Hill, RNAV (GPS)–A, Orig
Block Island, RI, Block Island State, NDB RWY 10, Amdt 4, CANCELLED
Henderson, TX, Rusk County, RNAV (GPS) RWY 16, Orig
Henderson, TX, Rusk County, GPS RWY 16, Orig, CANCELLED
Sulphur Springs, TX, Sulphur Springs Muni, RNAV (GPS) RWY 36, Orig
Sulphur Springs, TX, Sulphur Springs Muni, GPS RWY 36, Orig, CANCELLED

[FR Doc. 02–3242 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Natural Gas Pipelines; Project Cost and Annual Limits

February 5, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.308(x)(1), the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

EFFECTIVE DATE: January 1, 2002.

FOR FURTHER INFORMATION, CONTACT: Michael J. McGehee, Division of Pipeline Certificates, (202) 208–2257.

Publication of Project Cost Limits Under Blanket Certificates; Order of the Director, OEP

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to Section 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2002, as published in Table I of Section 157.208(d) and Table II of Section 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

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

J. Mark Robinson,

Director, Office of Energy Projects.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

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

2. Table I in § 157.208(d) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(d) * * *

TABLE I

Year	Limit	
	Auto. proj. (cost limit) (Col. 1)	Prior notice proj. cost limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000
2000	7,300,000	20,200,000
2001	7,400,000	20,600,000
2002	7,500,000	21,000,000

* * * * *

3. Table II in § 157.215(a) is revised to read as follows:

§ 157.215 Underground storage testing and development.

(a) * * *

(5) * * *

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000
2001	4,750,000
2002	4,850,000

* * * * *

[FR Doc. 02–3211 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–01–052]

RIN 2115–AE47

Drawbridge Operation Regulations; Darby Creek, PA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge and the Reading Railroad Bridge, both across Darby Creek at mile 0.3, in Essington, Pennsylvania. The final rule for the CONRAIL Railroad Bridge will eliminate the need for a bridge tender by allowing the bridge to be operated by the bridge/train controller from a remote location. The Reading Railroad Bridge will be left in the open position. The final rule will provide for the reasonable needs of navigation.

DATES: This rule is effective March 13, 2002.

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 CGD05–01–052 and are available for inspection or copying at Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 10, 2001, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Darby Creek, Pennsylvania" in the **Federal Register** (66 FR 51614). We received two letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

CONRAIL, who owns and operates both drawbridges, requested changes to the operating procedures for both their drawbridges across Darby Creek, mile 0.3, located in Essington, Pennsylvania. These changes allow the operation of the CONRAIL Railroad Bridge from a remote location for train crossings or

maintenance. Under this rule, the bridge/train controller at the Delair Railroad Bridge, in Delair, New Jersey, will operate the CONRAIL Railroad Bridge across Darby Creek. The Reading Railroad Bridge will be maintained in the open position for vessels at all times. The current operating schedule for the both drawbridges is set out in 33 CFR 117.903. The regulation states that from May 15 through October 15, from 11 p.m. to 7 a.m., the draws need not be opened for the passage of vessels. Between 7 a.m. and 11 p.m., the draws shall open on signal at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m. and 10:30 p.m. and at all other times during these hours, if an opening will not unduly delay railroad operations; and from October 16 through May 14, the draws shall open on signal if at least 24 hours notice is given. However, the CONRAIL Railroad Bridge currently is left in the open position and only closed by a bridge tender on site for passage of an approaching train.

Under this rule, when a train approaches the CONRAIL Railroad Bridge, it will stop and a crewmember will be on-site to assist in observing the waterway for approaching craft, which will be allowed to pass. The crewmember will then communicate with the off-site bridge/train controller at the Delair Railroad Bridge either by radio or telephone, requesting the off-site bridge/train controller to lower the bridge. Before closing the CONRAIL Railroad Bridge, the off-site bridge/. controller will monitor waterway traffic on Darby Creek in the area of the drawbridge by maintaining constant surveillance of the navigation channel using infrared channel sensors to ensure no conflict with maritime traffic exists. Channel traffic lights located on top of the bridge will change from flashing green to flashing red any time the bridge is not in the full open position.

This rule will make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance, and will save operational costs by eliminating bridge tenders while still providing the same bridge capabilities.

Since 1980, the Reading Railroad Bridge has had the tracks removed on the north and south sides of the bridge and is secured in the full open position to allow marine traffic to pass. In accordance with 33 CFR 117.41, the lift-span had been placed in the full open position for vessels. This final rule formalizes the current operation of the Reading Railroad Bridge.

Discussion of Comments and Changes

The Coast Guard received two comments on the NPRM. The first comment favored the proposed changes in the operation of the CONRAIL Railroad Bridge.

The second comment, from CONRAIL, noted that the off-site bridge/train controller would stop the CONRAIL Railroad Bridge and return it to the open position in the event of lost communications or failure of the infrared sensors. The proposed rule, in paragraph (a)(7), stated that the bridge would "automatically" stop and return to the open position in each occurrence.

The Coast Guard considers this change proposed by CONRAIL to be more reliable and efficient in the event of an emergency and the final rule was change to reflect this procedure.

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 Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of the final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact that this final rule for the Conrail Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge.

Under the current regulations, the Conrail Railroad Bridge remains closed and opens after proper signal from May 15 through October 15. The final rule will require the bridge to remain in the open position during this period, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

For the Reading Railroad Bridge, the final rule will provide for the reasonable needs of navigation since the bridge is maintained in the open position for vessel passage at all times.

Small Entities

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

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

This final rule will not have a significant economic impact on a substantial number of small entities because it will provide for the CONRAIL Railroad Bridge to operate remotely and remain in the open position, allowing the free flow of vessel traffic from May 15 through October 15. The bridge will only close for the passage of trains and maintenance. From October 16 through May 14, the drawbridge shall open on signal if at least 24 hours notice is given.

The Reading Railroad Bridge will have no impact since the bridge is maintained in the open position at all times for vessel passage.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small businesses who would answer questions concerning proposed provisions or options for compliance.

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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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. 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 considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of existing drawbridges and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

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; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub.L. 102–587, 106 Stat. 5039.

2. Section 117.903 is revised to read as follows:

§ 117.903 Darby Creek.

(a) The draw of the CONRAIL Railroad Bridge, mile 0.3, at Essington, will operate as follows:

(1) The owner of this bridge on this waterway shall provide and keep in good legible condition two board gages painted white with black figures, nine inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(2) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) From May 15 through October 15, the draw shall be left in the open position at all times and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(4) The bridge will be operated by the bridge/train controller at the Delair Railroad Bridge in Delair, New Jersey.

(5) Before the bridge closes for any reason, an on-site crewmember will observe the waterway for approaching craft, which will be allowed to pass. The on-site crewmember will then communicate with the off-site bridge/train controller at the Delair Railroad Bridge either by radio or telephone, requesting the off-site bridge/train controller to lower the bridge.

(6) The bridge shall only be lowered from the remote site if the on-site crewmember's visual inspection shows there are no vessels in the area and the infrared channel sensors are not obstructed.

(7) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, the off-site bridge/train controller will maintain constant surveillance of the navigational channel using infrared sensors to ensure no conflict with maritime traffic exists. In the event of failure or obstruction of the infrared channel sensors, the off-site bridge/train controller will stop the bridge and return the bridge to the open position. In the event of loss of radio or telephone communications with the on-site crewmember, the off-site bridge/train controller will stop the bridge and the bridge return to the open position.

(8) When the draw cannot be operated from the remote site, a bridge tender must be called to operate the bridge in the traditional on-site manner.

(9) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(10) During downward span movement, the channel traffic lights will change from flashing green to flashing red, the horn will sound two times, followed by a pause, and then two repeat blasts until the bridge is seated and locked down.

(11) When the rail traffic has cleared, the off-site bridge/train controller at the Delair Railroad Bridge will sound the horn five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(12) During upward span movement, the channel traffic lights will change from flashing green to flashing red, the horn will sound two times, followed by a pause, and then sound repeat blasts until the bridge is in the full open position. In the full open position, the

channel traffic lights will then turn from flashing red to flashing green.

(13) From October 16 through May 14, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231–7088 or (856) 662–8201. Operational information will be provided 24 hours a day by telephone at (856) 231–7088 or (856) 662–8201.

(b) The Reading Railroad Bridge, mile 0.3, at Essington, will be left in the full open position at all times.

Dated: January 29, 2002.

Thad W. Allen,

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

[FR Doc. 02–3249 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2000–7442]

RIN 2115–AD23

Permits for the Transportation of Municipal and Commercial Waste

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing regulations previously published as an interim rule (IR). These regulations have been codified at 33 CFR part 151. The IR was published to implement the permitting and numbering requirements of the Shore Protection Act, but was never published as a final rule.

DATES: This final rule is effective on March 13, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7442 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Michael Jendrossek, Office of Vessel and Facilities Operating Standards, Coast Guard, telephone 202–267–0836. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On May 24, 1989, the Coast Guard published in the **Federal Register** (54 FR 22546) an interim rule (IR) with request for comments (docket number CGD 89–014) implementing the permitting and numbering requirements of the Shore Protection Act (33 U.S.C. 2601 *et seq.*). In response, the Coast Guard received six comments. After it was determined that the procedures outlined in the IR were operating successfully, the Coast Guard published a Notice of Withdrawal in the **Federal Register** (60 FR 64001) on December 13, 1995, to discontinue the rulemaking. The intent was to close the rulemaking project. However, due to an oversight, the IR was never finalized.

The IR has been in place for the past 11 years, and the Coast Guard believes these procedures have been operating in a satisfactory manner. Therefore, the Coast Guard is now finalizing the IR. As the first step in this process, we reopened the comment period for the IR by publishing a notice of intent with request for comments in the **Federal Register** (66 FR 22137) on May 3, 2001. We received three comments regarding our intent to finalize this rulemaking.

Discussion of Comments

We received one comment that suggested using an Automatic Identification System (AIS) on vessels permitted to carry municipal waste. We are unable to respond to this comment as it is outside the scope of this rulemaking. However, the Coast Guard will be considering AIS use generally in a future rulemaking.

The second comment was from the Commonwealth of Virginia. The comment suggest the Coast Guard take further steps to ensure the protection of human health and the environment. They suggest requiring information from the applicant on financial capability for clean-up and natural resource damage, information on past environmental violations or criminal convictions and a waste load tracking system. The Commonwealth also urges the Coast Guard to recognize legitimate interests of state regulation.

This rulemaking is still a two-part regulation, and this final rule only concerns the first portion. This rule has been interim for over ten years and should be finalized before we progress with the second portion of this rulemaking. The second part will address such issues as permanent permits versus conditional permits, as well as suspension and revocation provisions. We will provide the public with additional opportunities to comment on the second portion of the rulemaking, and we will keep the comments listed above in mind as we prepare that second portion. That drafting process will include consultation with States, if necessary.

The third comment was from the Environmental Protection Agency (EPA) requesting that the Coast Guard delay finalizing this rule. As we have already stated, this is merely an administrative finalization of the interim rule that has been operating for over ten years. The Coast Guard is committed to working with EPA as they finalize their regulations under the Shore Protection Act. We are also committed to working with EPA to establish a formal, non-conditional permitting process, as well as suspension and revocation procedures for the permanent permits. In the spirit of that cooperation, we shared a draft of this final rule with EPA.

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 (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

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.

These regulations contain only minimal reporting requirements. Respondents are required to complete an application containing only the minimum information necessary for the Coast Guard to fulfill its obligations under the SPA. They are also required to display a number on the vessel. The cost of complying with these requirements will be minimal. These costs are proportionally lower for small entities than for larger ones because a small entity will have fewer vessels and therefore will have fewer applications to complete and numbers to display. Since these costs are so low, the cost to any

individual small entity will be negligible. During the two comment periods for this rulemaking, the Coast Guard received no comments regarding adverse impacts economic or otherwise on small entities. Therefore, 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 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

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). The collection of information requirements in the IR were previously approved by OMB. OMB Control Number 2115–0579 is assigned the collection.

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 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 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. 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 considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The permit and numbering system, required in the rule, are parts of a regulatory program to minimize the amount of municipal or commercial waste entering the coastal waters of the United States. The regulations are administrative in nature and do not prescribe any operational requirements that will have an impact on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 151 which was published at 54 FR 22546 on May 24, 1989, and amended at 54 FR 24078, June 5, 1989; 61 FR 33665, June 28, 1996; 62 FR 33363, June 19, 1997; and 66 FR 33637, June 25, 2001, is adopted as a final rule.

Dated: December 14, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02–3250 Filed 2–8–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1, 2, 90 and 95

[ET Docket No. 00–221; ET Docket No. 99–255; PR Docket No. 92–235; WT Docket 97–153; FCC 01–382]

Reallocation of 27 MHz of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallocates spectrum transferred from Federal Government use for non-Government services pursuant to the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997. Our actions here fulfill our statutory obligation to reallocate this transfer spectrum to non-Government users. We believe that this will lead to the development of new technologies and services and provide spectrum alternatives for users currently operating on heavily encumbered spectrum where operations are constrained due to congestion.

DATES: Effective April 12, 2002.

After January 1, 2002, new assignments will no longer be permitted

for Government and non-Government operations in the 216–217 band.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418–0616, TTY (202) 418–2989, e-mail: *ikeltz@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 00–221; ET Docket No. 99–255; PR Docket No. 92–235; WT Docket No. 97–153; FCC 01–382, adopted December 21, 2001 and released January 2, 2002. The full text of this document is available on the Commission's internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* e-mail, Portals II, 445 12th St., SW, Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. The *Notice of Proposed Rule Making* ("NPRM"), 66 FR 7443, January 23, 2001, proposed to allocate a total of 27 megahertz of spectrum from the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands transferred from Government to non-Government use pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93) and the Balanced Budget Act of 1997 (BBA–97). These seven bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that our actions will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligation as mandated by Congress to assign this spectrum for non-Government use. The NPRM also requested comment on procedures for the reimbursement of relocation costs incurred by incumbent Federal Government users as mandated by the National Defense Authorization Act of 1999. Of the bands considered in this proceeding, the 216–220 MHz, 1432–1435 MHz, and 2385–2390 MHz bands are subject to competitive bidding and reimbursement of Federal incumbents.

2. *216–220 MHz Band*—we are adopting our proposal to allocate the 216–220 MHz band to the fixed and mobile (except aeronautical mobile) services on a co-primary basis. In addition, we are adopting rules to upgrade the status of the Low Power Radio Service (LPRS) from secondary to primary on 216–217 MHz band. In making this allocation, we are retaining the secondary amateur service allocation at 219–220 MHz, the wildlife and ocean tracking allocation, as well as the secondary Government allocation. The rules adopted will continue to require licensees in this band to protect the Navy's SPASUR system.

3. We observe that maintaining the secondary allocation in the 216–220 MHz band for wildlife and ocean tracking and for Government operations is a departure from our proposal. However, we believe it is in the public interest to provide for the continuation of these services in this band. These services support scientific research as well as monitoring of critical infrastructure. In making this decision it is important to note that the majority of these operations tend to be in rural and unpopulated areas, far from where most licensees operate. Because it is unlikely for these existing secondary services to operate in proximity to new services, this action will allow the continuation of important operations with no impact on the ability of new licensees to use this band.

4. With respect to the 217–220 MHz band, we observe that the allocation changes we are adopting will not provide any significant change to current use of the spectrum. We are eliminating the Federal Government's unused primary maritime mobile allocation and are proceeding with the service plans currently underway. The 217–218 MHz and 219–220 MHz segments are currently used by AMTS stations and the Commission has proposed rules to assign the remaining AMTS licenses by competitive bidding. The 218–219 MHz band is currently allocated to the 218–219 MHz Service, formerly known as IVDS. The Commission established that service in 1992, and by 1995 had issued 612 licenses in 306 Metropolitan Statistical Areas (MSAs). We plan to award licenses for the remaining service areas in the 218–219 MHz Service in an upcoming auction.

5. With regard to the 216–217 MHz band, the LPRS auditory assistance and law enforcement applications are currently operating without encumbrance from a primary service due to technical limitations from adjacent band restrictions. The LPRS is ideally suited for this band given the technical limitations and propagation characteristics of the spectrum. Because LPRS devices operate with low power, they are susceptible to harmful interference from high-powered systems and thus not able to share well with many types of radios. If forced to relocate, it is highly unlikely that these consumer devices could be cost effectively retuned and instead would have to be replaced. Because the LPRS is licensed by rule, all spectrum in the 216–217 MHz band is shared among all users. Thus, it is not possible to have mutually exclusive applications under the current service rules. Under the provisions of Section 309(j), only mutually exclusive applications are eligible to be granted through competitive bidding.

6. Providing a primary allocation for the LPRS in the 216–217 MHz band is also consistent with statutory requirements for providing access to facilities and services by persons with disabilities. Most notably, the Americans with Disabilities Act (ADA) requires businesses to make their public facilities and services accessible to persons with disabilities. In fact, many businesses, such as theaters, stadiums, and other public gathering places, have complied with the ADA by installing auditory assistance devices in their facilities. In addition, many states have used assistive listening devices to comply with the Individuals with Disabilities Education Act, which requires that State Government agencies provide children with disabilities with a free and appropriate public education. Further, the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 promote the development and use of affordable telecommunications devices by persons with disabilities in places such as educational settings, public gathering places, and health care facilities.

7. LPRS is also used extensively by law enforcement agencies for law enforcement tracking systems (LETS). These systems, which operate on two channels in the 216–217 MHz band, protect high-risk businesses, such as banks and jewelers, by assisting in the recovery of stolen money and property. Currently, such systems are used by local police departments and the Federal Bureau of Investigation in 135 cities in the United States and have been instrumental in reducing crime rates. Allowing this service to continue to operate and providing protection by raising its status to primary along with

the other LPRS Services will ensure that the valuable services provided by these systems remain accessible to the public. We are amending the Table of Frequency Allocations in Section 2.106 and the LPRS rules in Part 95 to provide LPRS stations with primary status. In doing so, we are not making any other amendments to the LPRS service rules already in place. LPRS stations must continue to operate within the parameters of the current rules and protect the reception of television channel 13 and the Navy's SPASUR system.

8. We believe that it will likely be difficult for secondary telemetry licenses to coordinate with LPRS, which is licensed by rule, and authorized to operate ubiquitously without prior notice. LPRS operations are primarily in and near urban areas. We are sympathetic with the Hearing Industry Association comments that LPRS devices could be protected from interference by prohibiting non-LPRS operations in major cities. While it would not be equitable to force incumbent operations to relocate, we believe that we should no longer accept new applications in order to protect LPRS devices. Accordingly, new assignments will no longer be permitted for Government and non-Government operations in the 216–217 MHz band after January 1, 2002.

9. We are proceeding with our current plans to license the remainder of the 217–220 MHz band by competitive bidding. Thus, we affirm our tentative conclusion in the *NPRM* that it would be inappropriate to allow new co-primary services in this band. In doing so, we note that because this band is already licensed in many areas, the transfer of the Federal Government spectrum will not free up significant additional capacity. By this action, we are rejecting the requests of numerous parties to this proceeding that asked for various rule amendments to the 216–220 MHz band. We observe that many of the specific requests for this band can be accommodated under the fixed and mobile (except aeronautical mobile) allocations we are adopting and the rules currently in place in the 217–220 MHz portion of the band or other spectrum regulated by the Commission.

10. The Amateur Radio Relay League (ARRL) requests that we expand the current secondary Amateur Service allocation at 219–220 MHz to include the entire 216–220 MHz band. ARRL submits that currently amateurs must coordinate their operations in the 219–220 MHz band with nearby AMTS stations before operating. Because it is necessary to protect these critical operations, ARRL concedes that amateurs have only been able to make limited use of this band. Notwithstanding ARRL's statements that the amateur service should remain secondary under any expansion of the 216–220 MHz band to which amateurs have access, we do not believe such expansion would be appropriate. We have adopted a geographic area licensing scheme in the 217–220 MHz band segments, which should result in increased and more efficient use of these bands. Any increase in use of this spectrum by the Amateur Service within a licensee's service area could be detrimental to successful operations by the geographic area license. Additionally, because the existing complex coordination rules would have to be applied to the entire band, and such rules have foreclosed much use of the 219–220 MHz band by amateurs, we do not foresee much, if any, use of an expanded band by the amateur service. We also note, that amateur service licensees can operate message forwarding systems similar to those allowed in the 219–220 MHz band in any band in which they have privileges. Accordingly, we are denying ARRL's request to extend the amateur service use of the band to the entire 216–220 MHz band. We will continue to make the 219–220 MHz band available to amateurs on a secondary basis. If amateur use of this band significantly increases in the future, we may revisit and reevaluate this decision.

11. Manufacturers and users of 216–220 MHz band telemetry equipment request that we elevate their operations from secondary to primary status. They state that such action is needed to ensure that these operations continue to be viable for the transmission of "accurate, uncontaminated data." We continue to believe that secondary status is adequate. We have no indication that their existing secondary status has substantially constrained or impeded operations in this band. We note that many of these types of telemetry operations are temporary in nature and occur in areas with low population densities. If primary status is necessary, operators can obtain primary status, under the fixed and mobile (except aeronautical mobile) allocations we adopt herein, either by acquiring a license at the auction for the 217–218 Service or AMTS, or by negotiating with a licensee in the desired area.

12. With respect to the 216–217 MHz band, we note that the Commission asked for comment in WT Docket No. 97–153 on the need to protect LPRS operations from telemetry operations in that band. Based on the action taken here to elevate the LPRS allocation in the band to primary, no additional action is necessary to protect that service. Because LPRS is primary and telemetry remains secondary, telemetry operators must not cause interference to LPRS and telemetry is not entitled to any protection from LPRS. This regulatory structure should not be problematic for many of the telemetry systems in this band because, as stated above, many of these operations take place in rural areas, while the majority of LPRS operations occur in populated areas. With respect to the 216–217 MHz band, we decline to make changes as requested by Warren Havens and Securicor, except for the portion of these requests that encompasses the 216–217 MHz band, these requests are beyond the scope of this Report and Order and will be addressed in the Companion Service Rule Notice.

The 1.4 GHz Bands

13. The 1.4 GHz spectrum encompasses 13 megahertz of spectrum in four segments at 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, and 1432–1435 MHz. In the NPRM, we did not make specific allocation proposals for these bands, but instead presented several options for consideration.

Frequency Bands

14. *1390–1395 MHz Band:* The 1390–1395 MHz band is allocated internationally in ITU Region 2 on a primary basis to the radiolocation service, and on a secondary basis to the space research (passive) and Earth exploration-satellite (passive) services. Domestically, the 1390–1395 MHz band is a Federal Government exclusive band that is allocated to the radiolocation service on a primary basis and to the fixed and mobile services on a secondary basis. Federal agencies use this band for long-range air defense radars, military test range telemetry links, tactical radio relays, and radio astronomy. In designating this band for transfer to non-Federal Government use, NTIA noted that high powered Federal Aviation Administration (FAA) and Department of Defense (DoD) radars would continue to operate in the lower adjacent band which could affect the performance of non-Federal Government receivers in the 1390–1395 MHz band. In addition, NTIA stated that radio astronomy operations would continue within this band. Footnote US311 to the Table of Frequency allocations requires that every practicable effort be made to avoid the assignment of frequencies in the band in the geographic areas where radio astronomy is conducted. As a condition

of the reallocation, NTIA states that airborne and satellite downlink operations need to be prohibited to avoid interference to radio astronomy. NTIA also stated that 17 military radar sites in the band will require protection until the year 2009. These protection areas, circles with radii of 80 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. Finally, we note that the 1390–1395 MHz band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

15. *1427–1429 MHz Band:* The 1427–1429 MHz band is allocated to the fixed, mobile (except aeronautical mobile), and space operation (Earth-to-space) services on a co-primary basis throughout the world. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1427–1429 MHz band is allocated on a co-primary basis to Federal Government fixed and mobile (except aeronautical mobile) services and to the Federal and non-Federal Government space operation service. The 1427–1429 MHz band is also allocated on a secondary basis to non-Federal Government fixed and mobile services, limited to telemetering and telecommand applications. The Federal Government uses this band for military tactical radio relay communications and military test range aeronautical telemetry and telecommand. NTIA stated that airborne operations or space-to-Earth communications should be avoided in this band to protect sensitive radio astronomy observations in the adjacent 1400–1427 MHz band. In addition, NTIA stated that military airborne operations at 14 sites will require protection until the year 2004. These sites, which must be protected within circles with radii ranging from 70–160 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. The non-Federal Government use of this spectrum is for telemetry. This band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

16. *1429–1432 MHz Band:* In ITU Region 2, the 1429–1432 MHz band is allocated to the fixed and mobile services on a co-primary basis. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1429–1432 MHz band is allocated to the Federal and non-Federal Government land mobile service on a primary basis for WMTS use. The 1429–1432 MHz band is allocated to the fixed and land mobile services on a secondary basis for non-Federal Government use, limited to telemetering and telecommand applications. Federal Government uses of this band are identical to those described above for the 1427–1429 MHz band. Thus, operations in this band must also protect military airborne operations at the same 14 sites as for the 1427–1429 MHz band. This band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

17. *1432–1435 MHz Band:* In ITU Region 2, the 1432–1435 MHz band is allocated to the fixed and mobile services on a co-primary basis. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1432–1435 MHz band is allocated to the fixed and mobile services on a primary basis for Federal Government use. The 1432–1435 MHz band is allocated to the fixed and land mobile services on a secondary basis for non-Federal Government use, limited to telemetering and telecommand applications. This band is also used for the passive search for signals of extraterrestrial origin. This band is used by the military for tactical radio relay communications, military test range aeronautical telemetry and telecommand, and various types of guided weapon systems. NTIA stated that military airborne operations and their associated airspace will need to be protected at 23 sites indefinitely. These protection areas, circles with radii ranging from 3 kilometers to 160 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. This band was transferred to non-Federal Government use pursuant to BBA–97, and therefore licenses must be assigned in accordance with Section 309(j) of the Communications Act. In addition, new licensees must compensate Federal Government entities in advance for marginal costs incurred in relocating their facilities from the band.

Band Plan

The band plan options that we proposed in the *Notice* are summarized in Table 1, below.

TABLE 1.—SUMMARY OF 1.4 GHZ BAND PLAN OPTIONS

Band	1390–1392 MHz	1392–1395 MHz	1427–1429 MHz	1429–1432 MHz	1432–1435 MHz assign pursuant to 309(j) subject to NDAA–99
Current Allocations ...	Federal Government: RADIOLOCATION Fixed Mobile		Federal Government: SPACE OPERATION (uplink) FIXED MOBILE (except aeronautical Mobile).	Federal Government: LAND MOBILE (WMTS).	Federal Government: FIXED MOBILE.
			non-Federal Gov't: SPACE OPERATION (uplink) Fixed (telemetry) Land mobile (telemetry & Telecommand).	non-Federal Gov't: LAND MOBILE (WMTS) Fixed (non-med. telemetry) Land mobile (non-medical telemetry & telecommand).	non-Federal Gov't: Fixed (telemetry) Land mobile (telemetry & telecommand).

TABLE 1.—SUMMARY OF 1.4 GHz BAND PLAN OPTIONS—Continued

Band	1390–1392 MHz	1392–1395 MHz	1427–1429 MHz	1429–1432 MHz	1432–1435 MHz assign pursuant to 309(j) subject to NDAA–99
Option 1	FIXED & MOBILE (except aeronautical mobile) for PMRS use and pair with 1427–1429 MHz (site license).	FIXED & MOBILE (except aeronautical mobile) for PMRS use and pair with 1432–1435 MHz (band manager).	FIXED & MOBILE for PMRS use and pair with 1390–1392 MHz (site license).	Upgrade non-medical telemetry to co-primary status with WMTS.	FIXED & MOBILE for PMRS use and pair with 1392–1395 MHz (band manager).
Option 2	FIXED & MOBILE (except aeronautical mobile) for unpaired operations.		Upgrade telemetry to primary status		
Option 3	Allocate to FIXED & MOBILE (except aeronautical mobile) for PMRS use and to MSS (feeder uplinks) on a Co-primary basis.		1427–1430 MHz: Shift WMTS down in frequency and upgrade non-medical telemetry to primary status so that both medical and non-telemetry telemetry operates on a co-primary basis in this band.	Allocate 1430–1432 MHz to FIXED & MOBILE for PMRS use and to MSS (feeder downlinks) on a co-primary basis.	

18. Upon consideration of the various options and the comments, we believe that it is possible to craft a spectrum allocation plan that satisfies the needs of each of the user groups interested in the 1.4 GHz spectrum. While our spectrum plan does not meet the full request of any one user, it does provide some spectrum for all parties in a way that we believe allows each party to mutually coexist and provide services with minimal potential for harmful interference. We also note that new licensees in these bands must protect incumbent Federal Government licensees as specified above. The allocation plan being adopted for the 1.4 GHz spectrum is shown in the table below:

TABLE 2.—1.4 GHz BAND PLAN

1390–1392 MHz	1392–1395 MHz	1427–1429.5 MHz	1429.5–1432 MHz	1432–1435 MHz
MOBILE (except aeronautical mobile); Unpaired operations.	MOBILE (except aeronautical mobile); paired with 1432–1435 MHz.	LAND MOBILE (WMTS) ...	FIXED & LAND MOBILE (telemetry).	MOBILE (except aeronautical mobile); paired with 1392–1395 MHz.
FIXED	FIXED	Fixed & land mobile (non-medical telemetry).		FIXED.
NGSO MSS FEEDER UPLINKS (conditioned on international allocation).			1430–1432 MHz NGSO MSS FEEDER DOWNLINKS (conditioned on international allocation).	

19. As shown in Table 2, we are providing six megahertz of spectrum for fixed and mobile (except aeronautical mobile) uses by pairing the 1392–1395 MHz band with the 1432–1435 MHz band. This spectrum pairing was consistent throughout each of our options and was not disputed by any party. As noted above, aeronautical mobile use will be prohibited in the 1392–1395 MHz band to protect radio astronomy operations in the 1390–1400 MHz band. Thus, we will also prohibit aeronautical mobile use in the paired 1432–1435 MHz band. Further, because the 1432–1435 MHz band was transferred to non-Federal Government use pursuant to BBA–97, licenses must be assigned in accordance with Section 309(j) of the Communications Act. In addition, new licensees must compensate Federal Government entities for marginal costs incurred in relocating their facilities from the band. While the specific service and licensing rules for these bands will be the subject of the companion Service Rule NPRM, we observe that this spectrum may be well suited for licensing to band managers. Band managers could make spectrum available to PLMRS entities that are experiencing congestion in other bands. We are limiting this allocation to land mobile use rather than a general mobile allocation to protect sensitive adjacent channel operations such as radio astronomy.

20. We are making an additional two megahertz of unpaired spectrum available for a flexible fixed, mobile (except aeronautical mobile), and MSS (uplink) allocation in the 1390–1392 MHz band. Because airborne operations would be incompatible with co-channel satellite uplinks and sensitive radio astronomy operations that occur in-band and in the adjacent bands, we are prohibiting aeronautical mobile use.

21. This allocation makes a total of eight megahertz of spectrum potentially available to the mobile (except

aeronautical mobile) service. Although this is less than the ten megahertz LMCC sought in its petition for rule making and its comments, we believe that this provides sufficient spectrum to relieve much of the crowding in existing land mobile bands. Further, by making some unpaired spectrum available, we hope to encourage innovative technologies, such as time division duplex (TDD), to locate in this band. Also, this unpaired spectrum is well suited to services that traditionally operate one-way communications services, such as paging and telemetry systems.

22. The flexible allocation in the 1390–1392 MHz band also allows this spectrum to be used for satellite feeder uplinks by Little LEOs. This allocation is consistent with the views expressed by (CORF) proposing to limit uplink transmissions to spectrum below 1392 MHz. However, the allocation will be contingent on completion of ongoing studies and an international allocation for such feeder links through the international process. To codify this allocation, we will add a new footnote, US368, to the Table of Frequency Allocations in Section 2.106 of the Commission's rules.

23. An issue of concern from the land mobile industry has been the ability of satellite systems to successfully share spectrum with land mobile stations. Because spectrum in the 1390–1392 MHz band would be used for feeder uplinks, we believe that such sharing can be accomplished while still minimizing the potential for harmful interference between satellite earth stations and land mobile stations. As pointed out by the Joint Satellite Commenters, licensees using this band for feeder uplinks only need a few earth stations that can be located in areas where land mobile use is least likely to occur. Thus, through geographic separation, land mobile and satellite earth stations will be able to co-exist in this band. Satellite and land mobile licensees will have to coordinate their operations to ensure sufficient separation distance and/or shielding between stations.

24. In the remaining five megahertz (1427–1432 MHz), we are allocating the 1427–1429 MHz band to the land mobile service on primary basis and maintaining the current land mobile primary allocation in the 1429–1432 MHz band. Under this allocation, the 1427–1429.5 MHz segment will be limited to WMTS and the 1429.5–1432 MHz segment will be limited to telemetry. In addition, the 1429.5–1432 MHz segment is being allocated for fixed service on a co-primary basis also limited to telemetry operations. Further, we are conditionally permitting Little LEO feeder downlinks to share the 1430–1432 MHz band with telemetry on a co-primary basis. This allocation decision shifts WMTS down in frequency from its current allocation at 1429–1432 MHz and elevates telemetry operations to primary status in the 1429.5–1432 MHz segment. Non-medical telemetry will continue to operate with secondary status in the 1427–1429.5 MHz segment. Finally, we are removing the space operation (Earth-to-space) allocation from the 1427–1429 MHz band, as that allocation is incompatible with the allocation decisions we have made in the R&O. WMTS will continue to be licensed by rule in the modified allocation. Under this licensing scheme, WMTS licensees share spectrum with each other and applications are not mutually exclusive. Thus assignments are not subject to competitive bidding pursuant to Section 309(j) of the Communications Act.

25. Our allocation of the 1430–1432 MHz segment for Little LEO feeder downlinks, similar to the allocation for uplinks in the 1390–1392 MHz band, is contingent on completion of ongoing studies and adoption of an international allocation for this spectrum. All sharing studies must be completed and show that satellite downlink sharing is feasible with operations in the 1400–1427 MHz band before such an international allocation is adopted and our domestic allocation is finalized. We note that the sharing studies currently underway contemplate a satellite allocation in the 1429–1432 MHz band, but we have limited this allocation to the 1430–1432 MHz band which will provide an additional megahertz of guard band between the downlinks and the Earth Exploration Satellite Service (EESS) and Radio Astronomy Service (RAS). Once such an allocation is finalized, Little LEO operators may seek adoption of service rules, and issuance of necessary authorizations under Part 25 of our rules for feeder links subject to coordination with telemetry operations in the same spectrum.

26. We do not believe that the addition of Little LEO feeder downlinks in this band will preclude the use of the band by telemetry systems due to the low PFD levels of the satellite signals relative to the power levels of telemetry systems. We are confident that such limits will not preclude satellite earth stations in this band. However, these earth stations may have to locate in rural areas and use large, high gain antennas to ensure reception of the satellite signals. Because we anticipate that telemetry operations will be concentrated largely in urban areas, sharing can be readily accomplished.

27. Our decision to shift the WMTS allocation down to 1427–1429.5 MHz is consistent with the position of AHA. AHA indicates that at 1427–1429.5 MHz, WMTS would be adjacent to radio astronomy instead of potentially high powered land mobile operators and thus would not require a guard band making spectrum use more efficient. AHA also requests that adjacent band telemetry services operating in 1429.5–1432 MHz be limited to fixed utility telemetry operations in order to minimize the impact on WMTS operations. We note that there are currently telemetry operations that are not fixed or limited to utility telemetry, which would have to be relocated to implement AHA's request. We did not seek comment on relocating incumbents in this band and such action would need to be addressed in the companion service rule proceeding. We do, however, note that medical telemetry system operators can also use the 608–614 MHz and 1395–1400 MHz bands to obtain additional capacity for their systems.

28. We are deferring consideration of the proposed AHA/Itron band swap. AHA and Itron's proposal contemplated carving out 7 geographic areas in the Medical Telemetry band for utility telemetry and then compensating Medical telemetry with corresponding spectrum in the telemetry band to our companion service rule proceeding. These 7 sites represent areas where Itron has built out existing facilities under the current secondary telemetry allocation. We believe that spectrum allocations in general should be kept as flexible as possible and that issues such as eligibility or unique requirements/restrictions should be addressed in service rules.

29. In making these allocation decisions in the 1.4 GHz spectrum, we deny the Petitions for Reconsideration filed by Little LEO entities in ET Docket No. 99–255. However, we note that substantively, this proceeding is providing a substantial portion of what the petitioners have indicated they needed to operate. The Petitions asked that we allocate the 1429–1432 MHz band for Little LEO feeder links and eliminate the WMTS allocation in this band. We believe that there is substantial public interest in maintaining an allocation for WMTS and are shifting the allocation to 1427–1429.5 MHz. We are elevating telemetry to primary in the 1429.5–1432 MHz portion of the band and believe that such systems can share this spectrum with Little LEO systems. Accordingly, we have provided a mechanism by

which Little LEOs can obtain an allocation in the 1430–1432 MHz band. While the Petitions for Reconsideration seeking an exclusive allocation of three megahertz of spectrum at 1427–1432 MHz for Little LEOs are denied, we are providing 2 MHz of spectrum in the requested frequency range for Little LEOs conditioned on adoption of an international allocation for this spectrum.

30. We believe that the allocation plan for use of the 1.4 GHz spectrum provides a reasonable compromise solution that will best accommodate the needs of all parties interested in this band. Through careful planning and coordination, these parties will be able to share spectrum and satisfy their communications needs, while maximizing the efficient use of scare spectrum resources.

1670–1675 MHz Band

31. In the *NPRM*, we proposed to allocate the 1670–1675 MHz band to the fixed and mobile (except aeronautical mobile) services and to adopt rules that would make the band usable for a number of potential services. We specifically noted that five megahertz of unpaired spectrum could be useful for service providers interested in deploying TDD equipment.

32. We believe that a number of technologies, are well suited to this band. Therefore, in keeping with our policy of providing flexibility where possible and appropriate so that potential licensees can determine and offer the services that are valued most highly, we are adopting our proposal to provide a flexible allocation in this band for fixed and mobile (except aeronautical mobile) services. Aeronautical mobile use will be prohibited in order that operations in the 1670–1675 MHz band protect the sensitive radio astronomy receivers in the lower adjacent band. Further, the GOES receive earth stations located at Wallop's Island, Fairbanks and Greenbelt will have co-primary status with non-Federal Government operations in the band. In the *NPRM*, we asked for comment regarding appropriate technical rules for this band, especially as it relates to power limits and out-of-band emissions necessary to protect radio astronomy operations in the lower adjacent band. Specific service and licensing rules will be discussed in the companion Service Rule *NPRM*.

33. To protect the Federal Government earth stations located at Wallops Island and Fairbanks that will be co-primary in the band, we will require that licensees planning to operate within 100 kilometers (62.1 miles) of the earth stations at these facilities coordinate such use with the affected earth station prior to construction. This requirement will be added to footnote US362. In addition, we will require licensees planning to operate in the vicinity of the earth station located at Greenbelt to coordinate such use prior to construction. This requirement is consistent with the *First Spectrum Reallocation Report* in which NTIA recommended that, in the absence of coordination guidelines for METSATs, coordination of all ground stations is necessary. Because the Greenbelt facility is used as a back-up for Wallops Island it operates only during tests (about once per month) and in any instance where Wallops Island goes out of service. Due to this sporadic use, different coordination procedures may be needed for this site than for the other two sites. Therefore, we are not adopting specific coordination requirements for the Greenbelt facility.

34. We are mindful of the need to protect radio astronomy and radiosonde operations in the 1660–1670 MHz band. We note, however, that because radio astronomy receivers are much more sensitive than those of radiosondes, any protection schemes designed for radio astronomy receivers should also protect radiosondes. Typically, to accomplish such protection, the Commission has set out-of-band emission limits to restrict the amount of power present in a frequency band due to a transmitter in an adjacent band. We believe that such a requirement is necessary here. However, we are not adopting specific limits in the *Report and Order*. Instead, issues of maximum power levels and emission masks will be explored in the companion Service Rules Notice. In its comments, ArrayComm states that power spectral flux density limits (PSFD) should be established as coordination criteria for locating stations in the 1670–1675 MHz band near radio astronomy sites. We decline to adopt PSFD limits. We generally have not adopted such limits in the past and believe that they could artificially restrict commercial operations in the band. However, we will encourage future licensees in this band to coordinate mutually agreeable limits with radio astronomers. Finally, we note that the provisions of footnote US74 of the Table of Frequency Allocations will apply to this band. This footnote specifies that radio astronomy operations will be protected from extraband radiation only to the extent that such radiation exceeds the limits for a station operating in compliance with all applicable Commission rules.

2385–2390 MHz Band

35. In ITU Region 2, the 2385–2390 MHz band is allocated to the fixed, mobile, and radiolocation services on a primary basis and to the amateur service on a secondary basis. Domestically, the band is allocated to the mobile service on a primary basis for Federal and non-Federal Government use, limited to aeronautical telemetry and associated telecommand operations for flight testing of aircraft and missiles. All other mobile telemetering uses are secondary to these uses. Currently, DoD, the National Aeronautics and Space Administration (NASA), DOE, and the commercial aviation industry use the entire 2360–2390 MHz band to support aeronautical flight test operations. These operations will continue in the 2360–2385 MHz band. In addition, the 2385–2390 MHz band is allocated to the radiolocation service on a primary basis and to the fixed service on a secondary basis for Federal Government use.

36. The 2385–2390 band will become available for exclusive non-Federal Government use in January 2005. However, NTIA stated that to minimize the operational impact to flight test programs that are ongoing or planned to begin in the near future, Federal Government operations at seventeen sites will continue on a protected basis until 2007. These protection areas, circles with radii ranging from 100 kilometers to 160 kilometers, are scattered around the continental United States, Hawaii, and Puerto Rico, and range from sparsely populated desert areas to major metropolitan areas such as Seattle, Washington and St. Louis, Missouri. In addition, the National Astronomy and Ionosphere Center operates a 1-megawatt planetary research radar at Arecibo, Puerto Rico with a 20 megahertz bandwidth, centered at 2380 MHz. As indicated in the *Second Spectrum Reallocation Report*, airborne and space-to-Earth transmissions will be prohibited in Puerto Rico to protect this facility. Finally, we note that this band was transferred to non-Federal Government use pursuant to BBA–97, and therefore licenses will be assigned in accordance with Section 309(j) of the Communications Act. New licensees must compensate Federal Government entities in advance for marginal costs incurred in relocating their facilities from the band. In a recent Report to Congress, NTIA estimated the reimbursement costs for this band as $124–$219 million dollars with the majority of these costs going towards

retuning existing equipment to a band of replacement spectrum.

37. In the *NPRM*, we proposed to allocate the 2385–2390 MHz band to the fixed and mobile services on a co-primary basis and to allow flexible use. In addition, we asked for comment on whether we should allocate this band more narrowly. We received few comments regarding our proposals for this band. MicroTrax states that although the 2385–2390 MHz band presents characteristics that allow the band to be a good technical fit for its proposed PLMS, other aspects of the band make it less desirable than the 1670–1675 MHz band. Primarily, Microtrax argues that the requirement to reimburse Federal Government users of this spectrum for relocation costs, are unknown and may be prohibitively expensive as to prevent Microtrax from offering a low-cost consumer service. We believe other entities, such as those interested in the 1670–1675 MHz band, could also make use of the 2385–2390 MHz band. Under the provisions of the Communications Act, the Commission must reallocate and assign this spectrum for competitive bidding. If NTIA determines that it is in the public interest to retain this spectrum for Federal Government use, it may substitute this spectrum for other spectrum under its authorizing statute.

38. In addition to our proposal to allocate this band for fixed and mobile services, we sought comment on NTIA's determination that receiver and transmitter standards are needed for users of this band in order to reduce the potential for mutual interference with airborne systems that will continue to operate in the adjacent 2360–2385 MHz band. No comments were received regarding this issue. Thus, consistent with rules for most radio services regulated by the Commission, we will not adopt receiver standards for this band. However, in order to attract and retain customers, we believe that equipment manufacturers have sufficient incentive to design robust equipment capable of operating in this band absent specific Commission rules to that effect. We also asked for comment on whether sites in addition to the seventeen sites identified by NTIA for protection until 2007 are currently being used. The Aerospace and Flight Test Radio Coordinating Council (AFTRCC) requests that ten additional sites beyond those identified by NTIA receive protection until 2007. They state that this would minimize the impact of reallocation on current and planned flight test operations while they prepare to operate in reduced spectrum.

39. Inasmuch as there was no opposition to our proposal to provide a flexible allocation in this band to the fixed and mobile services, we are adopting this proposal for the 2385–2390 MHz band. As stated in the *NPRM*, we would like to minimize the impact on aeronautical telemetry operators from transitioning out of this band. We, therefore, will protect nine of the additional ten sites requested by AFTRCC, but will not extend this protection to the Fairfield County, Connecticut site. In this regard, we are concerned that protecting the Fairfield County site would delay deployment of service to the New York City metropolitan area for at least two years. Because this area is such a large population center, it is important that a licensee have access to this market as soon as possible. We believe that these actions strike a balance between the needs of the aeronautical telemetry community and those of new licensees in the 2385–2390 MHz band. Accordingly, we are modifying proposed footnote USzzz (codified herein as footnote US363) in the Table of Frequency Allocations to include protection for the requested nine sites.

Effect of Reallocated Spectrum on Native Americans

40. In the *NPRM*, we sought comment from Indian Tribal Governments regarding the effect our proposals for the 27 MHz being addressed in this proceeding might have on Native American Tribes. Last year, the Commission adopted a *Tribal Government Policy Statement*, 65 FR 41668, July 6, 2000 which stated that the Commission is committed to working with Native American tribes to ensure adequate access to communications services, and consulting with Tribal Governments prior to implementing any regulatory action or policy that would significantly affect tribal Governments, their land, and resources. We did not receive any comments from Tribal Governments or other parties on this issue. However, we will encourage future licensees, when deploying systems in spectrum reallocated in the *Report and Order*, to work with Tribal Governments to serve the communications needs of Tribal communities.

Protection of Federal Government Services

41. Federal Government operations will continue on a protected basis in several of the reallocated frequency bands, either indefinitely or for a period of time beyond the date of spectrum transfer from Federal to non-Federal Government use. In the *NPRM*, we stated that within the established protection zones, non-Federal Government stations would need to be coordinated with NTIA. This mandatory coordination will be accomplished by the Commission after an application is submitted by a licensee through the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). We proposed a procedure whereby licensees proposing to construct a facility within a protected zone, would submit an application through the Universal Licensing System which contains the technical information for the site. This information would then be forwarded to the FAS. Licensees would be prohibited from constructing the facility until receiving a response from the Commission that the coordination with NTIA was successful. We sought comment on this proposal and asked for suggestions on alternative procedures that might be less cumbersome. The only comment received on this issue was from The National Academy of Sciences, which suggests coordination procedures for the GOES earth stations that will continue to operate with co-primary status in the 1670–1675 MHz band. We are adopting rules to implement this suggestion. For all other frequency bands, we adopt the procedures as proposed. Under these procedures, Commission licensees may construct facilities under the terms of their license and in accordance with the relevant service rules so long as the facility is not within one of the protected zones as defined by NTIA, unless the facility has been coordinated with NTIA. This does not exempt licensees from any other required filings or coordination requirements, such as those that may be required under the National Environmental Policy Act of 1969 or for international coordination.

42. By the decisions in the R&O, we reallocate twenty-seven megahertz of spectrum from Federal to non-Federal Government use. These actions fulfil our obligations to implement various provisions of OBRA–93 and BBA–97 and they also continue implementation of the *1999 Spectrum Policy Statement*. We believe that through these actions, manufacturers, service providers and consumers will reap the benefits of new technologies and services.

Final Regulatory Flexibility Analysis

43. As required by the Regulatory Flexibility Act (RFA) [1] an Initial

[1] *See* 5 U.S.C. 603, The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With

Continued

Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (NPRM)*.[2] The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

Need for, and Objectives of, the Report and Order.

44. This *Report and Order* (R&O) allocates 27 megahertz of spectrum from the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands for non-Government use, thereby effectuating the transfer of this spectrum from the Federal Government, pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93) and the Balanced Budget Act of 1997 (BBA–97). The bands 1390–1395 MHz, 1427–1429 MHz, and 2385–2390 MHz are being allocated for exclusive non-Federal Government use, while the bands 216–220 MHz, 1432–1435 MHz, and 1670–1675 MHz, are being allocated for mixed use. Mixed use is a type of shared use whereby Federal Government use is limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by Federal Government stations is substantially less than the potential use to be made by non-Federal Government stations. All primary Government allocations are being deleted from the transfer bands except in the mixed-use bands, where a limited number of stations will be grandfathered indefinitely. Federal agencies will not add new primary stations in any of the transfer bands. In the bands 1432–1435 MHz and 2385–2390 MHz, non-grandfathered Federal Government stations will retain their primary status until relocated in accordance with the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999 (NDAA–99).

45. These seven bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that the *R&O* will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

46. There were no comments received in response to the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

47. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] "Small governmental jurisdiction"[10] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[11] As of 1992, there were approximately 85,006 governmental entities in the United States.[12] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[13] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

48. Licenses in some of the spectrum being allocated in the *R&O* will be assigned by auction, and licenses in some of the spectrum may be assigned by auction. The Commission has not yet determined how many licenses will be awarded, nor will it know how many licensees will be small businesses, until auctions are planned and held. We therefore assume that, for purposes of our evaluations and conclusions in the FRFA, all of the prospective licensees in the bands addressed in the *NPRM* are small entities, as that term is defined by the SBA.

49. Incumbent services in the 216–220 MHz band, which the *R&O* allocates on a primary basis to the Fixed and Mobile Services, include the Automated Maritime Telecommunications Service (AMTS), telemetry users and Low Power Radio Service (LPRS) users. The Commission has defined small businesses in the AMTS as those businesses which, together with their affiliates and controlling interests, have not more than fifteen million dollars ($15 million) in the preceding three years.[14] There are only three AMTS licensees, none of whom are small businesses. However, potential licensees in AMTS include all public coast stations, which fall within the Small Business Administration classification as Radiotelephone Service Providers, Standard Industrial Classification Code 33422.[15] The small business size standard for this category is an entity that employs no more than 1500 persons.[16] According to the 1992 Census of Transportation, Communications, and Utilities, there are a total of 1178 radiotelephone service

America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, ET Docket No. 00–221, 15 FCC Rcd 22,657, 22,697 (2000), 66 FR 7443, January 23, 2001.

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

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

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 47 CFR 1.1162.

[11] 5 U.S.C. 601(5).

[12] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[13] *Id.*

[14] Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 4, 1999).

[15] *See* 13 CFR 121.201, North American Industrial Classification System (NAICS) Code 33422.

[16] *See Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

providers, of whom only 12 had more than 1000 employees. Therefore, we estimate that at least 1166 small entities may be affected by these rules.

50. Users of telemetry are generally large corporate entities, such as utility companies, and it is unlikely that any of the users would be small businesses. LPRS permits licensees to use the 216–217 MHz segment for auditory assistance, medical devices, and law enforcement tracking devices. Users are likely to be theaters, auditoriums, churches, schools, banks, hospitals, and medical care facilities. The primary manufacturer of auditory assistance estimates that it has sold 25,000 pieces of auditory assistance equipment. Many if not most LPRS licensees are likely to be small businesses or individuals. However, because the LPRS is licensed by rule, with no requirement for individual license applications or documents, the Commission is unable to estimate how many small businesses make use of LPRS equipment.

51. The incumbent service in the 1427–1429 MHz band is telemetry. The incumbent services in the 1429–1432 MHz band include general telemetry and medical telemetry. The Commission has issued only a small number of licenses in these bands. The primary user of this band is Itron, Inc., which with an investment of $100 million in equipment development, is not likely to be a small business. Other licensees include utility companies, such as Pueblo Service Company of Colorado and E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. One licensee, Zytex, a manufacturer of high-speed telemetry systems may be a small business. Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses.

52. The Commission has not developed a definition of small entities specifically applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[17] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[18] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

53. According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of $5 million or less.[19] There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of $5 million or less. Thus, the approximate number of small confined setting entities to which the Commission's new rules will apply is 8,247.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. Entities interested in acquiring spectrum in the bands where license assignment will be made through an auction will need to submit a high bid and then submit a license application for the spectrum of interest. In other bands, entities will be required only to submit license applications to obtain the use of spectrum. Additionally, licensees will be required to file applications for license renewals and make certain other filings as required by the Communications Act.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As in all of the bands where incumbent licensees exist, we have inquired whether we should elevate the status of the services in which the incumbents are licensed to primary. 5 U.S.C. 603.

56. Although the scope of this *R&O* is spectrum allocation, and not license assignment and compliance requirements, several steps have been taken to minimize any possible significant economic impact on small entities. For example, the allocation decision not to auction the 216–217 MHz band and also to elevate LPRS to primary status in that band will protect the investment made by small entities in LPRS devices. Similarly, the decision to relocate the Wireless Medical Telemetry Service (WMTS) to the 1427–1429.5 MHz band from the 1429–1432 MHz band will allow licensees to more efficiently use the spectrum because the spectrum sharing environment will be more favorable at the lower end of the band. Because, the original allocation decision for WMTS was only made recently, devices are not yet on the market. Thus, there is no economic impact on licensees to retune equipment. Likewise, the impact on manufacturers will be minimal.

Report to Small Business Administration

57. The Commission will send a copy of this Report and Order, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

58. The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with the Report and Order, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

59. Authority for issuance of this *Report and Order and Memorandum Opinion and Order* is contained in Sections 4(i), 257, 303(b), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(b), 303(f), 303(g), 303(r), and 309(j).

60. Parts 1, 2, 90, and 95 of the Commission's Rules *Are amended,* effective April 12, 2002.

61. The proceeding in WT Docket No. 97–153 *Is terminated.*

62. The Petitions for Reconsideration filed in ET Docket No. 99–255 *Are denied.*

63. The Commission's Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this *Report and Order and*

[17] *See* 13 CFR 121.201, North American Industrial Classification System (NAICS) Code 33422.

[18] *See* U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), NAICS Code 33422.

[19] *See* Small Business Administration Tabulation File, SBA Size Standards Table 2C, January 23, 1996, SBA, Standard Industrial Code (SIC) categories 8050 (Nursing and Personal Care Facilities) and 8060 (Hospitals). (SBA Tabulation File).

Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 90 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.924 is amended by adding paragraph (g) to read as follows:

§ 1.924 Quiet zones.

* * * * *

(g) *GOES.* The requirements of this paragraph (g) are intended to minimize harmful interference to Geostationary Operational Environmental Satellite (GOES) earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia and Fairbanks, Alaska and Greenbelt Maryland.

(1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37°56′ 47″ N, 75°27′ 37″ W (Wallops Island) or 64°58′ 36″ N, 147°31′ 03″ W (Fairbanks) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination web page at *http://www.osd.noaa.gov/radio/frequency.htm,* which provides the technical parameters of the earth stations and the point-of-contact for the notification. The notification shall include the following information: requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (g)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (g)(1) of this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(3) If an objection is received during the 20-day period from NOAA, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

4. Section 2.106 is amended as follows:

a. Revise pages 23, 31, 41, 42, 43, 47, 50, and 51.

b. Revise footnotes US210, US229, US276, US311, US350, and US352; remove footnotes US274 and US317; and add footnotes US361, US362, US363, and US368.

c. Add footnotes NG173 and NG174.

d. Revise footnotes G2, G27, G30, G114, and G120.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 30.01-37.5 MHz			33-34	33-34 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			34-35 FIXED MOBILE	34-35	
			35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
			36-37 FIXED MOBILE US220	36-37 US220	
			37-37.5	37-37.5 LAND MOBILE NG124	Private Land Mobile (90)
37.5-38.25 FIXED MOBILE Radio astronomy			37.5-38 Radio astronomy S5.149	37.5-38 LAND MOBILE Radio astronomy S5.149 NG59 NG124	
S5.149			38-38.25 FIXED MOBILE RADIO ASTRONOMY S5.149 US81	38-38.25 RADIO ASTRONOMY S5.149 US81	
38.25-39.986 FIXED MOBILE			38.25-39 FIXED MOBILE	38.25-39	
			39-40	39-40 LAND MOBILE NG124	Private Land Mobile (90)
39.986-40.02 FIXED MOBILE Space research			40-42 FIXED MOBILE	40-40.98	ISM Equipment (18) Private Land Mobile (90)

162.0125-322 MHz (VHF/UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 156.8375-174 MHz			162.0125-173.2 FIXED MOBILE S5.226 US8 US11 US13 US216 US223 US300 US312 G5	162.0125-173.2 S5.226 US8 US11 US13 US216 US223 US300 US312	Auxiliary Broadcasting (74) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
174-223 BROADCASTING	174-216 BROADCASTING Fixed Mobile S5.234	174-223 FIXED MOBILE BROADCASTING	174-216	174-216 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	216-220 FIXED MARITIME MOBILE Radiolocation S5.241 S5.242		216-220 Fixed Mobile Radiolocation S5.241 G2 US210 US229	216-220 FIXED MOBILE except aeronautical mobile US210 US229 NG152 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95) Amateur (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation S5.241		220-222 FIXED LAND MOBILE Radiolocation S5.241 G2 US335	220-222 FIXED LAND MOBILE US335	Private Land Mobile (90)
S5.235 S5.237 S5.243		S5.233 S5.238 S5.240 S5.245	222-225 Radiolocation S5.241 G2	222-225 AMATEUR	Amateur (97)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 890-942 MHz	See previous page for 928-942 MHz	See previous page for 890-942 MHz	941-944 FIXED US268 US301 US302 G2	941-944 FIXED US268 US301 US302 NG120	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile BROADCASTING S5.322 S5.323	942-960 FIXED MOBILE	942-960 FIXED MOBILE BROADCASTING S5.320	944-960	944-960 FIXED NG120	Public Mobile (22) Auxiliary Broadcast. (74) Fixed Microwave (101)
960-1215 AERONAUTICAL RADIONAVIGATION S5.328			960-1215 AERONAUTICAL RADIONAVIGATION S5.328 US224		Aviation (87)
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329 SPACE RESEARCH (active) S5.330 S5.331 S5.332			1215-1240 RADIOLOCATION S5.333 G56 RADIONAVIGATION-SATELLITE (space-to-Earth)	1215-1240 S5.333	
1240-1260 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329 SPACE RESEARCH (active) Amateur S5.330 S5.331 S5.332 S5.334 S5.335			1240-1300 RADIOLOCATION S5.333 G56	1240-1300 Amateur	Amateur (97)
1260-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Amateur S5.282 S5.330 S5.331 S5.332 S5.334 S5.335			S5.334	S5.282 S5.333 S5.334	
1300-1350 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation S5.149			1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation G2 S5.149	1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 S5.149	Aviation (87)

1350-1400 FIXED MOBILE RADIOLOCATION	1350-1400 RADIOLOCATION	1350-1390 FIXED MOBILE RADIOLOCATION G2 S5.149 S5.334 S5.339 US311 G27 G114	1350-1390 S5.149 S5.334 S5.339 US311	
		1390-1395	1390-1392 FIXED MOBILE except aeronautical mobile FIXED-SATELLITE (Earth-to-space) US368 S5.149 S5.339 US311 US351	
			1392-1395 FIXED MOBILE except aeronautical mobile	
S5.149 S5.338 S5.339	S5.149 S5.334 S5.339	S5.149 S5.339 US311 US351	S5.149 S5.339 US311 US351	
		1395-1400 LAND MOBILE US350 S5.149 US5.339 US311 US351		Personal (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246		
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341		1427-1429.5 LAND MOBILE US350 S5.341 US352	1427-1429.5 LAND MOBILE US350 Fixed (telemetry) S5.341 US352	Private Land Mobile (90) Personal (95)
See next page for 1429-1452 MHz		See next page for 1429.5-1432 MHz	1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry) S5.341 US352	Private Land Mobile (90)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1429-1452 FIXED MOBILE except aeronautical mobile	1429-1452 FIXED MOBILE S5.343		1429.5-1432	See previous page	See previous page
				1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368	Private Land Mobile (90)
			S5.341 US352	S5.341 US352	
			1432-1435	1432-1435 FIXED MOBILE except aeronautical mobile	
			S5.341 US361	S5.341 US361	
S5.341 S5.342	S5.341		1435-1525 MOBILE (aeronautical telemetry)		Aviation (87)
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347	1452-1492 FIXED MOBILE S5.343 BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347				
S5.341 S5.342	S5.341 S5.344				
1492-1525 FIXED MOBILE except aeronautical mobile	1492-1525 FIXED MOBILE S5.343 MOBILE-SATELLITE (space-to-Earth) S5.348A	1492-1525 FIXED MOBILE			
S5.341 S5.342	S5.341 S5.344 S5.348	S5.341 S5.348A	S5.341 US78		
1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile except aeronautical mobile S5.349	1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Fixed Mobile S5.343	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile S5.349	1525-1530 MOBILE-SATELLITE (space-to-Earth) Mobile (aeronautical telemetry)		Satellite Communications (25) Aviation (87)
S5.341 S5.342 S5.350 S5.351 S5.352A S5.354	S5.341 S5.351 S5.354	S5.341 S5.351 S5.352A S5.354	S5.341 S5.351 US78		

1670-2110 MHz (UHF) Page 47

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE S5.380 S5.341			1670-1675 S5.341 US211 US362	1670-1675 FIXED MOBILE except aeronautical mobile S5.341 US211 US362	
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) S5.341 S5.377	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth)		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile S5.289 S5.341 S5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) S5.289 S5.341 S5.377 S5.381	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT-ELLITE (space-to-Earth) S5.289 S5.341 S5.381	S5.289 S5.341 US211		
1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space- to-Earth) MOBILE except aeronautical mobile S5.289 S5.341	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) S5.289 S5.341 S5.377	1700-1710 FIXED METEOROLOGICAL-SAT-ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.289 S5.341 S5.384	1700-1710 FIXED G118 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) S5.289 S5.341	1700-1710 METEOROLOGICAL-SAT-ELLITE (space-to-Earth) Fixed S5.289 S5.341	
1710-1930 FIXED MOBILE S5.380			1710-1755 FIXED MOBILE S5.341 US256	1710-1755 S5.341 US256	Note: Proceeds from the auction of the 1710-1755 MHz mixed-use band are to be deposited not later than September 30, 2002.

S5.392		MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space) S5.392 US303	US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123	2300-2305 Amateur	Amateur (97) Note: 2300-2305 MHz became non-Federal Government exclusive spectrum in August 1995
		2305-2310 US338 G123	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
		2310-2360 Fixed Mobile US339 Radiolocation G2 G120	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 S5.396 US338	Wireless Communications (27)
			2320-2345 BROADCASTING-SATELLITE US327 Mobile US276 US328 S5.396	Satellite Communications (25)
S5.150 S5.282 S5.395	S5.150 S5.282 S5.393 S5.394 S5.396	S5.396 US327 US328 See next page	See next page for 2345-2450 MHz	See next page for 2345-2450 MHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 S5.396	Wireless Communications (27)
			2360-2385 MOBILE US276 RADIOLOCATION G2 Fixed G120	2360-2385 MOBILE US276	
			2385-2390 US363	2385-2390 FIXED MOBILE NG174 US363	
			2390-2400 G122	2390-2400 AMATEUR	RF Devices (15) Amateur (97)
			2400-2402 S5.150 G123	2400-2402 Amateur S5.150 S5.282	ISM Equipment (18) Amateur (97)
			2402-2417 S5.150 G122	2402-2417 AMATEUR S5.150 S5.282	RF Devices (15) ISM Equipment (18) Amateur (97)
			2417-2450 Radiolocation G2 S5.150 G124	2417-2450 Amateur S5.150 S5.282	ISM Equipment (18) Amateur (97)
2450-2483.5 FIXED MOBILE Radiolocation S5.150 S5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION S5.150 S5.394		2450-2483.5 S5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation S5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

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United States (US) Footnotes

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US210 In the sub-band 40.66–40.7 MHz and 216–220 MHz, frequencies may be authorized to Government and non-Government stations on a secondary basis for the tracking of, and telemetering of scientific data from, ocean buoys and wildlife. Operation in these bands is subject to the technical standards specified in: (a) Section 8.2.42 of the NTIA Manual for Government use, or (b) 47 CFR 90.248 for non-Government use. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz.

* * * * *

US229 In the band 216–220 MHz, the fixed, aeronautical mobile, land mobile, and radiolocation services are allocated on a secondary basis for Government operations. The use of the fixed, aeronautical mobile, and land mobile services shall be limited to telemetering and associated telecommand operations. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz. Further, Government and non-Government assignments in the sub-band 216.88–217.08 MHz shall protect the Navy's SPASUR system, which operates on a primary basis at the following sites:

Transmit frequency of 216.98 MHz			Receive frequencies of 216.965–216.995 MHz		
Location	North latitude/west longitude	Protection radius	Location	North latitude/west longitude	Protection radius
Lake Kickapoo, TX	33° 32′/098° 45′	250 km	San Diego, CA	32° 34′/116° 58′	50 km
Jordan Lake, AL	32° 39′/086° 15′	150 km	Elephant Butte, NM	33° 26′/106° 59′	50 km
Gila River, AZ	33° 06′/112° 01′	150 km	Red River, AR	33° 19′/093° 33′	50 km
			Silver Lake, MO	33° 08′/091° 01′	50 km
			Hawkinsville, GA	32° 17′/083° 32′	50 km
			Fort Stewart, GA	31° 58′/081° 30′	50 km

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US276 Except as otherwise provided for in this note, use of the bands 2320–2345 MHz and 2360–2385 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The following four frequencies are shared on a co-equal basis by Government and non-Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2332.5 MHz, 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the uses listed elsewhere in this note.

* * * * *

US311 Radio astronomy observations may be made in the band 1350–1400 MHz on an unprotected basis at the following radio astronomy observatories:

Allen Telescope Array, Hat Creek, California	80 kilometers (50 mile) radius centered on latitude 40° 49′ W, longitude 121° 28′ N
Hat Creek Observatory, Hat Creek, California	Rectangle between latitudes 40° 00′ N and 42° 00′ N and between longitudes 120° 15′ W and 122° 15′ W
NASA Facilities, Goldstone, California	80 kilometers (50 mile) radius centered on latitude 35° 18′ W, longitude 116° 54′ N
National Astronomy and Ionosphere Center, Arecibo, Puerto Rico	Rectangle between latitudes 17° 30′ N and 19° 00′ N and between longitudes 65° 10′ W and 68° 00′ W
National Radio Astronomy Observatory, Socorro, New Mexico	Rectangle between latitudes 32° 30′ N and 35° 30′ N and between longitudes 106° 00′ W and 109° 00′ W
National Radio Astronomy Observatory, Green Bank, West Virginia	Rectangle between latitudes 37° 30′ N and 39° 15′ N and between longitudes 78° 30′ W and 80° 30′ W
National Radio Astronomy Observatory, Very Long Baseline Array Stations	80 kilometers (50 mile) radius centered on:

	Latitude (North)	Longitude (West)
Brewster, WA	48° 08′	119° 41′
Fort Davis, TX	30° 38′	103° 57′
Hancock, NH	42° 56′	71° 59′
Kitt Peak, AZ	31° 57′	111° 37′
Los Alamos, NM	35° 47′	106° 15′
Mauna Kea, HI	19° 48′	155° 27′
North Liberty, IA	41° 46′	91° 34′
Owens Valley, CA	37° 14′	118° 17′
Pie Town, NM	34° 18′	108° 07′
Saint Croix, VI	17° 46′	64° 35′

Owens Valley Radio Observatory, Big Pine, California	Two contiguous rectangles, one between latitudes 36° 00′ N and 37° 00′ N and between longitudes 117° 40′ W and 118° 30′ W and the second between latitudes 37° 00′ N and 38° 00′ N and between longitudes 118° 00′ W and 118° 50′ W

Every practicable effort will be made to avoid the assignment of frequencies in the band 1350–1400 MHz to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given in the table in this note. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

* * * * *

US350 The use of the bands 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz by the Government and non-Government land mobile service is limited to medical telemetry and medical telecommand operations, except that non-Government land mobile use is permitted for non-medical telemetry and telecommand operations on a

secondary basis in the band 1427–1429.5 MHz.

* * * * *

US352 In the band 1427–1432 MHz, Government operations, except for medical telemetry and medical telecommand operations, are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations. However, Government operations authorized as of March 22, 1995 at the 14 sites identified in the following table may continue on a fully protected basis until January 1, 2004:

Location	North latitude/west longitude	Operating radius	Location	North latitude/west longitude	Operating radius
Patuxent River, MD	38° 17′/076° 25′	70 km	Mountain Home AFB, ID	43° 01′/115° 50′	160 km
NAS Oceana, VA	36° 49′/076° 02′	100 km	NAS Fallon, NV	39° 24′/118° 43′	100 km
MCAS Cherry Point, NC	34° 54′/076° 52′	100 km	Nellis AFB, NV	36° 14′/115° 02′	100 km
Beaufort MCAS, SC	32° 26′/080° 40′	160 km	NAS Lemore, CA	36° 18′/119° 47′	120 km
NAS Cecil Field, FL	30° 13′/081° 52′	160 km	Yuma MCAS, AZ	32° 39′/114° 35′	160 km
NAS Whidbey IS., WA	48° 19′/122° 24′	70 km	China Lake, CA	35° 29′/117° 16′	80 km
Yakima Firing Ctr AAF, WA	46° 40′/120° 15′	70 km	MCAS Twenty Nine Palms, CA	34° 15′/116° 03′	80 km

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US361 In the band 1432–1435 MHz, Government stations in the fixed and mobile services may operate indefinitely on a primary basis at the 23 sites listed in the following table. All other Government stations in the fixed and mobile services shall operate in the band 1432–1435 MHz on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999. The table follows:

Location	North Latitude/West Longitude	Operating Radius	Location	North Latitude/West Longitude	Operating Radius
China Lake/Edwards AFB, CA	35° 29′/117° 16′	100 km	AUTEC	24° 30′/078° 00′	80 km
White Sands Missile Range/ Holloman AFB, NM.	32° 11′/106° 20′	160 km	Beaufort MCAS, SC	32° 26′/080° 40′	160 km
Utah Test and Training Range/ Dugway Proving Ground, Hill AFB, UT.	40° 57′/113° 05′	160 km	MCAS Cherry Point, NC	34° 54′/076° 53′	100 km
Patuxent River, MD	38° 17′/076° 24′	70 km	NAS Cecil Field, FL	30° 13′/081° 52′	160 km
Nellis AFB, NV	37° 29′/114° 14′	130 km	NAS Fallon, NV	39° 30′/118° 46′	100 km
Fort Huachuca, AZ	31° 33′/110° 18′	80 km	NAS Oceana, VA	36° 49′/076° 01′	100 km
Eglin AFB/Gulfport ANG Range, MS/Fort Rucker, AL.	30° 28′/086° 31′	140 km	NAS Whidbey Island, WA	48° 21′/122° 39′	70 km
Yuma Proving Ground, AZ	32° 29′/114° 20′	160 km	NCTAMS, GUM	[1] 13° 35′/144° 51′	80 km
Fort Greely, AK	63° 47′/145° 52′	80 km	Lemoore, CA	36° 20′/119° 57′	120 km
Redstone Arsenal, AL	34° 35′/086° 35′	80 km	Savannah River, SC	33° 15′/081° 39′	3 km
Alpene Range, MI	44° 23′/083° 20′	80 km	Naval Space Operations Center, ME.	44° 24′/068° 01′	80 km
Camp Shelby, MS	31° 20′/089° 18′	80 km			

[1] East.

US362 The band 1670–1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Government use. Earth station use of this allocation is limited to Wallops Island, VA (37°56′47″ N, 75°27′37″ W), Fairbanks, AK (64°58′36″ N, 147°31′03″ W), and Greenbelt, MD (39°00′02″ N, 76°50′31″ W). Applicants for non-Government stations within 100 kilometers of the Wallops Island or Fairbanks coordinates shall notify NOAA in accordance with the procedures specified in 47 C.F.R. § 1.924.

US363 (a) Until January 1, 2005, the band 2385–2390 MHz is allocated to the Government mobile and radiolocation services on a primary basis and to the Government fixed service on a secondary basis. Use of the mobile service is limited to aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. Use of the radiolocation service is limited to the military services.

(b) After January 1, 2005, Government stations in the mobile and radiolocation services shall continue to operate on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999, except at the sites identified in the following table where Government stations may not be re-accommodated until January 1, 2007:

Location	North Latitude/West Longitude	Location	North Latitude/West Longitude
Protection Radius for Each of the Following Sites is 160 km:			
Barking Sands, HI	22° 07′/159° 40′	Roswell, NM	33° 18′/104° 32′
Cape Canaveral, FL	28° 33′/080° 34′	Seattle, WA	47° 32′/122° 18′
China Lake, CA	35° 40′/117° 41′	St. Louis, MO	38° 45′/090° 22′
Eglin AFB, FL	30° 30′/086° 30′	Utah Test Range, UT	40° 12′/112° 54′
Glasgow, MT	48° 25′/106° 32′	White Sands Missile Range, NM	32° 58′/106° 23′
Nellis AFB, NV	37° 48′/116° 28′	Witchita, KS	37° 40′/097° 26′
Palm Beach County, FL	26° 54′/080° 19′	Yuma Proving Ground, AZ	32° 54′/114° 20′
Roosevelt Roads, PR	18° 14′/065° 38′		
Protection Radius for Each of the Following Sites is 100 km:			
Edwards AFB, CA	34° 54′/117° 53′	Patuxent River, MD	38° 17′/076° 25′

(c) In addition, non-Government flight test operations may continue at the sites identified in the following table on a primary basis until January 1, 2007:

Location	North Latitude/West Longitude	Location	North Latitude/West Longitude
Protection Radius for Each of the Following Sites is 160 km:			
Alammosa, CO	37° 26′ 04″/105° 52′ 03″	Thermal, CA	33° 37′ 35″/116° 09′ 36″
Albuquerque, NM	35° 11′ 03″/106° 34′ 30″	Phoenix, AZ	33° 18′ 28″/111° 39′ 19″
Amarillo, TX	35° 12′ 49″/101° 42′ 31″	Marietta, GA	33° 54′ 24″/084° 31′ 09″
Arlington, TX	32° 40′ 00″/097° 05′ 53″	Greenville, TX	33° 04′ 01″/096° 03′ 09″
Leadville, CO	39° 13′ 13″/106° 19′ 03″		

US368 The band 1390–1392 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis and the band 1430–1432 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to feeder links for the Non-Voice Non-Geostationary Mobile-Satellite Service, and contingent on (1) the completion of sharing studies including the measurement of emissions from equipment that would be employed in operational systems and demonstrations to validate the studies as called for in Resolution 127 (WRC–2000), (2) the adoption of worldwide feeder link allocations at the 2003 World Radiocommunication Conference (WRC–03), and (3) compliance with any technical and operational requirements that may be imposed at WRC–03 to protect passive services in the 1400–1427 MHz band from unwanted emissions associated with such allocations. These allocations become effective upon adoption of worldwide allocations at WRC–03. If no such allocations are adopted by WRC–03, these allocations shall be considered null and void, with no grandfathering of rights. Individual assignments shall be coordinated with the Interdepartmental Radio Advisory Committee's (IRAC) Frequency Assignment Subcommittee (FAS) (see, for example, Recommendations ITU–R RA.769–1 and ITU R SA.1029–1) to ensure the protection of passive services in the 1400–1427 MHz band. Coordination shall not be completed until the feeder downlink system is tested and certified to be in conformance with the technical and operational requirements for the protection of passive services in the 1400–1427 MHz band. Certification and all supporting documentation shall be submitted to the Commission and FAS prior to launch.

Non-Federal Government (NG) Footnotes

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NG173 In the band 216–220 MHz, secondary telemetry operations are permitted subject to the requirements of § 90.259 of this chapter. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz.

NG174 In Puerto Rico, frequencies within the band 2385–2390 MHz are not available for assignment to stations in the aeronautical mobile service.

Federal Government (G) Footnotes

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G2 In the bands 216–225 MHz, 420–450 MHz (except as provided by US217), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2385 MHz, 2417–2450 MHz, 2700–2900 MHz, 5650–5925 MHz, and 9000–9200 MHz, the Government radiolocation service is limited to the military services.

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G27 In the bands 255–328.6 MHz, 335.4–399.9 MHz, and 1350–1390 MHz, the fixed and mobile services are limited to the military services.

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G30 In the bands 138–144 MHz, 148–149.9 MHz, and 150.05–150.8 MHz, the fixed and mobile services are limited primarily to operations by the military services.

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G114 The band 1369.05–1390 MHz is also allocated to the fixed-satellite service (space-to-Earth) and to the mobile-satellite service (space-to-Earth) on a primary basis for the relay of nuclear burst data.

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G120 Development of airborne primary radars in the band 2310–2385 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

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PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

6. Section 90.259 is revised to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.

(a) *216–220 MHz band.* (1) Frequencies in the 216–220 MHz band may be assigned to applicants that establish eligibility in the Industrial/Business Pool.

(2) All operation is secondary to the fixed and mobile services, including the Low Power Radio Service.

(3) In the 216–217 MHz band, no new assignments will be made after January 1, 2002.

(b) *1427–1432 MHz band.* (1) Frequencies in the 1427–1432 MHz band may be assigned to applicants that establish eligibility in the Public Safety Pool or the Industrial/Business Pool.

(2) All operations in the 1427–1429.5 MHz band are secondary to the Wireless Medical Telemetry Service.

(3) All operations in the 1429.5–1432 MHz band authorized prior to April 12, 2002, are on a secondary basis.

(c) *Authorized uses.* (1) Use of these bands is limited to telemetering purposes.

(2) Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the vehicle itself, but will not be authorized solely to perform this function.

(3) Airborne use is prohibited.

PART 95—PERSONAL RADIO SERVICES

7. The authority citation for part 95 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

8. Section 95.630 is revised to read as follows:

§ 95.630 WMTS transmitter frequencies.

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz
1395–1400 MHz
1427–1429.5 MHz

9. Section 95.639(g) is revised to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(a) The maximum field strength authorized for WMTS stations in the 608–614 MHz band is 200 mV/m, measured at 3 meters. For stations in the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum field strength is 740 mV/m, measured at 3 meters.

* * * * *

10. Section 95.1017 is amended by revising paragraph (a) to read as follows:

§ 95.1017 Labeling requirements.

(a) Each LPRS transmitting device shall bear the following statement in a

conspicuous location on the device: "This device may not interfere with TV reception or Federal Government radar."

* * * * *

11. Section 95.1101 is revised to read as follows:

§ 95.1101 Scope.

This part sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1427–1429.5 MHz frequency bands.

12. Section 95.1103(c) is revised to read as follows:

§ 95.1103 Definitions.

* * * * *

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz frequency bands.

13. Section 95.1115(a)(2) and (d)(1) are revised to read as follows:

§ 95.1115 General technical requirements.

(a) * * *

(2) In the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

* * * * *

(d) *Channel use.* (1) In the 1395–1400 MHz and 1427–1429.5 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

* * * * *

14. Section 95.1121, is revised to read as follows:

§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1427–1429.5 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1429.5 MHz bands. The locations of government systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 635, 648, and 660

[Docket No. 010612153–2015–02; I.D. 041901A]

RIN 0648–AP21

Fisheries Off West Coast States and in the Western Pacific; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Implementation of the Shark Finning Prohibition Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the provisions of the Shark Finning Prohibition Act (Act). This final rule prohibits any person under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. Finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. This final rule is issued in accordance with the requirement of the Act that the Secretary of Commerce (Secretary) issue regulations to implement the Act. This final rule does not alter or modify shark finning regulations already in place in the Atlantic for Federal permit holders.

DATES: Effective March 13, 2002.

ADDRESSES: Copies of the environmental assessment (EA) and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213; fax 562–980–4047.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, at 562–980–4040; or Charles Karnella, Administrator, Pacific Island Area Office, NMFS, at 808–973–2935; or Karyl Brewster-Geisz, NMFS headquarters, at 301–713–2347.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su-docs/aces/aces140.html*

Background

The proposed rule published for this action (66 FR 34401, June 28, 2001) provided substantial background information on the issue of shark finning. A summary of that information is provided here.The Act was passed by Congress and signed by the President in December 2000 out of concern for the status of shark populations and the effects of fishing mortality associated with finning on shark populations. The Act amends the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Act prohibits any person subject to U.S. jurisdiction from (1) engaging in shark finning, (2) possessing shark fins aboard a U.S. fishing vessel without the corresponding carcass, or (3) landing shark fins without a corresponding carcass.

The strong international market for shark fins has increased the potential for fishing shark stocks at unsustainable levels. Uncontrolled shark finning may lead to unsustainable shark harvests, as well as to the waste of usable (but often relatively lower value) shark meat. The intent of the Act is to end the practice of shark finning and support domestic and international conservation of shark stocks.

Provisions of the Final Rule

To implement the Act, this final rule prohibits: (1) Any person from engaging in shark finning aboard a U.S. fishing vessel; (2) any person from possessing shark fins on board a U.S. fishing vessel without the corresponding shark carcasses; (3) any person from landing from a U.S. fishing vessel shark fins without the corresponding carcasses; (4) any person on a foreign fishing vessel from engaging in shark finning in the U.S. exclusive economic zone (EEZ), from landing shark fins without the corresponding carcass into a U.S. port, and from transshipping shark fins in the U.S. EEZ; and (5) the sale or purchase of shark fins taken in violation of the above prohibitions. In addition, this final rule requires that all shark fins and carcasses be landed and weighed at the same time, once a landing of shark fins and/or shark carcasses has begun. This rule does not affect the reporting

requirements currently in place for fisheries that take sharks or for any U.S. vessels that fish solely in state waters and that have not been issued a Federal Atlantic shark or dogfish permit.

This final rule establishes a rebuttable presumption that any shark fins possessed on board a U.S. fishing vessel, or landed from any fishing vessel, were taken, held, or landed in violation of these regulations if the total wet weight of the shark fins exceeds 5 percent of the total dressed weight of shark carcasses landed or found on board the vessel. It would be the responsibility of the person conducting the activity to rebut the presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations. NMFS has used wet weight to apply the 5–percent limit for shark fins landed in the Atlantic, Gulf, and Caribbean, where the fins are generally wet when landed. In the proposed rule for this action, NMFS specifically requested comments regarding how the weight of shark fins should be determined for purposes of this final rule. Public comments generally favored the use of wet weight, and this approach is maintained in the final rule for consistency with the approach used in the Atlantic shark fisheries.

The prohibition of landing shark fins without corresponding carcasses extends to any vessel (including a cargo or shipping vessel) that obtained those fins from another vessel at sea. Any such at-sea transfer of shark fins effectively would make the receiving vessel a "fishing vessel," as the receiving vessel is acting "in support of fishing." Thus, the receiving vessel is prohibited from landing shark fins without corresponding carcasses under this final rule.

Applicability in State Waters

NMFS requested public comment on whether the prohibitions in the Act should be applied to activities in state waters and the possession or landing of fins from sharks harvested from state waters. After reviewing the language of the Act and its legislative history, together with the public comments on this issue, NMFS concludes that the final rule should not operate to alter or diminish the jurisdiction or authority of any state within its boundaries. Therefore, this final rule does not apply to activities by persons on vessels fishing only in state waters. However, consistent with existing regulations at 50 CFR 635.4(a)(10) and 648.4(b), any person aboard a vessel issued an Atlantic shark or spiny dogfish permit shall be, as a condition of such permit, subject to the requirements of this subpart during the period of validity of the permit, without regard to whether the fins were taken from sharks harvested within or outside the U.S. EEZ. Persons aboard such federally permitted vessels that fish within the waters of a state that has more restrictive regulations pertaining to shark finning must abide by any of the state's regulations that are more restrictive. Because Pacific states, by and large, already prohibit finning, NMFS decided not to enact similar provisions in the Pacific.

Effects of Final Action

This final rule will directly affect (1) owners, operators, and crew of U.S. fishing vessels that engage in finning, and in landing and selling those fins; (2) owners and employees of U.S. firms that buy and sell shark fins harvested in and beyond the U.S. EEZ (which could include U.S. fishing vessels and foreign vessels that obtain fins without carcasses from foreign vessels at sea) or that sell sharks harvested by vessels that have been issued a Federal Atlantic shark or spiny dogfish permit; and (3) owners, operators, and crew of foreign fishing vessels that would otherwise land shark fins without carcasses in U.S. ports. Shark finning has been prohibited in the Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea since 1993, and finning of spiny dogfish in this region was prohibited in 2000. Further, finning is effectively prohibited under state regulations on the West Coast and in the north Pacific, as well as in a number of Atlantic states and Hawaii. Therefore, there will be minimal impacts in these areas.

Most, if not all, of the impacts will likely affect businesses in the western Pacific. This final rule is expected to have moderate impacts on fishermen and businesses in Guam and American Samoa, where shark fin landings have been made by U.S. and foreign vessels and substantial sales and trade in shark fins have been conducted for many years. In Guam and American Samoa, domestic landings of shark fins have been very low; however, foreign longline vessels have landed shark fins there in the past. Under this final rule, sales of those fins would be prohibited unless the corresponding carcasses were also landed. As there is no market for carcasses, it is likely that shark fin landings will cease or drop to very low levels. This would affect vessel sales as well as the earnings of crew on foreign fishing vessels because the revenue from fin sales often accrues directly to crew members. If that income is reduced, there could be less spending by crew members in port calls in American Samoa and Guam. It is estimated that shark finning accounts for between $1.8 million and $2.5 million of economic activity in the western Pacific (not including the values formerly attributable to finning by domestic vessels in Hawaii until 2000, when finning was prohibited).

This final rule may indirectly affect U.S. retailers and consumers of shark fins, but the extent of impact cannot be determined with available data. It is likely that shark fins, which would no longer be available in large quantities from domestic landings, would continue to be available through air, ocean, or surface freight shipments. It is also possible that the price of shark fins would rise due to lower domestic supply. If a market for shark carcasses could be developed, the effects of the landings prohibition on fins without carcasses could be alleviated somewhat. Because NMFS' interpretation of the Act is that it targets fishing vessels and was not meant to interfere with international trade, NMFS has drafted this final rule not to directly affect the owners and employees of businesses that are engaged in regular domestic and international cargo shipments of, and trade in, shark fins, or the owners and employees of businesses that provide supplies and services to foreign fishing vessels that may (but do not necessarily) engage in shark finning and associated sales.

This final rule does not establish any new reporting or recordkeeping requirements. Reporting requirements currently in place are believed to be sufficient for monitoring and enforcing these regulations. However, these regulations may be amended if information or conditions demonstrate that additional reporting or recordkeeping requirements are necessary to achieve the purposes of the Act. NMFS will work with the regional fishery management councils (councils), interstate marine fisheries commissions, and states to determine whether changes are needed to ensure adequate records for monitoring the fisheries and enforcing the prohibitions. If any changes are needed in reporting and recordkeeping requirements, they may be made nationally or in separate regions.

Alternative Construction of the Statute

NMFS considered applying broader interpretations of the Act that would likely have had much greater impacts on foreign fishermen. One alternative that NMFS considered would have prohibited foreign fishing vessels from possessing shark fins without carcasses while in U.S. ports. This could have

resulted in a substantial reduction in the use of those ports by foreign longline vessels that have shark fins on board without corresponding carcasses. It is estimated that this port activity generates between $40 and $60 million per year in sales by Hawaiian businesses.

NMFS considered a second alternative that would have prohibited the possession of shark fins without corresponding carcasses by all foreign fishing vessels whenever they are in the U.S. EEZ, even if not engaged in fishing. This could have forced some vessels fishing throughout the Pacific to adjust their navigation routes at high expense. It would have also constituted an infringement on the right of freedom of navigation under customary international law. This construction appears to go beyond the intent of the Act.

A third alternative would have extended the landing prohibition to all vessels, including non-fishing cargo vessels, whether or not such vessels are operating in support of fishing activity. Under this alternative, there would have been greater impacts on shippers, retailers, and consumers. U.S. Customs Service data indicate that documented imports and exports of shark fins into and out of the U.S. were valued at $3 million and $5 million, respectively, in 1999. Under this alternative, these shipments would likely be eliminated and shark fins could only enter the U.S. via air or land freight.

NMFS also considered a fourth alternative that would not have promulgated these regulations but would have used fishery management plans prepared by councils (and by the Secretary with respect to Atlantic Ocean, Gulf of Mexico, and Caribbean shark fishery management) under the Magnuson-Stevens Act to implement the Act. However, actions by the Councils would require an extended amount of time that would not meet the statutory time constraints of the Act.

Comments and Responses

A summary of the substantive comments on the proposed rule and responses to those comments follow.

Application of the Act in State Waters

Comment 1: Several commenters indicated that not applying the prohibitions of the Act in state waters is inconsistent with the Act and should not be incorporated in the final rule. Finning is a national concern, and the failure of states and councils to prohibit finning is what led to the need for the Act. The term "at sea" was meant broadly by Congress and Congress could have specifically excluded state waters if that was the intent. Therefore, the prohibitions should be applied in state waters, or at least in state waters where there are no state regulations prohibiting finning. It was suggested that non-application in state waters would result in unnecessary enforcement difficulties. One state had no objection to application of the regulations in state waters as long as states could adopt more stringent regulations. Another state agreed with NMFS' proposed approach under which the regulations would not apply in state waters.

Response: The language and legislative history of the Act indicate that the regulations should not apply in state waters. The prohibitions contained in the Act were enacted as an amendment to the Magnuson-Stevens Act. The Magnuson-Stevens Act grants authority to the Secretary and the eight fishery management councils to regulate fisheries in ocean areas seaward of state waters, while providing that such authority shall not be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries (16 U.S.C. 1856(a)). Neither the language nor the legislative history of the Act reveals an intent by Congress to extend Federal fishery management authority to regulate state shark fisheries, or the finning of sharks taken in such state fisheries. Hence, NMFS understands the prohibitions contained in the Act to apply to the finning, possession, and landing of sharks harvested seaward of state waters. The comprehensive prohibition of shark finning would require either corresponding state regulation or a specific exception to the Magnuson-Stevens Act under 16 U.S.C. 1856(b) allowing for Federal regulation of sharks harvested within the boundaries of a state. While most states already have prohibitions on shark finning in state waters, NMFS intends to work with regional fishery management councils, interstate marine fisheries commissions, and states to promote consistency in management throughout state and Federal waters.

Application of the Regulations to Foreign Vessels

Comment 2: The Act does not provide authority to prohibit foreign vessels from possessing shark fins from sharks caught on the high seas. The Act (as an amendment of the Magnuson-Stevens Act) is limited to regulating the possession or offloading of fish harvested in the U.S. EEZ. The only reasonable interpretation of the Act, therefore, is that the new law does not regulate shark fins caught by foreign vessels on the high seas. The Act does not authorize prohibiting shark finning by foreign fishing vessels on the high seas and therefore, the Act cannot prohibit the landing of shark fins without the corresponding carcasses if they were taken on the high seas.

Response: Foreign vessels, when they are engaged in fishing or fishing related activities in the U.S. EEZ, in state waters, or in U.S. ports, are subject to U.S. jurisdiction under customary international law. These vessels are subject to the Magnuson-Stevens Act, the Nicholson Act and other applicable law with respect to any fishing activity (defined in the Magnuson-Stevens Act to include any operations in support of the catching, taking or harvesting of fish) within the U.S. EEZ, or activities, including landing of fish or fish parts, conducted in U.S. ports in the 50 states and the U.S. Virgin Islands for vessels greater than 50 feet in length, as regulated by the Nicholson Act (see 46 U.S.C. Appx. sec. 251). Accordingly, the Act requires NMFS to prohibit both finning (as a fishing activity) and landing of shark fins without the corresponding carcasses by foreign vessels, when these activities occur in U.S. waters or U.S. ports. However, the Act does not confer jurisdiction to prohibit shark finning by foreign vessels on the high seas. Absent specific evidence to the contrary, NMFS must presume that any shark fins in the possession of a foreign vessel passing through the U.S. EEZ were harvested either on the high seas or in a foreign jurisdiction. The possession of such shark fins by foreign vessels in U.S. waters does not, of itself, constitute fishing or other activity subject to U.S. regulatory jurisdiction. Therefore, NMFS interprets the Act as not imposing the prohibition regarding possession of shark fins without corresponding carcasses against foreign vessels, except when those vessels are offloading shark fins in a U.S. port.

Comment 3: Sections 600.1022(b) and 600.1023(f) should be revised to clearly be limited to U.S. fishing vessels.

Response: Section 600.1022(b) has been revised to clearly indicate that the 5 percent threshold of the rebuttable presumption as it applies to possession of shark on board a vessel is applicable only to U.S. vessels, while the 5 percent threshold of the rebuttable presumption as it applies to landings is applicable to all vessels landing shark fins in a U.S. port or transshipping shark fins in waters under U.S. jurisdiction. No change was made in § 600.1023(f) (see response to comment 5).

Comment 4: There should be a clearer statement that foreign fishing vessels

that call at U.S. ports are exempt from application of the possession prohibition. There should not be any restriction on foreign vessels' freedom to transit the U.S. EEZ or enter a port in Hawaii based on possession of shark fins without corresponding carcasses on board the vessel. Section 600.1023(b) does not address the right of a foreign vessel to have possession of shark fins without carcasses in ports under U.S. jurisdiction. This would allow a state to prohibit such possession, and § 600.1020 further suggests this possibility. Prohibiting foreign vessels from possessing shark fins in U.S. ports could have serious adverse consequences on the economy of some ports because it would make it very difficult for Japanese fishing vessels to visit such ports.

Response: This final rule prohibits persons aboard U.S. or foreign fishing vessels from landing shark fins without corresponding carcasses. This final rule does not prohibit foreign vessels that possess shark fins without corresponding carcasses from transiting the U.S. EEZ or state waters, or from entering a U.S. port.

Comment 5: Foreign fishing vessels should be exempt from inspection under § 600.1023(f).

Response: Under customary international law, foreign vessels in U.S. ports are subject to inspection in accordance with the jurisdiction of port states to enforce their laws. Consequently, a foreign fishing vessel may be inspected when in a U.S. port.

States' Authority Over Foreign Vessels in U.S. Ports

Comment 6: Two commenters indicated that, as written, the proposed application of the prohibitions to foreign fishing vessels would occur even in state waters, while domestic vessels would not be subject to prohibitions in state waters. This distinction is troubling, especially in the context of trade disputes concerning environmental laws. At the least, NMFS should explain the basis for applying the Act differently for foreign and domestic fishing vessels.

Response: The comment refers to language in the preamble to the proposed rule that discusses the likely effects of the proposed prohibitions on persons aboard U.S. fishing vessels and foreign fishing vessels, respectively. The language in question discusses the effect of the proposed landing prohibition on persons aboard foreign fishing vessels that would be prohibited from landing shark fins without corresponding carcasses "in or inside" the U.S. EEZ. However, the landing prohibition under the final rule applies equally to foreign and domestic fishing vessels. Nor is there any disparate treatment of foreign vessels with respect to the prohibition against shark finning in waters seaward of the inner boundary of the U.S. EEZ.

Comment 7: If retained, § 600.1020 should be revised to limit states to regulating the taking of sharks in state waters and the rules should expressly authorize foreign vessels to possess shark fins without corresponding carcasses in U.S. ports.

Response: As discussed previously, the Act does not provide NMFS with authority or jurisdiction over state waters. Persons conducting activities regulated by this final rule must abide by any more restrictive state regulations as applied to sharks harvested in state waters or landed in a state. Foreign fishing vessels, while subject to the landing prohibition, may possess shark fins without corresponding carcasses as they transit the U.S. EEZ and state waters, and when they are in U.S. ports. Since such possession of shark fins by foreign vessels is not prohibited, no express authorization is required.

Application of the Rules in a Foreign Trade Zone

Comment 8: One commenter asked if the prohibitions against landing fins without carcasses by foreign fishing vessels would apply in the foreign trade zone in Hawaii; another commenter recommended that the landings prohibition be applied to foreign fishing vessels in a foreign trade zone.

Response: The final rule clarifies that foreign fishing vessels are prohibited from landing fins without corresponding carcasses in a foreign trade zone, whether in Hawaii or elsewhere. The Foreign Trade Zone Act, which establishes foreign trade zones, exempts imports from U.S. customs duties. The Free Trade Zone Act does not exempt fishing activity, including landing of shark fins, by persons or entities under U.S. jurisdiction.

Definition and Application of Terms

Comment 9: The terms, "dressed weight," "wet fins," and "corresponding carcass" should be defined. The use of wet weight is supported but it was noted that there are species differences in the ratio of fin weight to carcass weight. NMFS should consider requiring that fins be packed in ice to prevent drying. A definition of "wet" was suggested.

Response: The term "Corresponding Carcass" is self explanatory, and the term "dressed weight" is defined for the Atlantic at 50 CFR part 635. NMFS has retained the use of wet weight in the final rule and will use dressed weight in the application of the rebuttable presumption at § 600.1022(b). Therefore, no changes are made in this final rule. NMFS notes that enforcement and prosecution of violations will not be contingent solely on the use of the rebuttable presumption. NOAA will consider all evidence available in each instance, including the number and weight of fins, the number and weight of shark carcasses, the condition of the carcasses (*e.g.*, dressed or not dressed), and the amount or weight of other shark products when determining whether a violation likely occurred and whether to prosecute. More specific definitions of the terms as proposed will not necessarily increase NMFS' ability to enforce the regulations in a reasonable manner or help the public comply with the regulations. As recommended by the commenter, NMFS considered whether to require special packing of fins or keeping fins attached or specially identified with specific carcasses as a way of enforcing the finning definitions. Based on experience in the Atlantic, NMFS concluded that it has not been demonstrated that such restrictions are necessary or appropriate at this time. As more experience is gained in implementing the regulations in the Pacific, NMFS will consider the need for additional measures or new definitions to ensure that the Act is carried out effectively.

International Cooperation

Comment 10: The Act is unscientific and irrational, and efforts to enforce the Act may be counterproductive. The Act disregards established international rules concerning conservation and management of marine resources. Management must be based on objective and justifiable grounds, and an across-the-board prohibition on finning lacks objective and reasonable grounds. The Act will dampen Food and Agricultural Organization (FAO) efforts to conserve and manage sharks, which the U.S. has agreed is necessary under the International Plan of Action for Shark Conservation (IPOA) and the U.S. National Plan of Action (NPOA). Shark finning controls should not be taken up in isolation but should be part of a complete management strategy.

Response: The Act is U.S. law, reflecting the intent of Congress, and expressly provides that its terms must be implemented by domestic rulemaking. In enacting this law, Congress emphasized the need for international cooperation to conserve and manage sharks and their utilization in a reasonable and effective manner. In fact, the Act is fully consistent with the

objectives in paragraph 22 of the IPOA, namely encouraging the full use of dead sharks and minimizing the waste and discards from shark catches.

Comment 11: The Secretary should move forward with implementation of the international provisions of the Act.

Response: The Secretary is working with the Department of State to develop a strategy for complying with the international provisions of the Act.

Atlantic Fishery Regulations

Comment 12: Section 635.30(c)(1) should be revised to apply only to shark fins harvested by a vessel pursuant to a commercial vessel permit for sharks. This would make clear that this section would not apply to foreign fishing vessels transiting the EEZ or entering a U.S. port.

Response: Section 635.30(c)(1) has been clarified to apply only to shark fins harvested by fishermen that hold a Federal Atlantic commercial shark limited access permit.

Consideration and Evaluation of Alternatives and Negative Impacts

Comment 13: There is insufficient evaluation of possible effects of the measures; there should be a full evaluation along with consultations with FAO, other international organizations, and other nations.

Response: Both an EA and a combined RIR and initial regulatory flexibility analysis were prepared for the proposed rule, and a range of alternatives and their impacts have been considered. The proposed rule published for this action was widely available to, and open to comment by, U.S. interests, foreign nations, and international organizations. NMFS considered the comments it received on the proposed rule in drafting this final rule and its associated analytical documents.

This final rule affects foreign vessels' activities only while they are under U.S. jurisdiction and does not purport to control their activities on the high seas or in other nations' waters. Therefore, NMFS does not believe that consultations with other nations or international organizations on this action are necessary. However, in coordination with the Department of State, NMFS will continue to work with other nations to develop and implement international agreements for the conservation and management of sharks.

Comment 14: A legislative ban on shark finning could seriously impact port calls by foreign vessels and result in job and revenue loss in Hawaii. There will be a negative impact on people in small communities including Guam and American Samoa.

Response: Based on the RIR/FRFA for this final rule, NMFS does not believe that the ban on shark finning will result in significant job or revenue loss in Hawaii. Foreign fishing vessels do not land shark fins in Hawaii at this time. Further, this final rule does not prohibit foreign vessels from making port calls even if they have shark fins on board without corresponding carcasses. Therefore, this final rule is not expected to result in a reduction of port calls or associated adverse impacts on jobs and revenue in Hawaii. NMFS recognizes, as discussed above and in the supporting documents, that there may be adverse impacts in Guam and American Samoa. However, NMFS is obligated to promulgate regulations to implement the Act and has attempted to structure the regulations to have the least possible social and economic impacts on communities in American Samoa and Guam.

Comment 15: Pelagic shark populations are stable (especially blue sharks) and prohibition of finning is not necessary for conservation.

Response: Not enough research has been done and too few stock assessments have been prepared to demonstrate that pelagic shark populations are stable. In fact, the absence of good information on shark abundance was one of the principal concerns behind the FAO IPOA. This final rule should help reduce uncontrolled and unmonitored shark fishing mortality.

Comment 16: Prohibiting finning will lead to less data for stock monitoring and management because fishermen will not cooperate in collecting data under a regulation which does not have a scientific base.

Response: The regulations are not expected to result in a decrease in data needed for shark stock assessments or conservation and management. NMFS is working with regional fishery management councils, interstate marine fisheries commissions, and states to address data needs for these purposes. In addition, NMFS is working with the Department of State to develop and implement an international strategy for shark conservation.

Comment 17: An option before the U.S. could be to abolish the Act or adopt the status quo.

Response: NMFS cannot abolish the Act. NMFS is obligated to promulgate regulations to carry out the Act unless the Congress directs NMFS to do otherwise.

Reporting Requirements

Comment 18: NMFS should change logbooks to require additional catch and effort information by species; it is not clear how NMFS can enforce the regulations (especially the 5 percent weight ratio) without additional data reporting. The absence of data reporting requirements contradicts section 7 of the Act, which mandates a number of data collection and research priorities.

Response: NMFS has considered the need for data collection or reporting requirements and believes that it is premature to conclude that new requirements are necessary. Existing Federal fishery management plan and state reporting requirements generate much of the fishery information needed for shark conservation and management. Improvements in these reporting systems are expected as NMFS gains experience under these and other regulations. NMFS notes that a special effort to review reporting requirements will be undertaken in the Pacific. The EA for this action includes a comparison of current Atlantic and Pacific reporting requirements.

Other Comments

Comment 19: Two commenters objected to the statement that shark finning is a wasteful act that goes against sportsmanship when no clear definition of wastefulness is given; stated that finning makes effective use of unnecessary incidental catch; and indicated that there is no reason to prohibit finning if the species involved is healthy. Finning is neither wasteful nor unsportsmanlike. Retaining only the fins, especially of species whose meat is unpalatable, does not inherently make the practice wasteful. There are many cases in which only parts of fish are used.

Response: As stated in the Act, the United States has decided, through Congress, that shark finning is wasteful and should not be permitted by persons or vessels subject to U.S. jurisdiction. However, NMFS recognizes that other nations may feel differently and together with the Department of State, will work with other nations on developing and implementing international agreements that meet mutually acceptable objectives.

Comment 20: Notwithstanding that unilateral action on shark finning is a terrible precedent, it is recognized that NMFS needs to comply with the legislation and NMFS has made a good effort to implement it in a practical and reasonable manner, especially with respect to allowing foreign fishing vessels to possess fins without carcasses

while transiting and allowing cargo vessels to carry out regular shipping activities.

Response: NMFS is implementing the Act in a manner that minimizes adverse economic impacts while meeting the objectives of the Act.

Comment 21: The regulations should be implemented as quickly as possible and the 30–day "cooling off" period should be waived. NMFS should strictly enforce the prohibitions and should develop measures to combat illegal landings and transfer of illegally taken fins and to prevent "highgrading." Fins should have to either remain on the carcass or somehow be identifiable with the carcass (this will help in species identification as well). The fisherman should have the burden of proof to show that fins on board or landed relate to carcasses in the proper ratio.

Response: There is no legal basis available with respect to this rule to waive the 30–day delay in effectiveness required by the Administrative Procedure Act. NMFS intends to enforce the regulations. In prosecuting enforcement actions, NMFS carries the burden of proving violations of this rule. In proving violations of the prohibitions against possession or landing shark fins without the corresponding shark carcasses, this burden may be satisfied as a threshold matter using a rebuttable presumption based on evidence that the total weight of the fins exceeds 5 percent of the dressed weight of the carcasses. The person conducting the alleged illegal activity can rebut that presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations.

Comment 22: All recreationally and commercially caught sharks that are endangered, protected, undersized or not a desirable species to market or eat should be properly handled and released alive, in the water.

Response: While NMFS agrees that every effort should be made to release unwanted sharks alive, the Act did not address the manner in which sharks should be handled or released. This is a matter to be evaluated through the fishery management process.

Changes From the Proposed Rule

The following changes have been made from the proposed rule:

Section 600.1019, has been clarified to better define shark finning.

In § 600.1022, paragraph (b) has been revised to indicate that the 5–percent possession limit of fins to shark carcasses applies only to U.S. vessels. (See also the response to Comment 3.)

In § 600.1023, paragraph (i) has been revised and new paragraphs (j) and (k) added to clarify prohibited acts for vessels with a Federal Atlantic commercial shark limited access permit.

In § 635.30, paragraph (c)(1) has been revised to clarify that it applies only to shark fins harvested by fishermen that hold Federal Atlantic commercial shark limited access permits. (See also the response to Comment 12.)

In § 635.30, paragraphs (c)(1) and (c)(3) have been clarified to show that all carcasses and fins must be landed at the first point of landing.

There have been additional editorial changes made from the proposed rule to correct references and for clarity and consistency.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. NMFS has also determined that this final rule will not create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NMFS prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The need for and objectives of this rule are described in the Summary and Background sections of this preamble.

The principal affected entities are: (a) Western Pacific U.S. longline and purse seine fishing vessel operators and crew, and the businesses that buy and resell shark fins (without corresponding carcasses) from these vessels; (b) businesses that buy and export shark fins from crews of foreign longline vessels delivering those fins in western Pacific ports; and (c) businesses that sell goods and services to foreign vessel crew members who receive the revenue from the sale of shark fins in U.S. ports. The western Pacific is the region mainly impacted because this is the only region where shark finning by U.S. interests and delivery of fins by foreign vessels have not previously been regulated under Federal or state law. The principal effects of this action are to terminate finning by U.S. fishing vessels in the western Pacific, and to terminate landings of shark fins without corresponding carcasses into U.S. ports by U.S. and foreign fishing vessels in the western Pacific. Persons and businesses in that area may be seriously affected by the elimination of their principal source of shark fins.

NMFS does not know how dominant a role shark fin trade plays in the economic activity of the affected businesses. It is estimated that there are four to six active trading businesses in American Samoa and Guam. If trade in shark fins is their only trade, these businesses may be forced to cease activity and/or find alternate lines of trade. They may also seek ways to find more valuable uses of sharks (e.g., shark meat, cartilage, skins) such that more carcasses would be retained with the fins and greater values could be derived from the shark catches in the longline fishery. However, any such transition is likely to take some time and the businesses would suffer losses until that time. Based on studies of shark fin landings and crew income, it is estimated that the loss could be between $422,000–653,000 annually. It is acknowledged that there could be reductions in the availability of shark fins for soup and other products in the U.S. under this final rule. However, the supply impacts will be moderated if suppliers are able to use other means to ship shark fins into the United States.

NMFS considered four alternatives to this action other than the status quo or no action. These alternatives are discussed in the Alternative Construction of the Statute section of this preamble, which explains why these alternatives were not adopted. While NMFS received no comments regarding the IRFA, NMFS' response to comments 4, 8, 13, and 14 address economic aspects of this final rule.

This rule applies only to vessels harvesting sharks seaward of the inner boundary of the U.S. EEZ, and to federally permitted vessels in the Atlantic shark and spiny dogfish fisheries, and therefore, it does not conflict with any state laws governing fishing activities in state waters. NMFS does not intend by this regulation to supercede any state law or regulation with respect to shark finning and landing or possession of shark fins by state registered vessels, even with respect to more restrictive state laws or regulations pertaining to such activities occurring seaward of the state's boundary. NMFS intends to work with those states that do not already prohibit the landing of shark fins without the corresponding shark carcasses to enact

appropriate laws and to issue appropriate regulations so that the objectives of the Act are fully achieved.

NMFS completed an informal consultation on September 6, 2001, with regard to the effects of this proposed rule on endangered and threatened species under NMFS' jurisdiction. It was found that the action is not likely to adversely affect listed species under NMFS' jurisdiction.

List of Subjects

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600, 635, 648 and 660 are amended as follows:

1. The authority citation for parts 600, 635, 648, and 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

2. Subpart M is added to read as follows:

Subpart M—Shark Finning

sec.

Subpart M—Shark Finning

§ 600.1019 Purpose and scope.

The regulations in this subpart govern "shark finning" (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

§ 600.1020 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § § 600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and recordkeeping requirements found at parts 635 and 648 of this chapter, respectively.

§ 600.1021 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Land or *landing* means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Shark finning means taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1022 Prohibitions.

(a) In addition to the prohibitions in § § 600.505 and 600.725, it is unlawful for any person to do, or attempt to do, any of the following:

(1) Engage in shark finning, as provided in § 600.1023(a) and (i).

(2) Possess shark fins without the corresponding carcasses while on board a U.S. fishing vessel, as provided in § 600.1023(b) and (j).

(3) Land shark fins without the corresponding carcasses, as provided in § 600.1023(c) and (k).

(4) Fail to have all shark fins and carcasses from a U.S. or foreign fishing vessel landed at one time and weighed at the time of the landing, as provided in § 600.1023(d).

(5) Possess, purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section, as provided in § 600.1023(e) and (l).

(6) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to and/or inspection or copying of any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses, as provided in § 600.1023(f).

(7) Fail to have shark fins and carcasses recorded as specified in § 635.30(c)(3) of this chapter.

(8) Fail to have all shark carcasses and fins landed and weighed at the same time if landed in an Atlantic coastal port, and to have all weights recorded on the weighout slips specified in § 635.5(a)(2) of this chapter.

(9) Fail to maintain a shark intact through landing as specified in § § 600.1023(h) and 635.30(c)(4) of this chapter.

(b)(1) For purposes of this section, it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of this section if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

(2) For purposes of this section, it is a rebuttable presumption that shark fins possessed by a U.S. fishing vessel were taken and held in violation of this section if the total weight of the shark fins on board, or landed, exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

§ 600.1023 Shark finning; possession at sea and landing of shark fins.

(a)(1) No person aboard a U.S. fishing vessel shall engage in shark finning in waters seaward of the inner boundary of the U.S. EEZ.

(2) No person aboard a foreign fishing vessel shall engage in shark finning in waters shoreward of the outer boundary of the U.S. EEZ.

(b) No person aboard a U.S. fishing vessel shall possess on board shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

(c) No person aboard a U.S. or foreign fishing vessel (including any cargo vessel that received shark fins from a fishing vessel at sea) shall land shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ without corresponding shark carcasses, as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(1).

(d) Except as provided in paragraphs (g) and (h) of this section, a person who operates a U.S. or foreign fishing vessel and who lands shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ shall land all fins and corresponding carcasses from the vessel at the same point of landing and shall have all fins and carcasses weighed at that time.

(e) A person may not purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section.

(f) Upon request, a person who owns or operates a vessel or a dealer shall allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to, and/or inspection or copying of, any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses.

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the "weighout slips" specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has not been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c)(4) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall land shark fins without the corresponding carcass(es).

(l) A dealer may not purchase from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark limited access permit who lands shark in an Atlantic coastal port fins whose wet weight exceeds 5 percent of the dressed weight of the carcasses.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. In § 635.30, paragraphs (c)(1) through (c)(3) are revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) *Shark.* (1) Notwithstanding the regulations issued at part 600 (subpart M) of this chapter, no person who owns or operates a vessel issued a Federal Atlantic commercial shark limited access permit shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the dressed weight of the shark carcasses. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. While shark fins are on board and when shark fins are being offloaded, persons issued a Federal Atlantic commercial shark limited access permit are subject to the regulations at part 600, subpart M, of this chapter.

(2) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, wet shark fins may not exceed 5 percent of the dressed weight of the carcasses, in accordance with the regulations at part 600, subpart M, of this chapter.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart M, of this chapter. Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the dressed weight of the carcasses.

* * * * *

4. In § 635.31, paragraphs (c)(3) and (c)(5) are revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter and in § 635.30(c).

* * * * *

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart M, of this chapter and in § 635.30(c).

* * * * *

5. In § 635.71, paragraphs (d)(6) and (d)(7) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c)(4).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3) and § 600.1023 (e) and (l) of this chapter.

* * * * *

PART 648—FISHERIES OF THE NORTHEAST ATLANTIC OCEAN

6. In § 648.14, paragraph (aa)(4) is revised and paragraphs (aa)(5) and (6) are removed and reserved as follows:

§ 648.14 Prohibitions.

* * * * *

(aa) * * *

(4) Violate any of the provisions prohibiting finning in § § 600.1022 and 600.1023 that are applicable to the dogfish fishery.

* * * * *

7. In § 648.235, paragraph (c) is added as follows:

§ 648.235 Possession and landing restrictions.

* * * * *

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter.

* * * * *

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

8. In § 660.1, paragraph (c) is added as follows:

§ 660.1 Purpose and scope.

* * * * *

(c) Regulations governing the harvest, possession, landing, purchase, and sale

of shark fins are found at part 600, subpart M, of this chapter.

[FR Doc. 02–3113 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 020402F]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 6, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2002 red king crab bycatch limit for the RKCSS is 20,924 animals as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2002 red king crab bycatch limit specified for the RKCSS will be caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 6, 2002.

Bruce Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3269 Filed 2–6–02; 3:29 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 28
Monday, February 11, 2002

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG74

List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS®–24PT1 Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by adding the Standardized Advanced NUHOMS®–24PT1 Storage System to the list of approved spent fuel storage casks. The Standardized Advanced NUHOMS®–24PT1 Storage System design has improved shielding and the ability to withstand a higher seismic response spectra than the Standardized NUHOMS® Storage System; otherwise, the cask designs are the same. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the Standardized Advanced NUHOMS®–24PT1 Storage System under a general license.

DATES: The comment period expires April 29, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML012250290. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

Discussion

On September 29, 2000, Transnuclear West, Inc. (TN-West), submitted an application and associated Safety Analysis Report (SAR) to add the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel (Standardized Advanced NUHOMS®–24PT1 Storage System) to the list of approved cask designs. The Standardized Advanced NUHOMS® –24PT1 Storage System design has improved shielding and the ability to withstand a higher seismic response spectra than the Standardized NUHOMS®–24P, –52B, –61BT Storage System. In addition, the 24PT1 dry shielded canister, which will be stored in the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, is designed to be transportable; otherwise the designs are the same. The NRC staff performed a detailed safety evaluation of the proposed CoC request and found that adding the Standardized Advanced NUHOMS®–24PT1 Storage System to the list of approved storage systems continues to provide reasonable assurance that public health and safety and the environment will be adequately protected. Additionally, on October 4, 2001, Transnuclear, Inc. (TN), the parent company of TN-West, requested that the name on the certificate be changed from TN-West to TN.

This proposed rule would add the Standardized Advanced NUHOMS®–24PT1 Storage System to the listing in § 72.214 by adding CoC No. 1023.

The Standardized Advanced NUHOMS®–24PT1 Storage System, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations will meet the requirements of part 72; thus, adequate protection of

public health and safety will continue to be ensured.

Draft CoC No. 1023, the draft Technical Specifications, and the preliminary SER are available for inspection at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Discussion of Proposed Amendments by Section

§ 72.214 List of approved spent fuel storage casks.

CoC No. 1023 would be added to the list of approved spent fuel storage casks.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the Standardized Advanced NUHOMS®–24PT1 Storage System (CoC No. 1023) to the list of approved storage systems in § 72.214. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. Therefore, the NRC believes that the rule would not have significant environmental impacts. The proposed rule would add the Standardized Advanced NUHOMS®–24PT1 Storage System to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license.

The environmental assessment and finding of no significant impact may be examined at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On September 29, 2000, Transnuclear West, Inc. (TN-West), submitted an application to the NRC to add the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel (Standardized Advanced NUHOMS®–24PT1 Storage System) to the list of approved spent fuel storage casks. The Standardized Advanced NUHOMS®–24PT1 Storage System design has improved shielding and the ability to withstand a higher seismic response spectra than the Standardized NUHOMS®–24P, –52B, –61BT Storage System. In addition, the 24PT1 dry shielded canister, which will be stored in the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel, is designed to be transportable; otherwise the designs are the same. Additionally, on October 4, 2001, Transnuclear, Inc. (TN), the parent company of TN-West, requested that the name on the certificate be changed from TN-West to TN.

This rule would permit general licensees to use the Standardized Advanced NUHOMS®–24PT1 Storage System for storage of spent fuel. The alternative to this action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. Also, this alternative discourages competition because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous NRC actions. Further, the proposed rule will have no adverse effect on public health and safety. This proposed rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC

concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (§ 50.109 or § 72.62) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1023 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1023.

Initial Certificate Effective Date: (effective date of final rule)

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1023.

Certificate Expiration Date: (insert 20 years from the effective date of the final rule)

Model Number: Standardized Advanced NUHOMS®–24PT1.

* * * * *

Dated at Rockville, Maryland, this 23rd day of January, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–3228 Filed 2–8–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–02–AD]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain **Piaggio Aero Industries S.p.A. (Piaggio) Model P–180** airplanes. This proposed AD would require you to replace the four defective horizontal stabilizer hinge bushings with replacement bushings. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to replace defective bushings, which could result in reduced or loss of control of the aircraft.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before March 15, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and

submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–02–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on certain PIAGGIO Model P–180 airplanes. The ENAC reports that PIAGGIO has discovered four incidents of defective horizontal stabilizer hinge bushings being installed on 4 PIAGGIO Model P–180 airplanes. The defect is a missing thermal process during bushing manufacturing.

What are the consequences if the condition is not corrected? The continued operation with defective bushings could result in reduced or loss of control of the aircraft.

Is there service information that applies to this subject? PIAGGIO has issued Service Bulletin No. 80–0140, dated October 15, 2001.

What are the provisions of this service information? The service bulletin includes procedures for replacing the defective horizontal stabilizer hinge bushings with replacement bushings.

What action did the ENAC take? The ENAC classified this service bulletin as mandatory and issued Italian AD Number 2001–512, dated November 30, 2001, in order to ensure the continued airworthiness of these airplanes in Italy.

Was this in accordance with the bilateral airworthiness agreement? This airplane model is manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement; the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P–180 airplanes of the same type design that are on the U.S. registry;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to replace the defective bushings, return the bushings to PIAGGIO and report the return to FAA.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 2 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
50 workhours X $60 per hour = $3,000	$400 per aircraft	$3,400.	$3,400 X 2 = $6,800.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piaggio Aero Industries S.p.A.: Docket No. 2002–CE–02–AD

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, serial numbers 1034, 1035, 1039, and 1045, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to replace defective bushings, which could result in reduced or loss of control of the aircraft.

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

Actions	Compliance	Procedures
(1) Replace the horizontal stabilizer hinge bushings with replacement bushings (part number RDC. 19–09–167–1/300).	Within the next 150 hours time-in-service (TIS) after the effective date ofthis AD.	Follow the ACCOMPLISHMENT INSTRUCTIONS of PIAGGIO AERO INDUSTRIES S.p.A Service Bulletin No. 80–0140, dated October 15, 2001, and the applicable service manual.
(2) Send the removed bushings to **Piaggio Aero Industries S.p.A.** so the bushings can not be reused and report the return to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bushings or within 10 days after the effective date of this AD, whichever occurs later.	Send the removed bushings to **Piaggio Aero Industries S.p.A,** Via Cibrario 4,16154 Genoa, Italy, and report the return to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Italian AD Number 2001–512, dated November 30, 2001.

Issued in Kansas City, Missouri, on February 4, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3166 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–01–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2001–05–03, which applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. AD 2001–05–03 currently requires you to apply Loctite on attaching bolt/screw threads of inboard, central, and outboard carriages; increase tightening torques of associated hardware; and replace central carriage attaching bolts. The French airworthiness authority has determined that certain service information referenced in AD 2001–05–03 be removed and additional inspection of the flap carriage attaching bolts, screws, and barrel nut be included. Therefore, this proposed AD would retain the requirements of the current AD and would add the information communicated by the French airworthiness authority. The actions specified by this proposed AD are intended to prevent loose, or the loss of, flap attaching bolts/screws, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before March 15, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4191. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA,

Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–01–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

Reports of two occurrences on Socata Model TBM 700 airplanes where, following a flight, a screw of a flap attachment fitting was found partly unscrewed and another was missing, as a result of flap vibration, caused us to issue AD 2001–05–03, Amendment 39–12139 (66 FR 14308, March 12, 2001). This AD requires the following on Socata Model TBM 700 airplanes:

—Apply Loctite on attaching bolt/screw threads of inboard, central, and outboard carriages;

—Increase tightening torques of associated hardware; and

—Replace central carriage attaching bolts.

You must accomplish these actions in accordance with Socata Mandatory Service Bulletin No. SB 70–087 57, Amendment 1, dated November 2000.

What Has Happened Since AD 2001–05–03 To Initiate This Action?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA of the need to change AD 2001–05–03. The DGAC reports the procedures in the original issue of Socata Mandatory Service Bulletin SB 70–087, dated September, 2000, do not correct the unsafe condition. The DGAC indicates that reference to this service information should be removed from the AD. In addition, the DGAC is requiring the barrel nut be inspected for correct installation, with corrective action as necessary, on certain Socata Model TBM 700 airplanes registered in France.

Is There Service Information That Applies to This Subject?

Socata Mandatory Service Bulletin No. SB 70–087 57, Amendment 1, dated November 2000, applies to this subject and was part of AD 2001–05–03.

What Are the Provisions of This Service Bulletin?

The service bulletin includes procedures for:

—Inspecting the flap carriage attaching bolts and screws for damage and replacing as necessary;

—Applying Loctite on the attaching bolt and screw threads of inboard, central, and outboard carriages;

—Increasing the tightening torques;

—Replacing central carriage attaching bolts; and

—Inspecting the barrel nut for correct positioning, and corrective action as necessary.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD Number 2000–409(A) R1, dated September 29, 2001, to ensure the continued airworthiness of these airplanes in France.

Was This In Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Model TBM 700 of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2001–05–03 with a new AD that would require you to incorporate the actions in the previously-referenced service bulletin and not allow credit for compliance with an earlier edition service bulletin.

Cost Impact

How Many Airplanes Would the Proposed AD Impact?

We estimate that the proposed AD affects 75 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$10	$360 + $10 = $370	$370 × 75 = $27,750

The only difference between this proposed AD and AD 2001–05–03 is the addition of the inspection of the flap carriage attachment bolts, screws, and barrel nut. The FAA has determined that the cost of this proposed inspection is minimal and does not increase the cost impact over that already required by AD 2001–05–03.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2001–05–03, Amendment 39–12139 (66 FR 14308, March 12, 2001), and by adding a new AD to read as follows:

Socata—Groupe Aerospatiale: Docket No. 2002–CE–01–AD; Supersedes AD 2001–05–03, Amendment 39–12139.

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, serial numbers 1 through 164 and 166 through 173, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent loose, or the loss of, flap attaching bolts/screws, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Accomplish the following on the flap carriages:. (i) Inspect the inboard and outboard carriage attaching bolts and screws for peening and/or distortion, and replace screws and/or bolts, as necessary;. (ii) Apply Loctite on the attaching bolt and screw threads of the inboard and the outboard carriages;. (iii) Increase tightening torque of associated hardware;. (iv) Inspect the central carriage barrel nut for correct positioning, remove, inspect, and replace, as necessary;. (v) Replace the central carriage attaching bolts with new bolts, part number (P/N) Z00.N5109337315;. (vi) Apply Loctite on the attaching bolt threads of the central carriage; and. (vii) Increase tightening torque of associated hardware.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 100 hours TIS.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS in Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000, and the applicable maintenance manual.
(2) If, during compliance with AD 2001–05–03, you accomplished all procedures in Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000, no further action is required.	Not Applicable	In accordance with the ACCOMPLISHMENT INSTRUCTIONS in Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000, and the applicable maintenance manual.
(3) Do not install any central carriage attaching bolts that are not part number Z00.N5109337315 (or FAA-approved equivalent part number).	As of April 27, 2001 (the effective date of AD 2001–05–03).	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 2001–05–03, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2001–05–03, Amendment 39–12139.

Note 2: The subject of this AD is addressed in French AD 2000–409(A) R1, dated September 29, 2001.

Issued in Kansas City, Missouri, on February 4, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3164 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–10–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel Models 2 S1, 2 B, and 2 C Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. This proposal would require initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, this proposal would require removal from service fuel pumps that are found with pump wall thickness below minimum. This proposal is prompted by a manufacturing investigation of pump bodies found to have below minimum material thickness, which could cause fuel leakage through thin, porous walls, reducing fuel pump fire resistance. The actions specified by the proposed AD are intended to prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing.

DATES: Comments must be received by April 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00; fax (33) 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–10–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. The DGAC advises that it has received a manufacturer's report of 44 fuel metering HP/LP fuel pump assemblies that are suspected to

have pump body material wall thickness being below the minimum material thickness. This condition, if not corrected, may cause fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing.

Manufacturer's Service Information

Turbomeca has issued Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, that specifies procedures for initial and repetitive visual inspection for fuel leaks and serial number records inspections to locate 44 fuel metering HP/LP pump assemblies. These assemblies are suspected of having pump body material wall thickness below minimum material thickness and require initial and repetitive visual inspections, plus terminating action in the form of pump replacement or confirmation of correct pump body material wall thickness. The DGAC classified this service bulletin as mandatory and issued AD 99–285(A) in order to assure the airworthiness of these engines in France.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of Title 14 of the Code of Federal Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require initial and repetitive visual inspections for fuel leaks, and replacement of fuel pumps that are found leaking fuel. In addition, this proposal would require removal from service fuel pumps that are found with pump wall thickness below minimum. This proposal would also require that pumps with correct body material wall thickness have the letter "x" added to the end of the SN on the pump. Except for the letter "x" marking, the actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 44 engines of the affected design in the worldwide fleet. It is unknown by the FAA how many engines are installed on aircraft of U.S. registry that would be affected by this proposed AD. The FAA estimates that it would take approximately 1.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $59,000 per engine. Based on these figures, the total cost effect of the proposed AD is estimated to be $59,090 per engine. Assuming all 44 engines are installed on aircraft of U.S. registry, the total cost effect is estimated to be $2,599,960. The manufacturer has advised the DGAC that affected pumps may be exchanged free of charge, thereby substantially reducing the potential cost effect of this proposed rule.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca: Docket No. 2001–NE–10–AD.

Applicability:.This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel models 2 S1, 2 B, and 2 C turboshaft engines. These engines are installed on, but not limited to Sikorsky S76, Eurocopter France "Ecureuil" AS 350 B3, and Eurocopter France "Dauphin" AS 365 N3 helicopters.

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fuel leakage, which may cause engine fires that could lead to an in-flight engine shutdown, damage to the helicopter, and forced landing, do the following:

Inspections and Actions

(a) For the fuel metering high pressure/low pressure (HP/LP) pump assemblies listed by serial number (SN) in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, do the following:

(1) After the last flight of each day, within five minutes of engine shutdown, perform a visual inspection of the floor of the helicopter engine bay for fuel leaks.

(2) If evidence of a fuel leak is observed, inspect the fuel metering HP/LP pump assembly for leakage and if leakage is observed, replace with a serviceable pump assembly before further flight.

(3) If visual inspection of the floor of the helicopter engine bay for fuel leaks reveals no leaks, do either of the following:

(i) Continue repetitive visual inspections of the floor of the helicopter engine bay for fuel leaks in accordance with paragraph (a)(1) of this AD, and perform repetitive visual inspections of the fuel metering HP/LP pump assembly for fuel leaks at intervals not to exceed 50 hours of operation. If evidence of fuel leaking is observed, replace the pump assembly with a serviceable pump assembly before further flight, in accordance with

Turbomeca SB No. 292 73 2803, dated July 2, 1999; or

(ii) Remove the pump assembly and inspect to determine if pump body material wall thickness is below the minimum material thickness, in accordance with Section 2 of Turbomeca SB No. 292 73 2803, dated July 2, 1999. If pump body material wall thickness is at or above the minimum material thickness, mark the pump assembly by adding a letter "x" to the end of the SN.

(b) Replace the fuel metering HP/LP pump assembly if listed by SN in Appendix 1 of Turbomeca Service Bulletin (SB) No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly by December 31, 2006.

Definition

(c) For the purposes of this AD, a serviceable pump assembly is a fuel metering HP/LP pump assembly not listed by SN in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, or a fuel metering HP/LP pump assembly listed by SN in Appendix 1 whose pump body material wall thickness has been determined by inspection to be at or above the minimum material thickness, and marked in accordance with paragraph (a)(3)(ii) of this AD.

Terminating Action

(d) Replacement, or verification of correct wall thickness of a fuel metering HP/LP pump assembly that is listed in Appendix 1 of Turbomeca SB No. 292 73 2803, dated July 2, 1999, with a serviceable pump assembly as defined in paragraph (c) of this AD, is considered terminating action for the inspection requirements specified in paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directive AD 99–285(A), dated July 13, 1999.

Issued in Burlington, Massachusetts, on February 1, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–3160 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–344–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require a one-time inspection to determine whether the lower bearing support of the aileron transfer mechanism directly below the first officer's control column has a "pocket," and follow-on corrective actions, if necessary. This action is necessary to prevent jamming of the first officer's control wheel due to the presence of a foreign object on the lower bearing support of the transfer mechanism, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–344–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–344–AD" in the subject line and need not be submitted in triplicate Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Doug Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1506; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–344–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–344–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the first officer's control wheel on a Boeing Model 737–300 series airplane jammed during landing rollout. Investigation revealed that a foreign object jammed between the lower bearing support of the aileron transfer mechanism and the lost motion arm. A similar incident in 1984 prompted a change in the design of the lower bearing support of the transfer mechanism to remove a "pocket." "Pocket" is the term given to the area on the upper surface of the lower bearing support (aft of the bearing, in the area of the rig pin holes) that is surrounded by the ribs of the lower bearing support. A foreign object could become trapped in this pocket and interfere with the movement of the first officer's control wheel at large deflections, causing the control wheel to jam. This condition, if not corrected, could result in reduced controllability of the airplane.

The lower bearing support of the aileron transfer mechanism is the same on all Model 737–100, –200, –200C, –400, and –500 series airplanes as it is on certain Model 737–300 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition described above. Model 737–600, –700, –800, and –900 series airplanes have a different transfer mechanism for the aileron; thus, these models are not affected.

As stated previously, a design change to remove the pocket on the lower bearing support was implemented. This change was made during production on airplanes with line numbers 1249 and subsequent. However, since the aileron transfer mechanism and lower bearing support are interchangeable between airplanes, it is possible that the lower bearing support on any Model 737–100, –200, –200C, –300, –400, or –500 series airplane with a line number 1 through 3132 inclusive could have a pocket. Thus, all of these airplanes may be subject to the identified unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–27A1238, dated July 13, 2000, which describes procedures for a one-time visual inspection using a mirror to determine whether the lower bearing support of the aileron transfer mechanism directly below the first officer's control column has a pocket. If a pocket is found on the lower bearing support, the service bulletin specifies to accomplish a modification of the ribs of the lower bearing support. The procedures for modification include machining the ribs, accomplishing a dye-penetrant inspection to detect cracking of the lower bearing support, or, as an option, replacing the lower bearing support. The service bulletin also describes follow-on actions to the modification, which include a functional test of the transfer mechanism and testing of the aileron control mechanism for interference. If any cracking of the lower bearing support is found during the dye-penetrant inspection, or if any resistance is found during the follow-on testing of the aileron control mechanism, the service bulletin specifies to contact Boeing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that Boeing may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA.

Operators also should note that the service bulletin characterizes the inspection therein as a visual inspection using a mirror. For clarification, this proposed AD identifies the inspection described in the service bulletin as a "detailed inspection." Note 3 of this proposed AD defines such an inspection.

Cost Impact

There are approximately 3,101 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,244 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $74,640, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–344–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; line numbers 1 through 3132 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the first officer's control wheel due to the presence of a foreign object on the lower bearing support of the transfer mechanism for the aileron, which could result in reduced controllability of the airplane, accomplish the following:

Detailed Inspection

(a) Within 2 years after the effective date of this AD, do a one-time detailed inspection to determine whether the lower bearing support of the aileron transfer mechanism directly below the first officer's control column has a "pocket," according to Boeing Alert Service Bulletin 737–27A1238, dated July 13, 2000. (The upper surface has a raised stop at the end opposite the rig pin hole.) If no pocket is found, no further action is required by this AD.

Note 2: "Pocket" is the term given to the area on the upper surface of the lower bearing support, aft of the bearing in the area of the rig pin holes, that is surrounded by the ribs of the lower bearing support.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Actions

(b) If a pocket is found on the lower bearing support of the transfer mechanism for the aileron: Before further flight, do paragraphs (b)(1) and (b)(2) of this AD according to Boeing Alert Service Bulletin 737–27A1238, dated July 13, 2000, except as provided by paragraph (c) of this AD.

(1) Do all actions associated with the modification of the ribs of the lower bearing support (including performing a dye-penetrant inspection for cracking of the lower bearing support and any necessary corrective actions, machining the ribs, and changing the part number of the lower bearing support). Replacement of the lower bearing support with a new, improved support is optional as specified in the service bulletin.

(2) Do the follow-on actions to the modification, including a functional test of the transfer mechanism, a test of the aileron control mechanism for interference, and corrective actions, if necessary.

Corrective Actions

(c) If any cracking of the lower bearing support is found during the dye-penetrant inspection, or if any resistance is found during the test of the aileron control mechanism, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Spares

(d) As of the effective date of this AD, no person may install a lower bearing support, part number 65–55476–1 or 65–55476–9, on any airplane, unless the actions in paragraphs (a), (b), and (c), as applicable, of this AD have been accomplished.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on February 5, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–3273 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–U

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; 1611 Negotiated Rulemaking Working Group Meeting

AGENCY: Legal Services Corporation.

ACTION: Regulation negotiation working group meeting.

SUMMARY: LSC is conducting a Negotiated Rulemaking to consider revisions to its eligibility regulations at 45 CFR part 1611. This document announces the dates, times, and address of the next meeting of the working group, which is open to the public.

DATES: The Legal Services Corporation's 1611 Negotiated Rulemaking Working Group will meet on February 11–12, 2002. The meeting will begin at 9 a.m. on February 11, 2002. It is anticipated that the meeting will end by 3:30 p.m. on February 12, 2002.

ADDRESSES: The meeting will be held in the Ninth Floor Conference Room at the offices of the Legal Services Corporation, 750 First Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20001; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is conducting a Negotiated Rulemaking to consider revisions to its eligibility regulations at 45 CFR part 1611. The working group will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov.*

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–3294 Filed 2–6–02; 4:38 pm]

BILLING CODE 7050–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG71

Endangered and Threatened Wildlife and Plants; Revised Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Islands of Kauai and Niihau, Hawaii; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule and notice of determinations of whether

designation of critical habitat is prudent; Correction.

SUMMARY: A document containing the revised determinations of prudency and proposed designations of critical habitat for plant species from the islands of Kauai and Niihau, Hawaii was published in the **Federal Register** on January 28, 2002. Within the preamble, the third reference to the hearing date is incorrect. The correct hearing date is February 13, 2002. This document corrects the hearing date.

DATES: We will accept comments until March 29, 2002. We will hold one public hearing on this proposed rule. The public hearing will be held from 6:00 p.m. to 8:00 p.m., Wednesday, February 13, 2002, on the island of Kauai, Hawaii. Prior to the public hearing, we will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., Room 3–122, PO Box 50088, Honolulu, HI 96850–0001.

You may hand-deliver written comments to our Pacific Islands Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the above address. The public hearing will be held at the Radisson Kauai Beach Resort, 4331 Kauai Beach Drive, Lihue, Kauai. Additional information on this hearing can be found under "Public Hearing" found in the Background section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION: On January 28, 2002, the U.S. Fish and Wildlife Service (Service) published revised determinations of prudency and proposed designations of critical habitat for plant species from the islands of Kauai and Niihau, Hawaii (67 FR 3940).

Correction

Accordingly, make the following correction to FR Doc. 02–687 published at 67 FR 3940 on January 28, 2002:

On page 4062, in column 2, Public Hearing Section, third paragraph, correct the public hearing date to read: Wednesday, February 13, 2002.

Dated: February 4, 2002.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–3223 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223, 224, and 226

[Docket No. 020205024–2024–01; I.D. 011502K]

RIN 0648–ZB13

Endangered and Threatened Species: Findings on Petitions to Delist Pacific Salmonid ESUs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of findings; request for information on reinitiation of status reviews.

SUMMARY: The National Marine Fisheries Service (NMFS) has received six petitions to delist 15 Evolutionarily Significant Units (ESUs) of Pacific salmon and steelhead (*Oncorhynchus* spp.) in California, Oregon, Washington, and Idaho that are currently listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). One petition fails to present substantial scientific or commercial information to suggest that delisting may be warranted. The remaining petitions address ESUs with hatchery populations. In a recent U.S. District Court ruling, the Court found NMFS' prior treatment of hatchery fish in ESA listing determinations to be arbitrary and capricious. As such, NMFS finds that these petitions present substantial scientific and commercial information indicating that the petitioned actions may be warranted for 14 of the petitioned ESUs. Moreover, NMFS is reviewing the status of 10 additional ESUs currently listed as threatened or endangered, as well as updating the status of the ESA candidate Lower Columbia River/ Southwestern Washington coho salmon ESU (*O. kisutch*). To ensure that these status reviews are complete, NMFS is soliciting information and data regarding the status of the 25 ESUs to be updated. These status updates will be completed after a revision of agency policy regarding the consideration of hatchery fish in ESA status reviews of Pacific salmonids. At such time that the status reviews are complete, NMFS will consider whether there is a need to re-evaluate critical habitat designations, protective regulations, or ongoing recovery planning efforts for these ESUs. In addition to the reinitiation of status reviews, NMFS will identify preliminary recovery planning targets to assist in regional, state, tribal and local recovery efforts.

DATES: Information and comments on the action must be received by April 12, 2002

ADDRESSES: Information or comments on this action should be submitted to the Assistant Regional Administrator, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR, 97232–2737. Comments will not be accepted if submitted via e-mail or the internet. However, comments may be sent via fax to (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, NMFS, Northwest Region, (503) 231–2005; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Chris Mobley, NMFS, Office of Protected Resources, (301) 713–1401. Additional information, including the references used and the petitions addressed in this document, are available on the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Delisting Factors and Basis for Determination

Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving a petition for delisting, among other things, the Secretary of Commerce (Secretary) shall make a finding whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. The ESA implementing regulations for NMFS define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In evaluating a petitioned action, the Secretary must consider whether such a petition: clearly indicates the recommended administrative measure and the species involved; contains a detailed narrative justification for the recommended measure, describing past and present numbers and distribution of the species involved and any threats faced by the species; provides

information regarding the status of the species over all or a significant portion of its range; and is accompanied by appropriate supporting documentation (50 CFR 424.14(b)(2)).

50 CFR 424.11(d) contains provisions concerning petitions from interested persons requesting the Secretary to delist or reclassify a species listed under the ESA. A species may be delisted for one or more of the following reasons: The species is extinct or has been extirpated from its previous range; the species has recovered and is no longer endangered or threatened; or investigations show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Salmonid Evolutionarily Significant Units

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon and steelhead (*Oncorhychus* spp.) are threatened or endangered species under the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead, and treats ESUs as a "species" under the ESA (56 FR 58612, November 20, 1991). To date, NMFS has completed comprehensive coastwide status reviews of Pacific salmonids and identified 51 ESUs in California, Oregon, Washington, and Idaho. Five of these ESUs are currently listed under the ESA as endangered, and 21 ESUs are listed as threatened. In making these assessments, NMFS has focused on whether the native naturally spawned fish within an ESU are self-sustaining. NMFS then considers which hatchery populations are part of an ESU, and includes in the final listing only the ESU hatchery populations that are deemed essential for recovery. Typically, few or none of the hatchery populations within an ESU have been listed using this approach, which NMFS articulated in an interim artificial propagation policy published in the **Federal Register** on April 5, 1993 (58 FR 17573). However, a recent Federal court decision requires that NMFS reassess this approach.

In *Alsea Valley Alliance* v. *Evans* (99–6265–HO, D. OR, September 12, 2001) (*Alsea* decision), the U.S. District Court in Eugene, Oregon, set aside NMFS' 1998 ESA listing of Oregon Coast coho salmon, and ruled that NMFS' treatment of hatchery populations within an ESU was arbitrary and capricious. Specifically, the Court found that NMFS' 1998 listing of Oregon Coast coho made improper distinctions beyond the level of an ESU by excluding hatchery populations from listing protection even though they were determined to be part of the same ESU as the listed naturally spawned populations. While this ruling affected only one ESU, the interpretive issue raised by the ruling has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date. On December 14, 2001, the U.S. Court of Appeals for the Ninth Circuit (01–36071) granted intervenors-appellants an emergency motion to stay the district court judgement in the *Alsea* decision. Accordingly, the Oregon Coast coho ESU remains listed as a threatened species pending final disposition of the appeal.

Petitions Received

During September and October of 2001, NMFS received six delisting petitions. On September 19, 2001, NMFS received a petition from Interactive Citizens United (ICU petition) to delist coho salmon (*O. kisutch*) in Siskiyou County, CA. These fish are part of a larger ESU of Southern Oregon/Northern California Coast (SONCC) coho salmon. NMFS has also received several other petitions to delist 15 West Coast salmon and steelhead ESUs that include hatchery populations. On October 22, 2001, NMFS received a petition from the Washington State Farm Bureau (WFB petition), on the behalf of a coalition of agricultural organizations in Washington State, to delist 12 Pacific salmon ESUs: the endangered Snake River sockeye (*O. nerka*) ESU; the threatened Puget Sound, Snake River spring/summer, Snake River fall, Lower Columbia River, and endangered Upper Columbia River spring-run chinook (*O. tshawytscha*) ESUs; the threatened Hood Canal summer-run and Columbia River chum (*O. keta*) ESUs; and, the threatened Lower Columbia River, Middle Columbia River, Snake River steelhead (*O. mykiss*) ESUs and the endangered Upper Columbia River. On October 17, 2001, NMFS received a petition on behalf of the Columbia-Snake River Irrigators' Association (CSRIA petition) to delist seven Pacific salmon ESUs: the endangered Snake River sockeye ESU; the threatened Snake River fall, Snake River spring/summer, and the endangered Upper Columbia River spring-run chinook ESUs; and, the threatened Middle Columbia River, Snake River steelhead ESUs; and, the endangered Upper Columbia River. Also on October 17, 2001, a petition on behalf of the Kitsap Alliance of Property Owners and the Skagit County Cattlemen's Association (KAPO petition) was received to delist the threatened Puget Sound chinook and Hood Canal summer-run chum ESUs. On October 23, 2001 a petition was received on behalf of seven anonymous petitioners (SONCC–7 petition) to delist the threatened SONCC coho ESU. Finally, on October 24, 2001, NMFS received a petition on behalf of the Greenberry Irrigation District (GID petition) to delist the threatened Upper Willamette River chinook and steelhead ESUs. Copies of all of these petitions are available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Petition Findings and Re-initiation of Status Reviews

The ICU petition seeks delisting of a portion (i.e., fish in Siskiyou County) of the threatened SONCC coho salmon ESU, an action not authorized by the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead, and treats ESUs as a species under the ESA (56 FR 58612, November 20, 1991). The ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS, as defined under the ESA (50 CFR 424.02(k)). However, the ESA does not authorize the delisting of only a subset or portion of a listed species/subspecies/DPS (50 CFR 424.11(d)). The ICU petition does not provide status data for the listed ESU over all or a significant portion of its range, hence the data provided are not instructive in the context of the ESU's status as a whole. The petition lacks a coherent narrative detailing the justification for the recommended delisting. Furthermore, it does not present substantial scientific or commercial information that the SONCC ESU is recovered, extinct, or that the data or its interpretation in the original listing determination were in error. Additionally, the data provided are restricted to the Iron Gate Hatchery population, a population which was determined to be of uncertain relationship to the ESU in the original listing determination (62 FR 24588; May 6, 1997). Therefore, NMFS determines that the petition does not present substantial scientific or commercial information to indicate that the petitioned action may be warranted based on the criteria specified in 50 CFR 424.14(b)(2) and 50 CFR 424.11(d).

The WFB, CSRIA, KAPO, SONCC–7, and GID petitions address entire ESUs and, in a recent U.S. District Court ruling, the Court found NMFS prior treatment of hatchery fish in ESA listing determinations to be arbitrary and capricious. NMFS thereby concludes

that the petitions present substantial scientific and commercial information indicating that the petitioned action may be warranted for 14 of the 15 petitioned ESUs (50 CFR 424.14(b)(2) and 50 CFR 424.11(d)). However, NMFS finds that the WFB & CSRIA petitions do not present substantial scientific and commercial information to indicate that delisting of the Snake River sockeye ESU may be warranted (see discussion below).

NMFS is undertaking status reviews for 14 of the 15 petitioned ESUs. Moreover, NMFS is also reviewing the status of 11 additional ESUs that currently are candidates or are listed as threatened or endangered species under the ESA. These coastwide status reviews will encompass 24 of the 26 currently listed salmon and steelhead ESUs, as well as the candidate Lower Columbia River/Southwestern Washington coho ESU (see Description of ESUs to be Reviewed, below). NMFS will not revisit the status of the endangered Snake River sockeye ESU (identified in the WFB and CSRIA petitions), nor will it update the status of the endangered Southern California steelhead ESU. The captive hatchery population of Snake River sockeye was determined essential to the recovery of the ESU, and was included in the original listing determination (56 FR 58619; November 20, 1991). Although the captive propagation program offers some protection against extinction of the ESU in the short term, the precarious status of Snake River sockeye (e.g. the annual number of returning naturally spawned adults since 1991 has ranged from 0 to 250 fish) warrants maintaining the ESU as an endangered species. In the Southern California steelhead ESU there are no hatchery populations. Thus its original listing determination (62 FR 43937; August 18, 1997) is not affected by ESA interpretive issues stemming from the *Alsea* decision. Additionally, Southern California steelhead remain in danger of extinction throughout all or a significant portion of their range and will be maintained as an endangered species under the ESA.

Concurrent with the coastwide status review updates, NMFS will review its policy regarding the consideration of hatchery-bred salmon in its ESA listing determinations and issue a new artificial propagation policy. This new policy (see New Artificial Propagation Policy, below) is scheduled to be completed by September 2002. Subsequent listing determinations will be made in accordance with the new artificial propagation policy, and any indicated changes in the ESA-listing statuses of the 25 ESUs will be completed as soon as possible following the publication of a new artificial propagation policy in September 2002. At that time NMFS will consider whether there is the need to reevaluate critical habitat designations, protective regulations, or ongoing recovery planning efforts for these ESUs. In conducting these status reviews, NMFS will utilize the best available scientific and commercial data. NMFS will also consider conservation efforts that provided substantial benefit to the protection and conservation of West Coast salmon and steelhead (see joint NMFS-U.S. Fish and Wildlife Service "Draft Policy on Evaluating Conservation Efforts" 65 FR 37102; June 13, 2000).

Description of ESUs to be Reviewed

The following sections describe the specific ESUs to be updated. The year of the most recent status review and the latest data utilized are also provided for each ESU to indicate the data that would be most valuable to NMFS (e.g. information since the most recent status review) in conducting the status review updates.

West Coast Sockeye Salmon

Ozette Lake Sockeye Salmon ESU

The Ozette Lake ESU of sockeye salmon was listed as a threatened species on March 25, 1999 (64 FR 14528). The ESU includes all naturally spawned populations of sockeye salmon in Ozette lake and streams flowing into Ozette lake, Washington. The status of the ESU was last reviewed in 1998 (NMFS 1998), utilizing available population data through 1998.

West Coast Chinook Salmon

Sacramento River Winter-run Chinook Salmon ESU

The Sacramento River winter-run chinook ESU was listed as endangered on January 4, 1994 (59 FR 440). The ESU includes populations of winter-run chinook salmon in the Sacramento River and its tributaries in California. The status of the ESU was last reviewed in 1994 (NMFS 1994) using available data through 1992.

Snake River Spring/Summer Chinook Salmon ESU

The Snake River spring/summer ESU was listed as a threatened species on April 22, 1992 (57 FR 34639, but see correction in 57 FR 23458, June 3, 1992). The ESU includes all naturally spawned populations of spring/summer-run chinook salmon in the mainstem Snake River and any of the Tucannon, Grande Ronde, Imnaha and Salmon River subbasins. The status of the ESU was last reviewed in 1998 (63 FR 1807; January 12, 1998) utilizing available data through 1997.

Snake River Fall Chinook Salmon ESU

The Snake River fall chinook ESU was listed as a threatened species (57 FR 34639, April 22, 1992; but see correction in 57 FR 23458, June 3, 1992), and the ESU includes all naturally spawned populations of fall-run chinook salmon in the mainstem Snake River and the Tucannon, Grande Ronde, Imnaha, Salmon, and Clearwater River subbasins. The status of the ESU was last reviewed in 1999 (NMFS 1999) utilizing available data through 1998.

Puget Sound Chinook Salmon ESU

The Puget Sound chinook ESU was listed as a threatened species on March 24, 1999 (64 FR 14208). The ESU includes all naturally spawned populations of chinook salmon from rivers and streams flowing into Puget Sound, including the Straits of Juan De Fuca from the Elwha River eastward, and including rivers and streams flowing into the Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington. Chinook salmon (and their progeny) from the following hatchery stocks are also part of the listed Puget Sound ESU: Kendall Creek (spring run); North Fork Stillaguamish River (summer run); White River (spring run); Dungeness River (spring run); and Elwha River (fall run). The status of the ESU was last reviewed in 1998 (NMFS 1998) utilizing available data through 1996.

Upper Willamette River Chinook Salmon ESU

The Upper Willamette River chinook ESU was listed as a threatened species on March 24, 1999 (64 FR 14208). The ESU includes all naturally spawned populations of spring-run chinook in the Clackamas River, and in the Willamette River and its tributaries above Willamette Falls, Oregon. The status of the ESU was last reviewed in 1998 (NMFS 1998) utilizing available data through 1996.

Lower Columbia River Chinook Salmon ESU

The Lower Columbia River ESU of chinook salmon was listed as threatened on March 24, 1999 (64 FR 14208). The ESU includes all naturally spawned populations of chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon

River, and includes the Willamette River to Willamette Falls, OR, exclusive of spring-run chinook salmon in the Clackamas River. The status of the ESU was last reviewed in 1998 (NMFS 1998) utilizing available data through 1996.

Upper Columbia River Spring-run Chinook Salmon ESU

The endangered Upper Columbia River spring-run chinook ESU was listed on March 24, 1999 (64 FR 14208). The ESU includes all naturally spawned populations of chinook salmon in all river reaches accessible to chinook salmon in the Columbia River and its tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River. Chinook salmon (and their progeny) from hatchery stocks in the Chiwawa River (spring run), Methow River (spring run), Twisp River (spring run), Chewuch River (spring run), White River (spring run), and Nason Creek are also part of the endangered Upper Columbia ESU. The status of the ESU was last reviewed in 1998 (NMFS 1998) utilizing available data through 1996.

Central Valley Spring-run Chinook Salmon ESU

The California Central Valley spring-run chinook ESU was listed as a threatened species on September 16, 1999 (64 FR 50394). The ESU includes all naturally spawned populations of spring-run chinook salmon in the Sacramento River and its tributaries in California. The status of the ESU was last reviewed in 1999 (NMFS 1999) utilizing available data through 1998.

California Coastal Chinook Salmon ESU

The California Coastal chinook ESU was listed as threatened on September 16, 1999 (64 FR 50394). The ESU includes all naturally spawned populations of chinook salmon from California rivers and streams south of the Klamath River to the Russian River. The status of the ESU was last reviewed in 1999 (NMFS 1999) utilizing available data through 1998.

West Coast Coho Salmon

Central California Coast Coho Salmon ESU

The Central California Coast ESU was listed as threatened on October 31, 1996 (64 FR 50394), and includes all naturally spawned populations of coho salmon from Punta Gorda in northern California, south to and including the San Lorenzo River in central California, as well as populations in tributaries to the San Francisco Bay excluding the Sacramento-San Joaquin River system. The status of the ESU was last reviewed in 1995 (NMFS 1995), utilizing available population data through 1992.

Southern Oregon/Northern California Coast Coho Salmon ESU

The SONCC coho ESU was listed as a threatened species on May 6, 1997 (62 FR 24588). This ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California. The status of the ESU was last reviewed in 1997 (NMFS 1997) utilizing available data through 1996.

Oregon Coast Coho Salmon ESU

The Oregon Coast coho ESU was originally listed as a threatened species on August 10, 1998 (63 FR 42587), was delisted by court order on September 12, 2001, and on December 14, 2001 reinstated as a threatened species pending an appeal (see Background). The ESU includes all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco. The status of the ESU was last reviewed in 1997 (NMFS 1997), utilizing available data through 1996.

Lower Columbia/Southwest Washington Coho Salmon ESU

On July 25, 1995, NMFS determined that listing was not warranted for this ESU (60 FR 38011). However, the ESU is designated as a candidate for listing due to concerns over specific risk factors. The ESU includes all naturally spawned populations of coho salmon from Columbia River tributaries below the Klickitat River on the Washington side and below the Deschutes River on the Oregon side (including the Willamette River as far upriver as Willamette Falls), as well as coastal drainages in southwest Washington between the Columbia River and Point Grenville. The status of the ESU was last reviewed in 1996 (NMFS 1996), utilizing available data through 1995.

West Coast Chum Salmon

Hood Canal Summer-run Chum Salmon ESU

The Hood Canal summer-run chum ESU was listed as a threatened species on March 25, 1999 (64 FR 14508). The ESU includes all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries, as well as populations in rivers of the Olympic Peninsula between Hood Canal and Dungeness Bay, Washington. The status of the ESU was last reviewed in 1999 (NMFS 1999) utilizing available data through 1997.

Columbia River Chum Salmon ESU

The Columbia River chum ESU was listed as a threatened species on March 25, 1999 (64 FR 14508). The ESU includes all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon. The status of the ESU was last reviewed in 1999 (NMFS 1999) utilizing available data through 1997.

West Coast Steelhead

South-Central California Coast Steelhead ESU

The South-Central California steelhead ESU was listed as a threatened species on August 18, 1997 (62 FR 43937). The South-Central ESU includes all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive) to, but not including, the Santa Maria River in California. The status of the ESU was last reviewed in 1997 (NMFS 1997) utilizing available data through 1996.

Central California Coast Steelhead ESU

The Central California Coast ESU was listed as a threatened species on August 18, 1997 (62 FR 43937). The ESU includes all naturally spawned populations of steelhead (and their progeny) in California streams from the Russian River to Aptos Creek, as well as the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), exclusive of the Sacramento-San Joaquin River Basin. The status of the ESU was last reviewed in 1997 (NMFS 1997) utilizing available data through 1996.

Upper Columbia River Steelhead ESU

The Upper Columbia River ESU was listed as an endangered species on August 18, 1997 (62 FR 43937). The ESU is composed of all naturally spawned populations of steelhead (and their progeny) in Columbia River Basin streams upstream from the Yakima River, Washington, to the U.S.-Canada international border. Steelhead from the Wells Hatchery stock are also included in this ESU and are listed as endangered. The status of the ESU was last reviewed in 1997 (NMFS 1997) utilizing available data through 1996.

Snake River Basin Steelhead ESU

The Snake River Basin ESU was listed as a threatened species on August 18, 1997 (62 FR 43937). The ESU includes all naturally spawned populations (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho. The status of the ESU was last reviewed in 1997

(NMFS 1997) utilizing available data through 1996.

Lower Columbia River Steelhead ESU

The Lower Columbia River steelhead ESU was listed as a threatened species on August 18, 1997 (62 FR 43937). The Lower Columbia River ESU includes all naturally spawned steelhead (and their progeny) in streams and tributaries of the Columbia River between the Cowlitz and Wind Rivers (inclusive), Oregon. Excluded from this ESU are steelhead in the upper Willamette Basin above Willamette Falls and steelhead in the Little and Big White Salmon Rivers, Washington. The status of the ESU was last reviewed in 1997 (NMFS 1997) utilizing available data through 1996.

California Central Valley Steelhead ESU

The California Central Valley steelhead ESU was listed as a threatened species on March 19, 1998 (63 FR 13347). The ESU includes all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, exclusive of San Francisco and San Pablo Bays and their tributaries. The status of the ESU was last reviewed in 1998 (NMFS 1998) utilizing available population data through 1996.

Upper Willamette River Steelhead ESU

The Upper Willamette River ESU was listed as a threatened species on March 25, 1999 (64 FR 14517). The ESU includes all naturally spawned populations of winter-run steelhead in the Willamette River and its tributaries upstream of Willamette Falls, Oregon, to the Calapooia River (inclusive). The status of the ESU was last reviewed in 1999 (NMFS 1999), utilizing available population data through 1997.

Middle Columbia River Steelhead ESU

The Middle Columbia River ESU was listed as a threatened species on March 25, 1999 (64 FR 14517). The Middle Columbia River ESU comprises all naturally spawned populations of steelhead in Columbia River Basin streams above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to and including the Yakima River in Washington. Steelhead from the Snake River are excluded from this ESU. The status of the ESU was last reviewed in 1999 (NMFS 1999), utilizing available population data through 1997.

Northern California Steelhead ESU

Steelhead in the Northern California ESU were listed as a threatened species on June 7, 2000 (65 FR 36074). This ESU includes steelhead in California coastal river basins from Redwood Creek south to the Gualala River, inclusive. The status of the ESU was last reviewed in 2000 (NMFS 2000), utilizing available data through 1998.

New Artificial Propagation Policy

In implementing its "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (Interim Policy; 58 FR 17573; April 5, 1993), NMFS emphasized naturally spawned and self-sustaining populations in ESA listing determinations, and has included hatchery populations in the final listing only if they were determined to be similar to self-sustaining naturally spawned fish, and deemed essential for recovery (i.e. needed in artificial propagation programs intended to assist ESU recovery). In the Interim Policy, NMFS asserted that the listing of hatchery fish determined to be nonessential to recovery would not contribute to the ESA's goals of ensuring viable and naturally reproduced populations and conserving the ecosystems they inhabit. This approach, however, was called into question by the *Alsea* decision, in which the court ruled that NMFS could not determine that certain hatchery populations are part of an ESU, yet exclude them from protections under the ESA in the final listing determination.

The *Alsea* decision gives NMFS the opportunity to reevaluate how hatchery populations are considered in ESA listing determinations. NMFS will prepare a new artificial propagation policy that will propose an alternative approach to dealing with these listing issues under the ESA. In support of the new policy, NMFS will also issue guidelines that address the extent to which hatchery populations can be used to accelerate recovery, and that detail long-term standards for hatchery operation which assure that artificial propagation of salmon stocks will not undermine recovery efforts. The new artificial propagation policy and supporting guidelines will consider comments received in response to NMFS' Interim Policy. Additionally, NMFS will work in coordination with the U.S. Fish and Wildlife Service in drafting the new policy and the supporting guidelines. In formulating the new policy and supporting guidelines NMFS will seek public input and include public hearings during a 60–day comment period following publication of the proposed rule and guidelines. NMFS intends to publish the final policy on artificial propagation in listing determinations by September 2002.

Preliminary Recovery Planning Targets

As part of the status review updates, NMFS recognizes that regional, state, tribal and local planning efforts are vital to the recovery of threatened and endangered Pacific salmon and steelhead ESUs. NMFS also recognizes that recovery goals can provide an important context and perspective for these ongoing recovery efforts. Thus, NMFS will provide preliminary estimates of recovery planning targets to help stimulate recovery efforts and to provide guidance while final recovery plans and recovery targets are being developed. It is NMFS' intent that these preliminary estimates be helpful and meaningful to stakeholders by helping them gauge the disparity between present ESU status and that needed to ensure a species' conservation and survival (ESA Sec. 4(f)). Although these preliminary estimates may utilize biological "rules of thumb" (e.g., the population abundance or productivity values maintained over a specified time-frame that are necessary for population viability in a given subbasin), NMFS regards them as policy goals rather than more formally adopted delisting goals. These preliminary estimates will be in place until they are refined with information from the Technical Recovery Teams (TRTs) established by NMFS. NMFS intends to provide preliminary targets for all listed salmonid ESUs by Spring 2002. Refined and more specific targets resulting from TRT and local recovery planning efforts could be available by early summer for ESUs in the Puget Sound, Upper Columbia, and Lower Columbia recovery areas.

Information Solicited

Biological Status of ESUs

In the interim between publication of this document and the completion of the updated status reviews, NMFS seeks to compile the data and information necessary to expedite completion of the status review process once the new artificial propagation policy is finalized. To ensure that the status review updates are complete and are based on the best available and most recent scientific and commercial data, NMFS is soliciting information and comments (see **DATES** and **ADDRESSES**) concerning the 25 ESUs described earlier in the section entitled Description of ESUs to be Reviewed. NMFS is soliciting pertinent information on naturally spawned and hatchery populations within these ESUs, data on population abundance, recruitment, productivity, escapement, and reproductive success (e.g. spawner-recruit or spawner-spawner

survivorship, smolt production estimates, fecundity, and ocean survival rates); historical and present data on hatchery fish releases, outmigration, survivorship, returns, straying rates, replacement rates, and reproductive success in the wild; data on age structure and migration patterns of juveniles and adults; meristic, morphometric, and genetic studies; and spatial or temporal trends in the quality and quantity of freshwater, estuarine, and marine habitats. NMFS is particularly interested in receiving such information for the period subsequent to the most recent status review for a given ESU (see Description of ESUs to be Reviewed). Status reviews for the majority of the 25 ESUs to be reviewed were conducted in 1997–2000. However, the status of Sacramento River winter-run chinook, and Central California coast coho were last assessed in 1994, and 1995, respectively.

Conservation Efforts to Protect West Coast Salmonids

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after conducting a review of the status of a species and after taking into account efforts being made to protect the species. Therefore, in making its listing determinations, NMFS first assesses the status of the species and identifies factors that have led to the decline. NMFS then assesses conservation measures to determine whether they ameliorate a species extinction risk (50 CFR 424.11(f)). In judging the efficacy of conservation efforts, NMFS considers the following: The substantive, protective, and conservation elements of such efforts; the degree of certainty that such efforts will reliably be implemented (see draft policy, 65 FR 37102; June 13, 2000); the degree of certainty that such efforts will be effective in furthering the conservation of the species; and the presence of monitoring provisions to determine effectiveness of recovery efforts and that permit adaptive management. In some cases, conservation efforts may be relatively new or may not have had sufficient time to demonstrate their biological benefit. In such cases, provisions of adequate monitoring and funding for conservation efforts are essential to ensure that the intended conservation benefits are realized. NMFS also encourages all parties to submit information on ongoing efforts to protect and conserve West Coast salmonids, as well as information on recently implemented or planned activities (i.e., since the time of listing for a given ESU) and their likely impact on the ESUs to be reviewed.

The complete citations for the references used in this document can be obtained by contacting NMFS or via the internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 6, 2002.

Rebecca Lent,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–3271 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 020131023-2023-01; I.D. 011602B]

RIN 0648–AP80

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed changes to catch sharing plan and sport fishing management.

SUMMARY: NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific Halibut Catch Sharing Plan (Plan) to adjust the management of the sport fishery in Puget Sound, WA, and to adjust the halibut possession limit for Oregon anglers. NMFS also proposes sport fishery regulations to implement the Plan in 2002. A draft environmental assessment and regulatory impact review (EA/RIR) on this action is also available for public comment.

DATES: Comments on the proposed changes to the Plan must be received by February 22, 2002, and comments on the proposed sport fishery regulations must be received by February 22, 2002.

ADDRESSES: Send comments or requests for a copy of the Plan and/or the EA/RIR to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Electronic copies of the Plan, including proposed changes for 2002, and of the draft EA/RIR are also available at the NMFS Northwest Region website: http://www.nwr.noaa.gov, click on "Pacific Halibut." Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, Northwest Region, NMFS, phone: 206–526–6140; fax: 206–526–6736 or; e-mail: yvonne.dereynier@noaa.gov.

SUPPLEMENTARY INFORMATION: The Halibut Act of 1982, at 16 U.S.C. 773c, requires that the Secretary of Commerce (Secretary) adopt such regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention between the United States and Canada and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Each year since 1988, the Pacific Fishery Management Council (Council) has developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California).

In 1995, NMFS implemented the Council-recommended Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53′18″ N. lat.), Oregon, and California. North of 46°53′18″ N lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry sablefish fishery when the overall

Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

Council Recommended Changes to the Plan

At its September 2001 meeting, the Council adopted, for public comment, the following proposed changes to the plan: (1) Allowing the Washington Inside Waters sport fishery sub-quota to be taken in two separate seasons for two different regions within that sport fishery subarea; (2) allocating 50-65 percent of the Oregon North Central and South Central all-depth sport fishery sub-quotas to the May through June fishery and allowing only vessels carrying IPHC charter licenses to participate in the all-depth fishery during these months, and allocating 35-50 percent of the Oregon North Central and South Central all-depth sport fishery sub-quotas to the August through September fishery and allowing only vessels that do not have IPHC charter licenses to participate in the all-depth fishery during these months; (3) changing the season start date for the Columbia River subarea from May 1 to June 15; and (4) allowing Oregon sport fishers to retain and transport up to two halibut on land.

At its November 2001 public meeting, the Council considered the results of state-sponsored workshops on the proposed changes to the Plan and public comments, and made the final recommendations for two modifications to the Plan as follows:

(1) Allow the Washington Inside Waters sport fishery sub-quota to be taken in two separate seasons for two different regions within that sport fishery subarea. This provision is primarily intended to allow anglers in eastern Puget Sound to have access to halibut before the halibut migrate out of that area in the spring.

(2) Allow Oregon sport fishers to retain and transport up to two halibut on land. This provision would be more convenient for anglers who travel to the coast for multi-day fishing vacations. It also makes the possession limit consistent with the limit in the State of Washington and improved enforceability for agencies and for anglers.

Proposed Changes to the Catch Sharing Plan

NMFS is proposing to approve and to make the following changes to the Plan:

In section (f) of the Plan, Sport Fisheries, insert a new fourth sentence and revise the newly renumbered fifth, sixth, and seventh sentence of paragraph (1)(i) to read from the third sentence as follows:

The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. To that end, the Puget Sound subarea may be divided into two regions with separate seasons to achieve a fair harvest opportunity within the subarea. Due to inability to monitor the catch in this area inseason, fixed seasons, which may vary and apply to different regions within the subarea, will be established preseason based on projected catch per day and number of days to achievement of the quota. Inseason adjustments may be made, and estimates of actual catch will be made postseason. The fishery will open in April or May and continue until a dates established preseason (and published in the sport fishery regulations) when the quota is predicted to be taken, or until September 30, whichever is earlier.

In section (f), Sport Fisheries, paragraph 3 is revised to read as follows:

(3) *Possession limits.* The sport possession limit on land is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel.

Proposed 2002 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 2002. The 2002 TAC is unknown at this time, but information available from the IPHC indicates that the TAC may be similar to or somewhat higher than the TAC in 2001. The final TAC will be determined by the IPHC at its annual meeting January 22-25, 2002. The proposed 2002 sport fishery regulations based on the 2001 Area 2A TAC of 1,140,000 lb (517 mt) are as follows:

Washington Inside Waters (Subarea Puget Sound and Straits)

This subarea would be allocated 57,393 lb (26 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The Washington Department of Fish and Wildlife (WDFW), NMFS and IPHC are currently discussing how to estimate season durations for the Puget Sound and North Coast subareas under the proposed changes to subarea seasons and quota allocations. According to the Plan, the structuring objective for this subarea is to provide a stable sport fishing opportunity and to maximize the season length. In 2001, the fishery in this subarea was 49 days long, from May 17 through July 22, held for 5 days per week (Thursday through Monday). For the 2002 fishing season, the fishery in this subarea would be set to meet the structuring objectives described in the Plan, possibly with separate seasons in eastern and western Puget Sound. The final determination of the season dates would be based on the allowable harvest level, projected 2002 catch rates, and on recommendations developed in a public workshop sponsored by WDFW after the 2002 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day per person.

Washington North Coast Subarea (North of the Queets River)

This subarea would be allocated 108,030 lb (49 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. According to the Plan, the structuring objective for this subarea is to maximize the season length for viable fishing opportunity and, if possible, stagger the seasons to spread out this opportunity to anglers who use these remote grounds. The fishery opens on May 1, and continues 5 days per week (Tuesday through Saturday). The highest priority for local anglers is for the season to last through the month of May. If sufficient quota remains, the second priority is to establish a fishery that will be open July 1, through at least July 4. In 2001, the fishery in this subarea was 29 days long, from May 1 through June 1, held for 5 days per week (Tuesday through Saturday); the season re-opened for June 16, and again July 1 through 4. For the 2002 fishing season, the fishery in this subarea would be set to meet the structuring objectives described in the Plan. The final determination of the season dates would be based on the allowable harvest level, projected 2002 catch rates, and on recommendations developed in a public workshop sponsored by WDFW after the 2002 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day per person. A portion of this subarea located about 19 nm (35 km) southwest of Cape Flattery would be closed to sport fishing for halibut. The size of this closed area is described in the Plan, but may be modified preseason by NMFS to maximize the season length.

Washington South Coast Subarea

This subarea would be allocated 42,739 lb (19.4 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The fishery would open on May 1 and continue 5 days per week (Sunday through Thursday) until September 30, or until the quota is achieved, whichever occurs first. According to the Plan, the structuring

objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery would be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open 7 days per week in the area from the Queets River south to 47°00′00″ N lat. and east of 124°40′00″ W long. Subsequent to the closure of the Washington South Coast subarea, if any remaining quota is sufficient for a nearshore fishery, the area from the Queets River south to 47°00′00″ N lat. and east of 124°40′00″ W long. would be allowed 7 days per week until either the remaining subarea quota is estimated to have been taken and the season is closed by the IPHC, or until September 30, whichever occurs first. The daily bag limit would be one halibut of any size per day per person.

Columbia River Subarea

This subarea would be allocated 10,487 lb (4.8 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The fishery would open on May 1 and continue 7 days per week until the quota is reached or September 30, whichever occurs first. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon North Central Coast Subarea

This subarea would be allocated 199,803 lb (90.6 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The structuring objectives for this subarea are to provide two periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers, and to provide a period of fishing opportunity during the summer in nearshore waters for small boat anglers. The May all-depth season would be allocated 135,866 lb (61.6 mt). Based on an observed catch per day trend in this fishery, an estimated 24,000 lb (10.9 mt) would be caught per day in 2002, resulting in a 5-day fixed season. In accordance with the Plan, the season dates would be May 9, 10, 11, 16, and 17. If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms for the north central and south central coast subareas combined would be allocated 17,150 lb (7.8 mt) and would be open starting May 1 through September 30 or until the TAC is attained, whichever occurs first. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be allocated 49,951 lb (22.7 mt), which may be sufficient for a 1-day or 2-day opening starting August 2, based on the expected catch per day. If sufficient quota remains after this season for additional days of fishing, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by the Oregon Department of Fish and Wildlife (ODFW) after the 2002 TAC is set by the IPHC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon South Central Coast Subarea

This subarea would be allocated 15,820 lb (7.2 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The May all-depth season would be allocated 12,656 lb (5.7 mt) and, based on the observed catch per day trend in this fishery, an estimated 3,000 lb (1.4 mt) would be caught per day in 2002, resulting in a 4-day fixed season. In accordance with the Plan, the season dates would be May 10, 11, 17, and 18. If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms is combined for the north central and south central coast subareas and would be allocated 17,150 lb (7.8 mt) and would be open starting May 1 through September 30 or until the TAC is attained, whichever occurs first. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) may open for 1 day or 2 days on August 2, if sufficient quota is available. If sufficient quota remains for additional fishing days after this season, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates would be based on the allowable harvest level, projected catch rates, and recommendations developed in an ODFW-sponsored public workshop after the IPHC sets the 2002 TAC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Humbug Mountain, OR, through California Subarea

This subarea would be allocated 6,809 lb (3.1 mt) at an Area 2A TAC of 1,140,000 lb (517 mt) in accordance with the Plan. The proposed 2002 sport season for this subarea would be the same as last year, with a May 1 opening and continuing 7 days per week until September 30. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

NMFS requests public comments on the Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 22–25, 2002, in Seattle, WA. NMFS requests comments on the proposed changes to the Plan and sport fishing regulations by February 22, 2002, after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed changes. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known, and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific halibut sport fishery concurrent with the IPHC regulations for the 2002 Pacific halibut fisheries.

Classification

NMFS has prepared a draft EA/RIR on the proposed changes to the Plan. Copies of the "Draft Environmental Assessment and Regulatory Impact Review of Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A" are available from NMFS (see **ADDRESSES**). Comments on the EA/RIR are requested by February 22, 2002.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed changes to the Plan would not have a significant economic impact on a substantial number of small entities as follows:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $5.0 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance. The Council considered two issues, with alternatives, and ultimately chose the alternative that balanced the conservation and socioeconomic risks and benefits associated with the Pacific halibut fishery off the West Coast. The relevant issues were equity in access to the resource for Washington anglers and logistical

convenience for Oregon anglers on multi-day fishing vacations. The preferred alternatives were: (1) allowing the Washington Inside Waters sport fishery sub-quota to be taken in two separate seasons for two different regions within that sport fishery subarea; and (2) allowing Oregon sport fishers to retain and transport up to two halibut on land. Separating the Washington Inside Waters subarea into two seasons is primarily intended to allow anglers in eastern Puget Sound to have access to available halibut quota before the halibut migrate out of eastern Puget Sound. With two separate seasons, WDFW may also have a better opportunity to monitor and account for catch in the Inside Waters subarea. Allowing Oregon anglers to retain two halibut on land is intended to be more convenient for halibut anglers who participate in multi-day or multi-trip fishing vacations. Many participants in the Oregon charter halibut fisheries travel to the coast for fishing vacations. This policy change would allow an angler to transport two halibut on land without changing the at-sea bag limit of one fish. These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 - .65, and the Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan.

Proposed changes to the Plan will affect charter fishing operations and anglers in Puget Sound, Washington, and off the coast of the State of Oregon. Neither state is able to make an accurate estimation of the number of anglers participating in their sport halibut fisheries. The proposal to separate the Inside Waters subarea is not expected to affect Washington anglers or charter fishing businesses except by allowing these persons and businesses to fish during times when halibut are more likely to be available in their regions within Puget Sound. The proposal to revise the Oregon on-land bag limit to two fish is a modest change to the Plan and is expected to have modest convenience benefits for Oregon anglers and the charter operations that cater to those anglers. These benefits include anglers being able to bring an additional fish on land after a multi-day fishing trip and operators possibly experiencing an increase in multi-day charters due to the increased on-land bag limit.

These proposed changes to the Plan are insignificant and are expected to result in either no impact at all, or a modest increase in equity for all Washington anglers fishing in Puget Sound so that they are in parity of Oregon anglers, and in convenience for Oregon anglers and charter operators. These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan are not expected to meet of the RFA criteria of having a "significant" economic effect on a "substantial number" of small entities, as stated in 5 U.S.C. 603 *et seq.* The proposed sport management measures for 2002 merely implement the Plan at the appropriate level of TAC; their impacts are within the scope of the impacts analyzed in the EA/RIR for the Plan. Therefore, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of Executive Order 12866.

Dated: February 5, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 02–3268 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 28
Monday, February 11, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Resource Advisory Committee Meeting, Ravalli County Resource Advisory Committee, Hamilton, MT

AGENCY: Forest Service, USDA.

TIME AND DATE: February 26, 2002, 6:30 p.m.

PLACE: Corvallis High School Library, 1045 Main Street, Corvallis, Montana.

STATUS: The meeting is open to the public.

MATTERS TO BE CONSIDERED: Agenda topics will include NEPA process overview, Project Solicitation and Review process, and public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

FOR MORE INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: February 1, 2002.

Rodd Richardson,

Forest Supervisor.

[FR Doc. 02–3063 Filed 2–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–832, A–201–830, A–841–805, A–274–804, A–823–812]

Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances.

EFFECTIVE DATE: February 11, 2002.

SUMMARY: The Department of Commerce has preliminarily determined that critical circumstances exist for imports of carbon and alloy steel wire rod (steel wire rod) from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine, pursuant to section 733(e)(2) of the Tariff Act of 1930, as amended (the Tariff Act).

FOR FURTHER INFORMATION CONTACT: Mark Flessner at (202) 482–6312 (Germany); Marin Weaver at (202) 482–2336 (Mexico); Scott Lindsay at (202) 482–0780 (Moldova), Magd Zalok at (202) 482–4162 (Trinidad and Tobago); or Lori Ellison at (202) 482–5811 (Ukraine), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Tariff Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2000).

Background

On October 2, 2001, the Department initiated investigations to determine whether imports of steel wire rod from, *inter alia,* Brazil, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine are being, or are likely to be, sold in the United States at less than fair value (66 FR 50164, October 2, 2001). On October 29, 2001, the International Trade Commission (the Commission) published its determination that there is a reasonable indication of material injury to the domestic industry from imports of steel wire rod from all of these countries. On December 5, 2001, petitioners [1] alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of steel wire rod from Brazil, Germany, Mexico, Moldova and Ukraine. Petitioners added Trinidad and Tobago to its allegation in a subsequent letter dated December 21, 2001.

In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998, the Department stated it may issue a preliminary critical circumstances determination prior to the date of the preliminary determinations of sales at less than fair value, assuming sufficient evidence of critical circumstances is available. *See Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364. In accordance with this policy, at this time we are issuing the preliminary critical circumstances decision in the investigations of steel wire rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine.[2] A full discussion of our analyses may be found below and in the concurrent country-specific memoranda, dated February 4, 2002 (Critical Circumstances Memoranda). Public versions of these memoranda are on file in the case-specific public files maintained by the Import Administration Central Records Unit, in Room B–099 of the Department of Commerce building.

[1] Petitioners are: Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] We intend to issue our preliminary critical circumstances findings with respect to Brazil concurrenlty with our preliminary dumping determination.

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by petitioners in their December 5, 19, and 21, 2001, and their January 25, 2002 letters; (ii) exporter-specific shipment data requested by the Department; (iii) comments by interested parties in response to petitioners' allegations; (iii) import data available through the International Trade Commission's DataWeb website; and (iv) the Commission's preliminary injury determinations.

History of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Tariff Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 Fed. Reg. 70,696 (November 27, 2000). On November 16, 1983, the Department published an antidumping duty order on steel wire rod from Trinidad and Tobago. *See Antidumping Duty Order; Carbon Steel Wire Rod from Trinidad and Tobago*, 48 FR 52111. Accordingly, we find a history of dumping of steel wire rod from this country. However, we are not aware of any antidumping order in any country on steel wire rod from Germany, Moldova, or Ukraine. For this reason, we do not find a history of injurious dumping of the subject merchandise from these countries pursuant to section 733(e)(1)(A)(i) of the Tariff Act.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling steel wire rod at less than fair value, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001). The Department normally bases its preliminary decision with respect to knowledge on the margins calculated in the preliminary determination. However, because section 733(e)(1) of the Tariff Act permits the Department to make a preliminary critical circumstances determination prior to the issuance of the preliminary dumping determination, we may rely on other information to make an early critical circumstances determination.

In the instant cases we find the antidumping petition contains sufficient information to conduct our analysis of this criterion. The petition estimated dumping margins for Germany of 37.78 to 99.32 percent; for Mexico of 29.63 to 40.52 percent; for Moldova of 159.00 percent; for Trinidad and Tobago of 87.27 percent; and for Ukraine of 101.92 percent. *See Initiation of Antidumping Duty Investigations: Carbon and Certain Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001) (*Initiation Notice*).[3] Because the highest estimated dumping margin calculated in the petition for each of these countries is greater than 25 percent, there is a reasonable basis to impute knowledge of dumping with respect to imports from these countries. Therefore, we have imputed to importers knowledge of dumping of the subject merchandise exported from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

In determining whether there is a reasonable basis to believe or suspect an importer knew or should have known there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the Commission. If the Commission finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine a reasonable basis exists to impute importer knowledge there was likely to be material injury by reason of dumped imports. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61967 (November 20, 1997). In this case the Commission has found a reasonable indication of present material injury due to dumping of subject imports of steel wire rod from each of the named countries. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*, USITC Publication No. 3456, October 2001 (Preliminary). As a result, the Department has determined there is a reasonable basis to believe or suspect importers of steel wire rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine knew or should have known there was likely to be material injury by reason of these dumped imports.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Tariff Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the

[3] In some cases, the Department adjusted certain elements of the petitioners' calculations; therefore, the margins presented above may differ from those presented in the August 31, 2001 petitions.

petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the Critical Circumstances Memoranda, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known antidumping cases were pending on steel wire rod imports from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine by June 2001 at the latest. Accordingly, we determined December 2000 through May 2001 should serve as the "base period," while June 2001 through November 2001 should serve as the "comparison period" in determining whether or not imports have been massive in the comparison period.

Pursuant to 19 CFR 351.206(h), we found imports increased by more than 15 percent for Germany, Mexico, Moldova, and Ukraine; accordingly, we find that imports have been massive in the comparison period for each of the named countries. With respect to Trinidad and Tobago, we found imports for the sole respondent, Caribbean Ispat, Ltd., increased by well over 15 percent. However, imports for Trinidad and Tobago as a whole rose by only 12.11 percent. Accordingly, we find imports were massive for Caribbean Ispat, Ltd., but not for all other exporters or producers. *See* the Critical Circumstances Memoranda for more detailed information.

In summary, we find there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to imports of steel wire rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine. We further find there have been massive imports of steel wire over a relatively short period from Germany, Mexico, Moldova, and Ukraine. We also find there have been massive imports over a relatively short time for Caribbean Ispat, Ltd. of Trinidad and Tobago; such imports have not been massive for all other exporters or producers from that country.

Conclusion

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memoranda, we preliminarily determine critical circumstances exist for imports of steel wire rod from Germany, Mexico, Moldova, and Ukraine, as well as for Caribbean Ispat, Ltd. of Trinidad and Tobago. Further, we preliminarily find critical circumstances do not exist for "all others" from Trinidad and Tobago.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Tariff Act, if the Department issues an affirmative preliminary determination of sales at less than fair value in the investigation with respect to imports of steel wire rod, the Department, at that time, will direct the U.S. Customs Service (Customs) to suspend liquidation of all entries of steel wire rod from Germany, Mexico, Moldova, Trinidad and Tobago (from Caribbean Ispat, Ltd., only), and Ukraine that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations in these investigations. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determinations will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for all countries named in petitioners' allegations when we make our final dumping determinations in these investigations, which will be 75 days (unless extended) after issuance of the preliminary dumping determinations.

Commission Notification

In accordance with section 733(f) of the Tariff Act, we will notify the Commission of our determinations.

This notice is issued and published pursuant to section 777(i) of the Tariff Act.

Dated: February 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–3255 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Final Results of Antidumping Duty Administrative Review and Termination of the Suspension Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of the Suspension Agreement.

SUMMARY: We published in the **Federal Register** the preliminary results of review on August 8, 2001. *See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review of Suspension Agreement,* 66 FR 41500 (August 8, 2001) (*Preliminary Results*). This review covers three manufacturers and exporters of the subject merchandise, Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA) during the period of review (POR) from July 19, 1999 through June 30, 2000.

Based on our analysis of the comments received, we have made some changes in our calculations. For these final results, we determine that CSN and USIMINAS have made sales below the reference price established by the Suspension Agreement. We also determine that the amount by which the estimated normal value exceeds the export price for each entry by CSN and USIMINAS/COSIPA indicates that the dumping margin on certain entries exceeds 15 percent of the weighted average margin for CSN and USIMINAS/COSIPA in the LTFV investigation. The Department determines that CSN and USIMINAS/COSIPA have violated the Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil ("the Suspension Agreement"). Because we find that the violations were not inconsequential and frustrated the purposes of this Agreement, we are terminating the Suspension Agreement.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (CSN), Michael Ferrier or Dena Aliadinov (USIMINAS/COSIPA), or Abdelali Elouaradia, Enforcement Group III, Office 8, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–1394, (202) 482–3362, and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

Background

We invited parties to comment on our preliminary results of review. Respondents filed a brief on September 7, 2001, and petitioners filed a rebuttal brief on September 17, 2001.

Scope of the Review

The products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum;
Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum;
Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16% Mo 0.21% Max	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% V(wt.) 0.10% Max	1.30–1.80% Cb 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max Nb 0.005% Min	1.40% Max Ca Treated	0.025% Max A1 0.01–0.07%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this agreement, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Period of Review

The POR is July 19, 1999 through June 30, 2000.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 4, 2002, which is hereby adopted by this notice. A list of the issues raised, 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, on file in Room B–099 of the U.S. Department of Commerce.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are noted in various sections of the Decision Memorandum, accessible in B–099 and on the World Wide Web at *www.ia.ita.doc.gov/frn*.

Final Results of Review

The purpose of the review has been to review the current status of, and compliance with, the terms of the Suspension Agreement.

Compliance With Section IV(E) of the Suspension Agreement

Under the statute, the Department is required to review entries made under the Suspension Agreement to determine whether the terms of the Agreement are being complied with by the signatories of the Suspension Agreement. Specifically, section IV(E) of the Suspension Agreement requires that for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed a specified amount. That limit is 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

We examined the extent to which CSN and USIMINAS/COSIPA may have made sales that were not in compliance with this provision of the Suspension Agreement. To this end, we examined (see Department's Analysis Memorandum, dated February 4, 2002, proprietary version) the number of sales which had margins that exceeded the limit established by the Suspension Agreement and the amount by which the margins of these sales exceeded this limit. As a result, we found that at least one company made sales at dumping margins that exceeded the limit established by the Suspension Agreement and that neither the number of sales nor the amount by which they exceeded the limit was insignificant. On this basis, we cannot conclude that these sales with dumping margins inconsistent with those allowed under the Suspension Agreement are inconsequential or inadvertent. *See* Decision Memorandum and USIMINAS/COSIPA and CSN Final Analysis Memoranda, dated February 4, 2002.

Compliance With Section IV(A) of the Suspension Agreement

Section IV(A) of the Suspension Agreement contains the reference price requirements for merchandise subject to the Suspension Agreement. We compared the price charged by the mill to the first unaffiliated customer in the United States to the reference price for the applicable period for that sale (based upon the order confirmation date). The Suspension Agreement states that the reference price includes all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. In addition, the Suspension Agreement stipulates that if the sale for export is on terms that do not include these expenses, the Signatories will ensure that the actual terms are equivalent to a price that is not lower than the reference price. Therefore, we have added to the price to the first unaffiliated U.S. customer any of these charges that were not included in the price terms to that first unaffiliated U.S. customer, and we compared this total to the applicable reference price.

In our analysis, we examined the quantity of sales below the reference price established by the Suspension Agreement and the amount by which these prices were below the reference price. As a result, we found that for at least one company, neither the number of sales made below the reference price established by the Suspension Agreement nor the amount by which they were below the reference price was insignificant. On this basis, we cannot conclude that these sales with prices inconsistent with the reference price established by the Suspension Agreement are inconsequential or inadvertent. *See* Decision Memorandum and USIMINAS/COSIPA and CSN's Preliminary Analysis Memoranda, dated February 4, 2002.

Termination of Agreement

Therefore, we determine that CSN and USIMINAS/COSIPA have made sales in violation of the terms of the Suspension Agreement as set out in section IV(E) and section IV(A). Pursuant to section XI(B) of the Agreement, the Department hereby terminates with this notice the Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil. In accordance with section XIII(B) of the Agreement and section 734(1)(A)(i) of the Act, the Department will instruct U.S. Customs to suspend liquidation of unliquidated entries of the merchandise on the date of publication of this determination for all entries entered 90 days before the date of this publication. Given that the Department completed the original investigation (*see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 64 FR 38756 (July 19, 1999), the Department will publish in the **Federal Register** an antidumping duty order under section 736(a) of the Act with respect to the suspension of unliquidated entries entered 90 days before the date of this publication.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 4, 2002.

Faryar Shirzad,

Assistant Secretary, for Import Administration.

Appendix I—Issues in Decision Memorandum

1. Sales Involving Trading Companies / Agency Sale Approach
2. Adjustment to U.S. Price for Comparison to Reference Price—Commissions
3. Adjustment to U.S. Price for Comparison to Reference Price—Ocean Freight
4. Adjustment to U.S. Price for Comparison to Reference Price—U.S. Inland Freight
5. Adjustment to U.S. Price for Comparison to Reference Price—Credit Insurance
6. Violation of Suspension Agreement—Alleged Inadvertent Nature
7. Margin Calculation—Entry Basis versus Sales Item Basis
8. U.S. Commission Offset—Margin Calculation
9. U.S. Warranty—Direct versus Indirect Expense
10. U.S. Credit Expense—Credit Days
11. U.S. Credit Expense—Interest Rate
12. Freight Costs—Estimated versus Actual
13. PIS /COFINS Taxes

[FR Doc. 02–3256 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review in Accordance With Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review in accordance with court decision.

SUMMARY: On August 6, 2001 the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed the final results of the 1995–96 administrative review by the Department of Commerce (the Department) arising from the antidumping duty order on silicon metal from Brazil. *See American Silicon Technologies* v. *United States* 261 F.3d 1371 (Fed. Cir. 2001). After recalculation of the dumping margin for RIMA, we are amending the final results of the review in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jim Doyle, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3434 and (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991 the Department issued an antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil*, 56 FR 36135 (July 31, 1991) *(Antidumping Duty Order)*. On February 11, 1998 the Department published its final results of the fifth administrative review of silicon metal for four Brazilian manufacturers/exporters, Companhia Brasilerira Carbureto de Calcio ("CBCC"), Companhia Ferroligas Minas Gerais-Minasligas ("Minasligas"), Eletrosilex Belo Horizonte ("Eletrosilex"), and Rima Industrial S/A ("RIMA"). *See Silicon Metal from Brazil; Final Results of Antidumping Administrative Review*, 63 FR 6899 (February 11, 1998) *("Final Results")*.

On August 19, 1999 the U.S. Court of International Trade (CIT) issued an order remanding to the Department the *Final Results*. *See American Silicon Technologies* v. *United States*, 63 F. Supp. 2d 1324 (CIT 1999). In its August 19, 1999 order, the CIT instructed the Department to: reconsider whether RIMA interest income consists of only short-term investments; recalculate RIMA's financial expenses to account for foreign exchange losses; and deduct RIMA's warehousing expenses from the export price in the calculation of the overall margin.

On March 9, 2000 the CIT affirmed the Department's redetermination and dismissed the case. *See American Silicon Technologies* v. *United States*,

No. 98–03–00567, Slip Op. 2000–26(CIT 2000). American Silicon timely appealed to the CAFC. On August 16, 2001 the CAFC affirmed the decision of the CIT and the Department's redetermination. *See American Silicon Technologies* v. *United States,* 261 F.3d 1371 (Fed. Cir. 2001). There was no appeal.

Litigation in this case is final and conclusive. We are therefore amending our final results of review for the period July 1, 1995 through June 30, 1996.

The revised weighted average margin for RIMA is as follows:

Manufacturer/exporter	Margin (percent)
RIMA	3.27

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from RIMA in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. The Department will issue appraisement instructions directly to Customs. The above rate will not affect RIMA's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: January 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–3254 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838] and [C–122–839]

Amendment to Preliminary Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada; Amendment to Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Determination: Certain Softwood Lumber Products from Canada.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment to preliminary determination of sales at less than fair value and amendment to preliminary affirmative countervailing duty determination, preliminary affirmative critical circumstances determination, and alignment of final countervailing duty determination with final antidumping determination.

SUMMARY: The Department of Commerce is amending its notices of preliminary determination in the antidumping duty (AD) investigation and preliminary determination in the countervailing duty (CVD) investigation of certain softwood lumber products from Canada to clarify Harmonized Tariff Schedule of the United States (HTSUS) coverage of the subject merchandise.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at 202–482–0650 or Maria MacKay at 202–482–1775, Office of AD/CVD Enforcement V, and AD/CVD Enforcement VI, respectively, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

ACTIONS SINCE PRELIMINARY DETERMINATIONS: In the notice of preliminary determination in the countervailing duty (CVD) investigation the Department published a list of products preliminarily excluded from the scope of these proceedings. See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products From Canada, 66 FR 43186–43188 (August 17, 2001). Subsequently, in the notice of preliminary determination in the antidumping (AD) investigation, we amended that list, taking into account comments from interested parties and expert advice of the U.S. Customs Service (Customs). See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products From Canada, 66 FR 56062, 56078 (November 6, 2001). Petitioners filed comments on this amended list.

ANALYSIS: Petitioners claim that, when the Department amended the list of the excluded products, it failed to correct an error: it did not clarify that certain products, included in the scope of these investigations, may be classified by Customs under Harmonized Tariff Schedule of the United States (HTSUS) headings other than those listed in the scope description (HTSUS 4407.1000, 4409.1010, 4409.1090, and 4409.1020). Petitioners point out that Customs has refused to enforce the suspension of liquidation based on the written description of the subject merchandise without a recitation of the HTSUS headings in which the subject merchandise could be classified.

We reviewed the HTSUS headings and subheadings of concern to petitioners, 4418.90.40.90, 4421.90.70, 4421.90.98.40, 4421.90, 4418.90.40.20, 4415.20, and the description of the subject merchandise (including the list of excluded products as updated in the AD preliminary determination). We also consulted with the National Import Specialist and took into account information provided by the U.S. International Trade Commission (ITC). See Memorandum to the File from Maria MacKay on Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada: Teleconference with Paul Garretto, National Import Specialist, U.S. Customs Service, dated 12/19/01, on file in the Central Record Unit, Room B–099, Main Commerce Building. As a result of our analysis, we concluded that certain products subject to the scope of these investigations may be classified by Customs under HTSUS 4418.90.40.90,

4421.90.70.40, and 4421.90.98.40. Our findings are detailed in a decision memorandum regarding Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada: Amendment to the Language of the Scope Description. See Memorandum to Bernard T. Carreau from Melissa G. Skinner and Gary Taverman on Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada: Amendment to the Language of the Scope Description, dated 1/18/02, on file in the Central Record Unit, Room B–099, Main Commerce Building.

We are therefore publishing an amendment to the notice of preliminary determination in the AD investigation and to the notice of preliminary determination in the CVD investigation clarifying the HTSUS coverage of the scope. Although additional HTSUS headings have been provided for convenience and U.S. Customs purposes, the written description remains dispositive. We plan to amend the instructions to Customs for both the AD and CVD cases.

AMENDMENT:

The language of the Scope Issues section in the notice of preliminary determination in the AD investigation (which also applies to the CVD investigation) is amended as follows (added language in bold print).

In the Initiation Notice, we invited all interested parties to raise issues and comment regarding the product coverage under the scope of this investigation. We received numerous comments, including scope clarification requests, scope exclusion requests, and requests for determinations of separate classes or kinds. The requests covered approximately 50 products, ranging from species, like Western red cedar and Douglas fir, to fencing products, bed frame components, pallet stock, and joinery and carpentry products. We published a preliminary list of scope exclusions in the Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada, 66 FR 43186 – 43188 (August 17, 2001) (CVD Preliminary).

In our review of the comments received since the first list of product exclusions was issued in the CVD Preliminary, we found that some of the excluded product definitions required further clarification. Based on our analysis of the comments received, we have amended the list of excluded products that was originally presented in the CVD Preliminary. The amended list of scope exclusions is divided into two groups:

Group A. *Softwood lumber products excluded from the scope:*

1. Trusses and truss kits, properly classified under HTSUS 4418.90
2. I–Joist beams
3. Assembled box spring frames
4. Pallets and pallet kits, properly classified under HTSUS 4415.20
5. Garage doors
6. Edge–glued wood, properly classified under HTSUS item 4421.90.98.40
7. Properly classified complete door frames.
8. Properly classified complete window frames
9. Properly classified furniture

Group B. *Softwood lumber products excluded from the scope only if they meet certain requirements:*

1. Stringers (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

2. Box–spring frame kits: if they contain the following wooden pieces – two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.

3. Radius–cut box–spring–frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

4. Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

We have preliminarily determined that the products listed in groups (A) and (B) above are outside the scope of this investigation. See Memorandum to Bernard T. Carreau from Maria MacKay, Gayle Longest, David Layton on Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada (October 30, 2001), which is on public file in the CRU, room B–099 of the main Commerce building. Lumber products that Customs may classify as stringers, radius cut box–spring–frame components, and fence pickets, not conforming to the above requirements, as well as truss components or pallet components, are covered under the scope of these investigations and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. On January 24, 2002, Customs informed the Department of certain changes in the 2002 HTSUS affecting these products. Specifically, subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively. Therefore, we are adding these subheadings as well.

This notice is issued and published pursuant to sections 773(f) and 777(i)(1) of the Act.

February 2,2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–3257 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020402D]

New England Fishery ManagementCouncil; Public Meetings

AGENCY: NationalMarine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA),Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England FisheryManagement Council (Council) is scheduling a public meeting of its Groundfish OversightCommittee and Scallop Oversight Committee in February, 2002 to consider actions affectingNew England fisheries in the exclusive economic zone (EEZ). Recommendations from thesegroups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on Friday,February 22 and Monday, February 25, 2002. See **SUPPLEMENTARY**

INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held in Mansfield and Danvers, MA. See **SUPPLEMENTARYINFORMATION** for specific locations.

Council address: NewEngland Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978)465-0492.

SUPPLEMENTARYINFORMATION:

Meeting Dates and Agendas

Friday,February 22, 2002, 9:30 a.m.--Groundfish Oversight Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508)339-2200.

The Groundfish Oversight Committee will meet to discussAmendment 10 to the Scallop Fishery Management Plan (FMP) and Amendment 13 to theNortheast Multispecies FMP. The Committee will first discuss Amendment 10 to the ScallopFMP. The committee will evaluate habitat and bycatch technical advice from the joint meetingof the Habitat Technical Team, the Groundfish Plan Development Team (PDT), and the ScallopPDT. Recommendations will be developed for draft alternatives in Scallop FMP Amendment 10to minimize, to the extent practicable, bycatch and habitat impacts from scallop fishing.

The Committee will then discuss Amendment 13 to the Northeast Multispecies FMP. Amendment 13 will establish rebuilding programs for overfished groundfish stocks, and will alsoend overfishing on stocks in that condition. The Committee will review available information onthe biological objectives for the FMP, including the mortality and biomass targets for stocks suchas Gulf of Maine cod. The Committee will also explore alternatives for crafting managementrecommendations for Amendment 13 that will incorporate additional input and advice from NewEngland fishermen. The Committee is considering an approach that would have managementmeasures in geographic areas developed by fishermen that fish in those areas. The details,advantages, and limitations of this approach will be discussed and the Committee will prepare arecommendation for the Council. Finally, the Committee will continue its review anddevelopment of specific management alternatives for further analysis.

TheCommittee's discussion on Amendment 13 may be influenced by a pending court order in thematter of Conservation Law Foundation et al. v. Donald Evans et al. Should a court order beissued prior to the meeting, the Committee's discussions will include an evaluation of the impactsof that order on the development of Amendment 13. This court order may also constrain orexpand the Committee's discussions on measures that are to be used for Amendment 13.

Monday, February 25, 2002, 9:30 a.m.--Scallop Oversight Committee Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923;telephone: (978) 777-2500.

The Oversight Committee will continue development ofmanagement alternatives for Draft Amendment 10 to the Sea Scallop Fishery Management Plan(FMP). The committee will evaluate habitat and bycatch technical advice from the joint meetingof the Habitat Technical Team, the Groundfish Plan Development Team (PDT), and the ScallopPDT. Recommendations will be developed for draft alternatives in Scallop FMP Amendment 10to minimize, to the extent practicable, bycatch and habitat impacts from scallop fishing. Otherissues and measures associated with Amendment 10 may also be developed.

Although non-emergency issues not contained in this agenda may come before this group fordiscussion, those issues may not be the subject of formal action during this meeting. Action willbe restricted to those issues specifically listed in this notice and any issues arising afterpublication of this notice that require emergency action under section 305(c) of theMagnuson-Stevens Act, provided the public has been notified of the Council's intent to take finalaction to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign languageinterpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

February 4, 2002.

Richard W. Surdi,

ActingDirector, Office of Sustainable Fisheries, National marine Fisheries Service.

[FR Doc. 02–3114 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020402A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has issued permit 1303 to Dr. R. Michael Laurs, of Southwest Fisheries Science Center (SWFSC) (1303).

ADDRESSES: The applications and related documents are available for review in the indicated office, by appointment:

Permits, Conservation, and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov)

SUPPLEMENTARY INFORMATION:

Electronic Access

To view the final version of Permit 1303 go to http://www.nmfs.noaa.gov/prot—res/PR1/Permits/pr1permits—review.html.

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Sea Turtles: Species Covered in This Notice

The following species are covered in this notice:

Threatened and endangered green turtle (*Chelonia mydas*)

Endangered leatherback turtle (*Dermochelys coriacea*)

Threatened loggerhead turtle (*Caretta caretta*)

Threatened and endangered Olive ridley turtle (*Lepidochelys olivacea*)

Permit Issued

Notice was published on May 10, 2001 (66 FR 23882) that Dr. R. Michael Laurs, of Southwest Fisheries Science Center applied for a scientific research permit (1303). The applicant requested authorization to allow take of listed sea turtles while conducting experiments on methods for reducing sea turtle take by longline fisheries in the Pacific Ocean and to allow import of living, deeply hooked sea turtles for treatment and rehabilitation. Permit 1303 expires December 31, 2005.

Dated: February 5, 2002.

David Cottingham,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–3270 Filed 2–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0101]

Federal Acquisition Regulation; Information Collection; Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning drug-free workplace. The clearance currently expires April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at FAR 52.223–6, Drug-Free Workplace, requires (1) contract employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer.

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Respondents: 600.

Responses Per Respondent: 1.

Annual Responses: 600.

Hours Per Response: .17.

Total Burden Hours: 102.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3180 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Federal Acquisition Regulation; Information Collection; Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning report of shipment. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military and, as required, civilian agency storage and distribution points, depots, and other receiving activities require advance notice of large shipments enroute from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

B. Annual Reporting Burden

Respondents: 250.
Responses Per Respondent: 4.
Annual Responses: 1,000.
Hours Per Response: .167.
Total Burden Hours: 167.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection package from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3181 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0044]

Federal Acquisition Regulation; Information Collection; Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bid/offer acceptance period. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by providing a period of time in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Respondents: 308.
Responses Per Respondent: 40.
Annual Responses: 12,320.
Hours Per Response: .017.
Total Burden Hours: 209.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection package from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3182 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091]

Federal Acquisition Regulation; Information Collection; Anti-Kickback Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning anti-kickback procedures. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of section 3 of the Act have occurred.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Annual Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.

Obtaining Copies of Proposals

Requesters may obtain copies of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3183 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107]

Federal Acquisition Regulation; Information Collection; Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notice of radioactive materials. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 5.
Annual Responses: 2,500.
Hours Per Response: 1.
Total Burden Hours: 2,500.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3184 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Federal Acquisition Regulation; Information Collection; Incentive Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office

of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning incentive contracts. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor—such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established—is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Respondents: 3,000.
Responses Per Respondent: 1.
Annual Responses: 3,000.
Hours Per Response: 1.
Total Burden Hours: 3,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3185 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0108]

Federal Acquisition Regulation; Information Collection; Bankruptcy

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bankruptcy. The clearance currently expires on April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform it's Government contract. The Government often does not receive adequate and timely notice of this event. The clause at 52.242–13 requires contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

B. Annual Reporting Burden

Respondents: 1,000.
Responses Per Respondent: 1.
Annual Responses: 1,000.
Hours Per Response: 1.
Total Burden Hours: 1,000.

C. Annual Recordkeeping Burden

Recordkeepers: 1,000.
Hours Per Recordkeeper: .25.
Total Burden Hours: 250.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3186 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059]

Federal Acquisition Regulation; Information Collection; North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning North Carolina sales tax certification. The clearance currently expires April 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 12, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Respondents: 424.
Responses Per Respondent: 1.
Annual Responses: 424.
Hours Per Response: 17.
Total Burden Hours: 72.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection package from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: February 5, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–3187 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Final Environmental Impact Statement for North Pacific Acoustic Laboratory Project

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. section 4321 *et seq.*, the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, and Navy regulations implementing NEPA procedures (31 CFR 775); the Department of the Navy announces its decision to conduct the North Pacific Acoustic Laboratory (NPAL) project, which will entail resumption of transmissions from a sound source off the north coast of Kauai for five years. The action will be accomplished as described in the Final Environmental Impact Statement's (FEIS) preferred alternative, denoted "Continued Operation of the Kauai Sound Source." The Navy was the lead agency and the National Marine Fisheries Service (NMFS) was a cooperating agency in the Environmental Impact Statement (EIS) process.

Background: The action will be conducted by Scripps Institution of Oceanography of the University of California, San Diego (Scripps), which carried out the first phase of Acoustic Thermometry of Ocean Climate (ATOC) feasibility research, and by the Applied Physics Laboratory of the University of Washington. Funding will be provided by the Office of Naval Research (ONR). Based on the success of the ATOC effort, the Navy recognizes the opportunity to transition into a second phase of research, NPAL, which will use the same acoustic source that was used in the Kauai ATOC program.

The purposes of the NPAL project are to study the feasibility and value of large scale acoustic thermometry; to study the behavior of sound transmissions in the ocean over long distances; and to study the possible long-term effects of sound transmission on marine life.

Under this action, the seabed power cable and sound source will remain in their present locations, and transmissions will continue with approximately the same signal parameters and transmission schedule used in the ATOC project. NPAL transmissions will consist of six 20-minute transmissions (one every four hours), every fourth day, with each transmission preceded by a five minute ramp-up period during which the signal intensity will be gradually increased. This represents an average duty cycle of two percent. With the possible exception of short duration testing with duty cycles of up to eight percent, or equipment failure, this schedule will continue for a period of five years. The signals transmitted by the source will have a center frequency of 75 Hertz (Hz) and a bandwidth of approximately 35 Hz. Approximately 260 watts of acoustic power will be radiated during transmission. At one meter from the source, the sound intensity will be about 195 decibels (dB) referenced to the intensity of a signal with a sound pressure level of one microPascal on a "water standard" basis. These signal

parameters and source level were found during the ATOC project to provide adequate, but not excessive, signal-to-noise ratios at the receiver ranges of interest.

At the conclusion of the five-year period, the seabed power cable will be abandoned in place. This will have the benefits of avoiding disturbance of sensitive military instrumentation in the vicinity and the benthic environment. The source will also be abandoned in place unless it appears to be in sufficiently good condition to warrant recovery.

Alternatives: A screening process, based upon criteria set in the EIS, was conducted to identify a reasonable range of alternatives that would satisfy the Navy's purpose and need, while minimizing environmental impacts.

Seven alternatives were initially considered: (1) The preferred alternative described above; (2) a no-action alternative; (3) additionally restricting source transmission times and modifying source operational characteristics; (4) using an alternate site for the project; (5) using a moored autonomous sound source; (6) the use of alternate sensors such as satellites; and (7) use computer modeling without collection of real-world data. Four of these alternatives, additionally restricting source transmission times and modifying source operational characteristics, moored autonomous source, alternate sensors, and modeling, were eliminated because they would not have met the desired research objectives. The other three alternatives, the preferred alternative, no action, and an alternate project site (Midway Island), were analyzed in detail.

The preferred alternative involves the continued operation for five additional years of the low frequency sound source (including the seabed power cable) previously installed off the north shore of Kauai, Hawaii, for use in the ATOC research, as described in detail above. This alternative best meets the project objectives for the three components of NPAL. The sound source at Kauai would provide superior acoustic capability for study of both large scale acoustic thermometry and long-range underwater sound transmission. In addition, further studies of the marine mammal species in the vicinity of the Kauai source would be able to build on the data collected during the Kauai ATOC Marine Mammal Research Program (MMRP). A sound source at Midway (alternate project site—Midway Island alternative) would have a more limited acoustic capability and limited baseline marine animal data while the no action alternative would offer no possibility for a long-term research project exploring underwater sound transmission and the natural and man-made changes in the ocean environment. Therefore, continued operation of the Kauai source (preferred alternative) best meets the project objectives.

The preferred alternative is considered the most environmentally benign alternative. As described in detail in the EIS, the environment includes the following major resources: physical, biological, economic, and social. Physical effects include those from construction and/or removal of facilities and potential increases in ambient noise. The physical installations at Midway Island, as part of the Midway alternative would be relatively minor and generally are benign from an environmental standpoint. The no action and Midway alternatives would involve the removal of the sound source and cable presently in place off northern Kauai. Removing the cable is likely to disrupt the seafloor environment and any new coral that may have begun to grow on the cable. The preferred and Midway alternatives would add somewhat to the ambient noise levels during transmission periods. The comparative potential biological effects of the preferred and Midway alternatives depend on the relative abundance of sensitive animals at the respective locations. For source transmissions, these differences would be minimal. However, there exists the potential at Midway for disturbance of breeding and pupping of highly endangered Hawaiian monk seals during installation of the power cable. The preferred and Midway alternatives would have comparable socioeconomic effects. The no action alternative would not have any socioeconomic effects. Therefore, the preferred alternative is the most environmentally benign alternative.

Environmental Impacts: Potential environmental impacts of continuing transmission of the sound source installed north of Kauai were analyzed in the Environmental Consequences section of the EIS. Several potential effects due to source transmissions were discussed, including the potential for physical auditory effects, behavioral disruption, habituation, masking, long-term effects, and indirect effects. Analysis of potential effects on marine mammals was accomplished with results from the California and Hawaii ATOC MMRPs and a program of underwater acoustical modeling. Neither MMRP observed any overt or obvious short-term changes in behavior, abundance, distribution, or vocalization in the marine mammal species studied. Intense statistical analyses revealed some subtle changes in the distance and time between successive humpback whale surfacings, and in the distribution of humpback whales away from the Kauai source and humpback (and possibly sperm) whales away from the California source during transmission periods. Bioacoustic experts concluded that these subtle effects would not adversely affect the survival of an individual whale or the status of the North Pacific humpback whale population (Frankel and Clark, 2000).

Mitigation: The following mitigation measures discussed in the FEIS will be employed to minimize the potential effects of the NPAL sound source:

1. Sound source will operate at the minimum duty cycle necessary to support the large-scale acoustic thermometry and long-range propagation objectives.

2. Any increases in the duty cycle beyond the two percent, with a maximum of eight percent, will not occur during the peak season for humpback whale presence in the vicinity of the Kauai sound source. (January–April).

3. Sound source will operate at the minimum power level necessary to support large-scale acoustic thermometry and long-range sound transmission objectives.

4. Transmissions from the NPAL sound source will be preceded by a five-minute ramp-up of the source power.

5. All NPAL vessels and aircraft will be equipped with required air pollution controls.

6. The source cable and possibly the sound source, will not be removed at the end of the experiment.

The feasibility and desirability of limiting sound transmissions to times when potentially vulnerable species are not present in the vicinity of the source and modifying source characteristics to potentially reduce effects on marine animals was considered as an initial alternative. Limiting source transmissions to seasons when humpback whales, the most abundant of the potentially vulnerable species in the Kauai area, are not present would severely reduce the utility of both the acoustic thermometry and long-range propagation studies, as well as make it essentially impossible to study the possible long-term effects of low frequency sound transmissions on marine life. Operational characteristics important to potential effects on marine animals include frequency, source power level, waveform, and sound signal transmission length. Each of these characteristics has been selected for the

least potential environmental impact and the maximum scientific utility. Results from the ATOC study demonstrate that these source characteristics provide adequate, but not excessive, signal-to-noise ratios at the receiver ranges of interest.

Because subtle effects detected by the ATOC MMRPs were found only after intense statistical analysis, the conduct of further marine mammal monitoring studies is based on the advancement of the understanding of the potential for long-term effects from acoustic transmissions. The following monitoring measures will be in place:

1. Conduct eight aerial surveys from February through early April, eight days apart, to match the NPAL transmission schedule. Annual reports of the monitoring and studies will include numbers and locations of marine mammal and sea turtle sightings, which would be submitted to NMFS, with copies to the Hawaii Department of Land and Natural Resources, the Office of Planning and the Hawaiian Island Humpback Whale National Marine Sanctuary. The effort will continue to monitor for acute short-term effects, although none were observed during the ATOC MMRPs.

2. Monitor marine mammal data by coordinating with the local marine mammal stranding network to detect any long-term trends.

In the Biological Opinion (BO), NMFS recommended investigating the effects of masking by low frequency anthropogenic sounds on baleen whales through studies of similar species that are sensitive to low frequency sound, as a conservation recommendation. The only marine mammal species that regularly occur off Hawaii and vocalizes in the same frequency range as the NPAL transmissions, and thus could potentially be masked if positioned close to the acoustic source, is the humpback whale. Since it is nearly impossible to capture a humpback whale or another baleen whale and conduct masking studies, and there are no other similar species that are sensitive to low frequency sound that regularly occur off Hawaii, the NPAL project will not focus its marine mammal monitoring and studies on this issue. However, the Navy has sponsored and is continuing to sponsor, other researchers whose work focuses on clarifying the potential effects of anthropogenic sounds on marine mammals, including the effects of masking by low frequency sounds (e.g., Nachtigall et al., 2001; Schlundt et al., 2000; Kastak and Schusterman, 1998).

Coordination and Consultation With NMFS: In addition to acting as a cooperating agency in the EIS process, NMFS has a regulatory role in its jurisdiction over issues related to endangered species and marine mammals. The potential effect upon listed species required consultation with NMFS under section 7 of the Endangered Species Act. ONR initiated interagency consultation on June 23, 2000 by submitting a Biological Assessment to NMFS. Consultation concluded with NMFS' issuance of a BO on April 26, 2001. Based on the status of the species, environmental baseline, effects of the action, and cumulative effects, NMFS concluded that the proposed action is not likely to jeopardize the continued existence of the endangered humpback, fin, sei, blue, right, and sperm whales or the Hawaiian monk seal, or result in the destruction or adverse modification of critical habitat considered in the BO.

NMFS also administers the Marine Mammal Protection Act. Scripps, in coordination with NMFS, is pursuing a Letter Of Authorization (LOA) for incidental taking by harassment under 16 U.S.C. 1371. With the publication of the draft EIS, Scripps began the process of applying for a LOA. NMFS published an Advance Notice of Proposed Rulemaking on August 24, 2000 (65 FR 51584), and a Proposed Rule on December 22, 2000 (65 FR 80815). A Final Rule was published on August 17, 2001 (66 FR 43442).

Response to Comments Received Regarding the FEIS: After the FEIS was distributed for a 30-day public review period which ended June 25, 2001, Scripps/ONR received 3 letters. From the state of Hawaii Department of Land and Natural Resources was a letter concurring with the "no effect" determination regarding National Historic Preservation Act Review, section 106 Compliance. There was a "no additional comment" letter from the Department of the Army, U.S. Army Engineer District of Honolulu. The third comment pertained to a different Navy proposed action, the Low Frequency Active sonar, an action unrelated to the NPAL project.

Conclusion: Continued use of the previously installed sound source off the northern coast of Kauai is the alternative that best meets the project's purpose and need for large-scale acoustic thermometry and long-range underwater sound transmission studies. Selection of this, the preferred alternative, also best facilitates the planned marine mammal monitoring and studies, and also minimizes environmental impacts.

Based on the analysis contained in the FEIS, the administrative record, and other factors discussed above, I select the preferred alternative, Continued Operation of the Kauai Source, to implement the proposed action.

Dated: January 23, 2002.

Donald Schregardus,

Deputy Assistant Secretary of the Navy, (Environment).

[FR Doc. 02–3222 Filed 2–8–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 11, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 12, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office

of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 5, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Rural Education Achievement Program (REAP) Spreadsheet for Small, Rural School Achievement Program and Rural Low-Income School Program.

Abstract: The purpose of the REAP Spreadsheet is to collect the data the statute requires for determining eligibility and allocations under the REAP Small, Rural School Achievement Program and Rural Low-Income School Program. Respondents are primarily state education agencies.

Additional Information: The Department requests emergency processing because a normal clearance is likely to cause a statutory or court-ordered deadline to be missed. The statute directs that average daily attendance (ADA) data for eligible local educational agencies (LEAs) be submitted to the Department by March 1 and that the Department make grant awards by July 1. The requested approval date for this emergency collection is February 11.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 3,330.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, *vivian.reese@ed.gov,* or should be electronically mailed to the internet address *OCIO_RIMG@ed.gov,* or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at (540) 776–7742 or via her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–3157 Filed 2–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.103A]

Office of Postsecondary Education; Training Program for Federal TRIO Programs (Training Program); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: To improve the operation of projects funded under the Federal TRIO Programs, the Training Program provides grants to train staff and leadership personnel employed in, participating in or preparing for employment in, projects funded under those programs.

Eligible Applicants: Institutions of higher education; and other public and private nonprofit institutions and organizations. We suggest that applicants read the "Dear Applicant letter" included in the application package before completing the Training Program application.

Applicaitons Available: February 15, 2002.

Deadline for Transmittal of Applications: April 5, 2002.

Deadline for Intergovernmental Review: June 10, 2002.

Estimated Available Funds: The Administration has set aside $6,325,000 for this program for FY 2002.

Estimated Range of Awards: $170,000–$290,000.

Estimated Average Size of the Awards: $250,000.

Estimated Number of Awards: 15–26.

Project Period: Up to 24 months.

Note: The Department is not bound by any estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point, or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education DepartmentGeneral Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; and, (b) The regulations for this program in 34 CFR part 642.

Priorities: Under 34 CFR 75.105(b), this competition focuses on projects designed to meet one of the following nine priorities (34 CFR 642.34 and 20 U.S.C. 1070a–17(b)(4)).

(1) Legislative and regulatory requirements for the operation of the Federal TRIO Programs.

(2) Student financial aid.

(3) The design and operation of model programs for projects funded under the Federal TRIO Programs.

(4) Use of educational technology.

(5) General project management for new directors.

(6) Retention and graduation strategies.

(7) Counseling.

(8) Reporting student and project performance.

(9) Coordinating project activities with other available resources and activities.

An applicant can submit only one application per priority. A single application cannot address more than one priority.

Under 34 CFR 75.105(c)(2)(i) we award up to an additional 8 points to an application, depending on how well the application meets one of the priorities

listed under the *Priorities* section of this notice.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: VirginiaMason, Training Program for Federal TRIO Programs, U.S.Department of Education, Office of Federal TRIO Programs, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510.Telephone: 202–502–7600 or via Internet: *virginia.mason@ed.gov*.

If you use a telecommunications device for the deaf(TDD), you may call the Federal Information Relay Service(FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all otherDepartment of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format(PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1070a–17.

Dated: February 6, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–3238 Filed 2–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.120A]

Office of Postsecondary Education; Minority Science and Engineering Improvement Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Minority Science and Engineering Improvement Program (MSEIP) is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific careers.

Eligibility for Grants: Under section 361 of Title III of the Higher Education Act as amended (HEA), the following entities are eligible to receive a grant under the MSEIP:

(1) Public and private nonprofit institutions of higher education that:

(A) Award baccalaureate degrees; and

(B) Are minority institutions;

(2) Public or private nonprofit institutions of higher education that:

(A) Award associate degrees; and

(B) Are minority institutions that:

(i) Have a curriculum that includes science or engineering subjects; and

(ii) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that:

(A) Provide a needed service to a group of minority institutions; or

(B) Provide in-service training for project directors, scientists, and engineers from minority institutions; or

(4) Consortia of organizations that provide needed services to one or more minority institutions, the membership of which may include:

(A) Institutions of higher education that have a curriculum in science or engineering;

(B) Institutions of higher education that have a graduate or professional program in science or engineering;

(C) Research laboratories of, or under contract with, the Department of Energy;

(D) Private organizations that have science or engineering facilities; or

(E) Quasi-governmental entities that have a significant scientific or engineering mission.

Eligible Applicants: (a) For institutional, design, and special projects described in 34 CFR 637.12, 637.13 and 637.14, respectively, public and private nonprofit minority institutions of higher education as defined in sections 361(1) and (2) of the HEA.

(b) For special projects described in 34 CFR 637.14(b) and (c): nonprofit organizations, institutions, and consortia as defined in section 361(3) and (4) of the HEA.

(c) For cooperative projects described in 34 CFR 637.15: groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: 1. A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups exceeds 50 percent of the total enrollment.

Applications Available: February 11, 2002.

Deadline for Transmittal of Applications: March 29, 2002.

Deadline for Intergovernmental Review: May 29, 2002.

Estimated Available Funds: $8,500,000.

Estimated Range of Awards: $15,000–$500,000.

Estimated Average Size of Awards: The amounts referenced are advisory and represent the Department's best estimate at this time. The average size of an award is the estimate for a single-year project or for the first budget period of a multi-year project.

Institutional Projects

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $120,000.

Estimated Number of Awards: 16.

Design Projects

Estimated Range of Awards: $15,000–$20,000.

Estimated Average Size of Awards: $19,000.

Estimated Number of Awards: 2.

Special Projects

Estimated Range of Awards: $20,000–$150,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 8.

Cooperative Projects

Estimated Range of Awards: $100,000–$500,000.

Estimated Average Size of Awards: $280,000.

Estimated Number of Awards: 4.

Estimated Total Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice. Applicants should

periodically check MSEIP web site for further information on this program. The address is: *http://www.ed.gov/offices/OPE/HEP/idues/mseip.html.*

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Applicability of Executive Order 13202: Applicants that apply for construction funds under these programs must comply with the Executive Order 13202 signed by President Bush on February 17, 2001 and amended on April 26, 2001. This Executive order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements.

Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Minority Science and Engineering Improvement Program, CFDA 84.120A is one of the programs included in the pilot project. If you are an applicant under the Minority Science and Engineering Improvement Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in the e-APPLICATION pilot, please note the following:

- Your participation is strictly voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You may submit all grant documents electronically including the Application for Federal Assistance under the Minority Science and Engineering Improvement Program (OMB No. 1840–0109), Project Summary Page, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance under the Minority Science and Engineering Improvement Program (OMB No. 1840–0109) to the Application Control Center after following these steps:

1. Print the Application for Federal Assistance under the Minority Science and Engineering Improvement Program (OMB No. 1840–0109) from the e-APPLICATION system.
2. Make sure the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of the Application for Federal Assistance under the Minority Science and Engineering Improvement Program (OMB No. 1840–0109).
5. Fax the Application for Federal Assistance under the Minority Science and Engineering Improvement Program (OMB No. 1840–0109) to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the MSEIP at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Mr. Kenneth Waters or Ms. Deborah Newkirk, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8516. Telephone: (202) 502–7586 for Mr. Waters and for Ms. Newkirk, (202) 502–7591. FAX: (202) 502–7861, or via Internet: ken.waters@ed.gov, deborah.newkirk@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1067–1067k.

Dated: February 6, 2002.

Kenneth W. Tolo,

Acting Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.

[FR Doc. 02–3239 Filed 2–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–02GO92001]

Industrial Assessment Centers Field Manager

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Industrial Technologies (OIT) is seeking applications for the Industrial Assessment Center (IAC) Program Technical Field Manager. The IAC program enables eligible small and medium-sized manufacturers to have comprehensive industrial assessments performed at no cost to the manufacturer. Teams of engineering faculty and students from the Centers, located at 26 universities around the country, conduct energy audits or industrial assessments and provide recommendations to manufacturers to help them identify opportunities to improve productivity, reduce waste, and save energy. These Centers are selected under a separate DOE solicitation and administered through individual cooperative agreements directly with DOE. The IAC program is guided by technical field management working under policy guidelines established by DOE. This procurement will be for one technical field manager to assist DOE in monitoring and managing the program nationally. For further information on the IAC program visit *www.oit.doe.gov/iac.*

DATES: DOE expects to issue the solicitation on or about February 1, 2002. The deadline for receipt of applications will be on or about 3:00 pm Mountain Time on March 29, 2002.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE-PS36–02GO92001, Industrial Assessment Center Field Manager, through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov.* IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS "User Guide for Contractors" can be obtained by going to the IIPS Homepage at the URL noted above and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Jim Damm, Contract Specialist, at *go_iac@nrel.gov*

SUPPLEMENTARY INFORMATION: The field management organization sought in this solicitation will: (1) Provide coordination and technical facilitation of the 26 schools (Centers) participating in the IAC Program; (2) monitor the technical performance of each individual center and provide for technical training and support; (3) integrate and coordinate the IAC program with the mission and broader activities of the Office of Industrial Technologies; (4) revamp existing IAC database; and (5) maintain the new IAC database.

The Golden Field Office has been assigned the responsibility of issuing the solicitation and administering the award. DOE will award one cooperative agreement as a result of this solicitation. The award will be incrementally funded. The initial budget period will be one year, with the possibility of 4 one-year continuations depending upon availability of funds and satisfactory performance. Estimated funding for the first year is $1,000,000.

Issued in Golden, Colorado on January 22, 2002.

Jerry Zimmer,

Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 02–3192 Filed 2–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14280]

Steel Industries of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of solicitation for awards of financial assistance.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) processes which will enable the commercial deployment of several emerging ironmaking technologies in the U.S.A. within the next six years. The goal is to provide the domestic steel with additional alternative quality ironmaking capacity that is less dependent on the availability of coke. This solicitation targets ironmaking processes that displace coke with coal, natural gas, and other reductants/fuels.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14280 will be on or about February 4, 2002. The deadline for receipt of applications is April 15, 2002, at 3 p.m. MST.

ADDRESSES: The solicitation will be available in its full text on the Internet by going to the DOE's Industry Interactive Procurement System (IIPS) at the following URL address: *http://e-center.doe.gov.* This will provide the medium for disseminating solicitations and amendments to solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then click on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_Motor Carrier Fuel Cost Equity Act;HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Trudy Harmel, Contract Specialist at *harmelta@id.doe.gov*, or Dallas L. Hoffer, Contracting Officer at *hofferdl@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The Steel Technology Roadmap can be found at *http://www.steel.org/mt/roadmap/roadmap.htm.* Approximately $3,000,000 in federal funds is expected to be available to fund the first year of selected research projects. Subject to the availability of funds, it is anticipated that equivalent funds should be available for the subsequent years. DOE anticipates making 2 to 3 cooperative agreement awards, each with a duration of three years or less. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. First year cost share can be as low as 30% if subsequent years have sufficient cost share so that non-federal share totals at least 50%. Multi-partner collaborations among steel companies, equipment suppliers and/or engineering firms is

mandatory. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577).

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on February 4, 2002.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–3191 Filed 2–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–2A–001 FERC Form No. 2–A]

Information Collection Submitted for Review and Request for Comments

February 4, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from a single entity who supported the continued use of this information collection. These comments were in response to an earlier **Federal Register** notice of October 2, 2001 (66 FR.50178). The Commission has acknowledged these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW Washington, D.C. 20503. The Desk Officer may also be reached at (202)395–7318. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Mr. Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at mike.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 2–A "Annual Report for Nonmajor Natural Gas Companies".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0030. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, without any changes to the existing collection. There is an decrease in the reporting burden due to an adjustment in the number of entities who are now subject to the Commission's jurisdiction and as a result must submit this annual report. In addition, the availability of Form 2–A submission software for filers for the 2001 filing year, will the Commission believes, reduce the burden as respondents benefit from user support at the Commission and from filing the FERC Form 2–A electronically through the Commission's gateway on its web site. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Natural Gas Act(NGA). Under the NGA the Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. The FERC Form 2–A is designed to collect financial information from jurisdictional nonmajor natural gas companies. A"nonmajor" natural gas company is one that has combined gas sales for resale and has gas transported or stored for a fee that exceeds 200,000 Dth but which is less than 50 million Dth, in each of the three previous calendar years. Under the Form 2–A, the Commission investigates, collects and records data, and prescribes rules ad regulations concerning accounts, records and memoranda as necessary to administer the NGA.

Respondent Description: The respondent universe currently comprises on average, 53 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 1,590 total burden hours, 53 respondents, 1 response annually, 30 hours per response (average).

7. Estimated Cost Burden to Respondents: 1,590 hours ÷ 2,080 hours per year × $117,041 per year = $ 89,469 average cost per respondent = $1,688.

Statutory Authority: Sections 10 and 16 of the Natural Gas Act (NGA), 15 U.S.C. 717i–717o.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3206 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–73–001 FERC Form No. 73]

Information Collection Submitted for Review and Request for Comments

February 4, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from a single entity who supported the continued use of this information collection. These comments were in response to an earlier **Federal Register** notice of September 28, 2001 (66 FR.49654). The Commission has acknowledged these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory

Commission, Desk Officer, 725 17th Street, NW. Washington, DC 20503. The Desk Officer may also be reached at (202)395–7318 or by fax at (202)395–7285. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Mr. Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at mike.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 73 "Oil Pipelines Service Life Data".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0019. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, without any changes to the existing collection. There is a decrease in the reporting burden due to an adjustment in the number of entities who are now subject to the Commission's jurisdiction and as a result must submit this report. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Department of Energy Organization Act and the Interstate Commerce Act. Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline was transferred from the Interstate Commerce Commission to the Commission (FERC), pursuant to Sections 306 and 402 of the Department of Energy Organization Act (DOE Act). The Commission has authority over interstate oil pipelines as stated in the Interstate Commerce Act, § 6501 et. al. 49 U.S.C. A submission for new or changed depreciation rates is initiated by the oil pipeline company. As part of the information necessary for the subsequent investigation and review of the oil pipeline company's proposed depreciation rate, the pipeline companies are required to provide service life data as part of data submission if the proposed depreciation rates are based on remaining physical life calculations. This service life data is collected and submitted on FERC Form 73. The data is used by the Commission as input to several computer programs known collectively as the Depreciation Life Analysis System (DLAS) to assist in the selection of appropriate service lives and book depreciation rates. Book depreciation rates are used by oil pipeline companies to compute the depreciation portion of their operating expense which is a component of their cost of service which in turn is used to determine the transportation rate to assess customers. Commission staff's recommended book depreciation rates become legally binding when issued in an order by the Commission. These rates remain in effect until a subsequent review is requested and the outcome indicates that a modification is justified.

5. Respondent Description: The respondent universe currently comprises on average, 2 oil pipeline companies subject to the Commission's jurisdiction.

6. Estimated Burden: 80 total burden hours, 2 respondents, 1 response on occasion, 40 hours per response (average).

7. Estimated Cost Burden to Respondents: 80 hours ÷ 2,080 hours per year × $117,041 per year = $ 4,502 average cost per respondent = $2,251.

Statutory Authority: Sections 306 and 402 of the DOE Act, § 7155 and 7172, 42 U.S.C.; the ICC Act § 6501 et. al. 49 U.S.C. and Executive Order No. 12009, 42 FR 46277 (September 13, 1977).

Magalie R. Salas,

Secretary.

[FR Doc. 02–3207 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–719B–002]

Information Collection Submitted for Review and Request for Comments

February 4, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from a single entity. In their comments, the entity agreed with the Commission's burden estimates but challenged the Commission's efforts to collect information on economic outages and proposed an alternative template to the one developed by the Commission. However, the information proposed to be collected on the alternative template raises issues that are the subject of filings still pending before the Commission, and so accordingly cannot comment on those issues as this time.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before March 13, 2002.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, Room 10202 NEOB, 725 17th Street NW, Washington, DC 20503. The Desk Officer may also be reached by telephone at (202) 395–7318 or by fax at (202) 395–7285. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Federal Energy Regulatory Commission, Attention: Michael Miller, 888 First Street NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at *mike.miller@ferc.fed.us;* and

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of the General Counsel, Federal Energy Regulatory Commission, (202) 208–2103.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–719B "Reporting of Generation Unit Outages in California".

2. Sponsor: Federal Energy Regulatory Commission.

3. Control Number: 1902–0185. Because the current authorization was scheduled to expire on November 30, 2001,[1] the Commission is requesting renewal of the data collection until the expiration of the mitigation plan implemented by the Commission in its

[1] Due to the continuing interruption of mail and delivery services to the Executive Office of the President, OMB has continued the expiration dates on information collections on a month to month basis. The expiration date for FERC–719B has been extended through February 28, 2002.

April 26, 2001 order and amended in its June 19, 2001 order. As of now, pursuant to the June 19 Order, the mitigation plan is to remain in effect until September 30, 2002. If the Commission subsequently extends the date of the expiration of the mitigation plan, the Commission proposes to continue the information collection through the new expiration date, recognizing that the maximum clearance OMB can grant under the Paperwork Reduction Act is three years. There is a decrease in the reporting burden due to an adjustment in the number of reports that must be submitted to the Commission. Between May 23, 2001, when the Commission began receiving the first outage reports, and October 23, 2001, the Commission received a total of 1,839 outage reports by a total of 22 generators. (Many generators have multiple units and submitted separate outage reports for each one). Extrapolating this five month total for the expected ten month period of the renewed clearance (assuming that the Commission mitigation plan expires, as is currently proposed, on September 30, 2002), the Commission anticipates that there would be a total of 3,678 reports filed. (We note that the May 11 OMB Request estimated that there would be 4,038 reports filed during the entire six-month period of the current clearance. This was before Commission staff excluded from the reporting requirements co-generation units that did not sell into the ISO market from the reporting requirements.) If the Commission's mitigation plan expires on September 30, 2002, it anticipates that 3,678 reports will be filed. In addition, because Commission staff created a pre-existing template, generators did not need to develop a reporting format. Moreover, all of the generators that previously submitted outage reports already have the fixed items (such as Nameplate Capacity and Fuel Type) filled in for units that have been the subject of prior reports. The Commission estimates that it would take each generator that previously submitted an outage report for a generation unit approximately 20 minutes to fill out a subsequent report (because much of the information remains constant). This is a mandatory information collection requirement.

4. Necessity of the Collection of Information: Submission of the information is necessary for the Commission to carry out its responsibilities under the Federal Power Act (FPA). The FPA directs the Commission to ensure just and reasonable rates for transmission and wholesale sales of electricity in interstate commerce. See 16 USC 824e(a). To enable the Commission to fulfill this duty, the Federal Power Act also authorizes the Commission to conduct investigations of, and collect information from, public utilities. See 16 USC 825, 825c, 825f, and 825j. Commission staff has been investigating the California electricity market, which in late 2000 and early 2001 was in a state of emergency with prices at extremely high levels and, on some days, rotating blackouts.

One of the likely reasons for the high prices was forced and scheduled outages by electric generators in California. On most days between January and May 2001, the California Independent System Operator (ISO) had reported outages of well over 10,000 megawatts for generating plants in California. In addition to causing higher prices, the outages limited the availability of electric power in California, leading the ISO to order rotating blackouts in the state to preserve the transmission system. On April 26, 2001, the Commission issued an Order Establishing Prospective Mitigation and Monitoring Plan for the California Wholesale Electric Markets and Establishing An Investigation of Public Utility Rates in Wholesale Energy Markets, *San Diego Gas and Electric Company* v. *Sellers of Energy and Ancillary Service et. al*, 95 FERC ¶ 61,115 (2001), *Order on Rehearing*, 95 FERC ¶ 61,418 (2001). In the April 26 Order, the Commission stated that:

> the Commission staff will continue its independent monitoring of generating unit outages as well as the real-time and forward price monitoring of both electric and natural gas commodity and transmission prices. Knowledge of these conditions on an ongoing and up-to-date basis is essential, if the Commission is to provide an independent and informed assessment of the key elements of the mitigation plan, such as the level of unplanned outages and conditions that could cause price mitigation to be invoked.

95 FERC at 61,360.

To implement its monitoring efforts, on May 11, 2001, the Commission sought a clearance from OMB to collect information electronically from generators on plant outages within 24 hours of their occurrence and conclusion, whether forced, scheduled or otherwise. 66 FR 24353 (May 14, 2001). OMB granted the Commission's request on May 17, 2001, with an expiration date of November 30, 2001. Currently, the Commission requires this information from all non-municipal generators that sell into the ISO market, are not investor owned utilities, and own, operate or control either one generation unit with a capacity of 30 MW or more or generation units aggregating 50 MW or more in capacity. Municipal generators that meet the generation capacity parameters are requested to supply the information on a voluntary basis. For the purposes of the data collection, Commission staff considers an outage partial if it reduces the available output of a generation unit below its nameplate rated capacity or below the reliable capacity of the unit as determined by contract with the California ISO. The Commission has treated the information provided by the generators as non-public pursuant to the provisions of 18 C.F.R. 1b.9 (2001).

The Commission believes that federal oversight of California generator outages in general, and the collection of outage data in particular, played an important role in the maintenance of an adequate system supply and low electricity prices in California this past summer. Since the data collection began, Commission staff has reviewed the outage incident reports submitted and has contacted generators, when warranted, for further information. Staff has also utilized the data to investigate or mediate disputes between the ISO and generators. For example, Commission staff has resolved disputes between generators and the ISO involving the current generating capacity of 30 units and is currently attempting to resolve additional similar disputes. The Commission believes that these efforts have played a significant role in helping to preserve system reliability on the ISO grid.

While the California electric market had adequate generation supply and stable prices this past summer, the Commission is concerned that outages could cause supply shortages and higher prices during the next ten months. From November 2000 through May 2001, California endured tight supplies, high outage rates (often exceeding 10,000 MW per day), extremely high prices and, on seven occasions, rolling blackouts. Between January 16, 2001 and February 16, 2001, the ISO declared a record 32 straight days of Stage 3 emergencies, the highest state of emergency. During the winter and spring, many generators will go off-line for weeks or months to perform scheduled maintenance or to install equipment to comply with upcoming more stringent environmental standards. Adding to the potential supply problem in the near term is that California traditionally has obtained less imported power during the winter months as its sources provide power to their own loads and export power to the Pacific Northwest.

Generator outages affect the supply of electricity and prices in the market each day in which they occur. By continuing to request that generators provide information on outages within 24 hours of when they begin and end, the Commission's staff will be able to analyze outages quickly and, if necessary, investigate outages in real time when the effect on prices is occurring. This analysis will include determining whether generators that have taken plants out of service with the permission of the California ISO for scheduled maintenance return those plants to service promptly and do not improperly extend those outages to influence market prices.

The Commission is seeking to retain the existing reporting format, but is requesting one change in the scope of the reporting requirements. Specifically, the Commission seeks to require generators to file reports of outages that occur for economic reasons. Last summer, the ISO began to grant permission for "economic" outages. An "economic" outage is an outage in which the ISO allows a generator to take an uneconomic unit out of service because it will not be needed for dispatch. In recent months, these "economic" outages have become a significant issue. The ISO alleges that some units are being taken out of service without ISO permission and that others are not being brought back on line when the ISO withdraws permission. On the other hand, the generators allege that the ISO is granting permission for "economic" outages on an inconsistent basis and is improperly withdrawing that permission. To monitor generation supply effectively in California and ensure just and reasonable rates, it is now important to collect data on outages for economic reasons as well as outages for mechanical reasons.

6. Estimated Burden: As stated above, for the first five months of the current approved data collection, the Commission received 1,839 electronic outage incident reports, which extrapolates to 3,678 reports for the proposed ten month extension period. Assuming a total of 3,678 outage reports for the ten months for which this information collection is requested, the total number of hours it would take to comply with the reporting requirement would be approximately 1,278 hours (78 hours for initial submissions and 1,200 hours for subsequent submissions, assuming 20 minutes per submission).

7. Estimated Cost Burden to Respondents: Commission staff estimates a cost of $50 per hour for complying with the reporting requirement, based on salaries for professional and clerical staff, as well as direct and indirect overhead costs. Therefore, the total estimated cost of compliance would be $63,900.

Statutory Authority: Sections 206, 301, 304, 307 and 311 of the Federal Power Act (FPA), 16 U.S.C. 824(e)(a); 16 U.S.C. 825; 825(c); 825(f); and 825(j).

Magalie R. Salas,

Secretary.

[FR Doc. 02–3208 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–550–001, FERC–550]

Information Collection Submitted for Review and Request for Comments

February 4, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission did not receive any comments in response to an earlier notice issued September 24, 2001, 66 FR 49655–56, September 28, 2001.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, Room 10202 NEOB, 725 17th Street, N.W. Washington, D.C. 20503. The Desk Officer can also be reached at (202)395–7318 or by fax at (202)395–7285. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at michael.miller@ferc.fed.gov.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–550 "Oil Pipeline Rates: Tariff Filings"

2. Sponsor: Federal Energy Regulatory Commission

3. Control No.: OMB No. 1902–0089. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an adjustment to the reporting burden due to an increase in the number of entities that are now subject to the reporting requirements. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: The filing requirement provides the basis for analysis of all rates, fares, or charges whatsoever demanded, charged or collected by any common carrier or carriers in connection with the transportation of crude oil and petroleum products and are used by the Commission to establish a basis for determining the just and reasonable rates that should be charged by the regulated pipeline company. Based on this analysis, a recommendation is made to the Commission to take action whether to suspend, accept or reject the proposed rate. The data required to be filed for pipeline rates and tariff filings is specified by 18 Code of Federal regulations (CFR) Chapter I Parts 340–348.

Jurisdiction over oil pipelines, as it relates to the establishment of rates or charges for the transportation of oil by pipeline or the establishment or valuations for pipelines, was transferred from the Interstate Commerce Commission to the Commission, pursuant to Section 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172, and Executive Order No. 12009.

5. Respondent Description: The respondent universe currently comprises on average, 200 respondents subject to the Commission's jurisdiction.

6. Estimated Burden: 6,600 total burden hours, 200 respondents, 3. responses annually, 11 hours per response (average).

7. Estimated Cost Burden to Respondents: 6,600 hours 2,080 hours

per year x $117,041 per year = $ 371,380, average cost per respondent = $1,857.

Statutory Authority: Part I, Sections 1, 6, and 15, of the Interstate Commerce Act (ICA), (Pub.L. No. 337, 34 Stat. 384).

Magalie R. Salas,

Secretary

[FR Doc. 02–3209 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–76–000]

Eastern Shore Natural Gas Company; Notice of Application

February 5, 2002.

Take notice that on January 25, 2002, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No CP02–76–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to construct and operate certain pipeline facilities in Delaware, Pennsylvania and Maryland, in order to provide additional firm transportation capacity on Eastern Shore's system, all as more fully set forth in the application on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket" and follow the instructions (call 202–208–2222 for assistance).

Specifically, Eastern Shore proposes to (1) construct and operate approximately 1.5 mile of 16-inch mainline looping in Pennsylvania and one mile of 16-inch mainline looping in Maryland and Delaware. Eastern Shore states that the facilities are required to provide additional firm transportation service of 4,500 dekatherms (dt) per day as requested by two of Eastern Shore's local distribution company customers, Conectiv Power Delivery (3,000 dt), and Delaware Division of Chesapeake Utilities Corporation (1,500 dt).

Eastern Shore asserts that it conducted an open season between May 1 and May 31, 2001, and asserts that the result was that the two customers have fully subscribed the capacity to be made available to satisfy increased market demand. It is estimated that the cost of the proposed facilities would be $2,653,618, to be financed from internally generated funds and short-term notes, with permanent financing to be arranged on completion of construction. Eastern Shore requests a preliminary determination that the total cost of the project be given rolled-in rate treatment, stating that the project satisfies the requirements of the Commission's policy statement issued in PL99–3–000. Eastern Shore requests that a certificate be issued by May 31, 2002, in order to complete construction and place the facilities in service by November 1, 2002.

Any questions regarding the application may be directed to Philip S. Barefoot, Vice President, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3205 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–153–000]

Horizon Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

February 4, 2002.

Take notice that on January 30, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, certain pro forma tariff sheets.

Horizon states that the purpose of this filing is to comply with Order Nos. 637 *et seq.* and is consistent with the Commission's orders in Docket Nos. CP00–129, et al.

Horizon states that copies of the filing are being mailed to all parties set out on

the Commission's official service list in Docket Nos. CP00–129–000, et al.

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, N.E., Washington, D.C. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docket" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3212 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–74–000]

Reef International, L.L.C.; Notice of Application

February 4, 2002.

Take notice that on January 22, 2002, Reef International, L.L.C., (Reef), 1330 Leopard St., Suite 26, Corpus Christi, Texas 78410, filed an application seeking Section 3 authorization pursuant to the Natural Gas Act (NGA) and a Presidential Permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to site, construct, operate and maintain facilities at the International Boundary between the United States and Mexico for the exportation of initially 5,000 MMBtu per day of natural gas, and thereafter will average approximately 15,000 MMBtu per day from Eagle Pass, Maverick County, Texas to Coahuila, Mexico, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call (202)208–2222 for assistance).

Reef proposes to construct approximately 5 miles of 12-inch pipeline and appurtenant facilities from an interconnection with the existing intrastate pipeline facilities of Southern Transmission Company in Maverick County, Texas, crossing under the Rio Grande River (the mid-point of which is the International Boundary between the United States and Mexico), to a point just across the river in Coahuila, Mexico. In order to cross the Rio Grande River, Reef proposes to directionally bore under it for a total bore length of approximately 800 feet. The new pipeline will then terminate approximately 1000 feet from the International Boundary in Coahuila, Mexico, at a point of interconnection with the distribution system of Compania National de Gas, S.A. (Conagas). According to Reef, Conagas will construct the metering and regulating facilities, known as the Phenix Station, in Mexico necessary for it to receive the gas from Reef's new pipeline. Reef states that the purpose of the new pipeline is to provide the Piedras Negras region of Coahuila, Mexico, with additional, needed supplies of clean burning natural gas, which will be derived exclusively from production sources within the State of Texas.

Reef seeks both an NGA Section 3 order and a Presidential Permit for the approximately 400 feet of 12-inch pipeline that will begin at the point of commencement of the directional bore on the United States side of the river and extend to the mid-point of the river. The remaining facilities that will lie within the United States will be subject to the jurisdiction of the State of Texas. Reef asserts that since none of the transported supplies will be derived from sources outside of state, the U.S. portion of the pipeline facilities are exempt from Section 7.

Any questions regarding the application should be directed to Michael Ward, Reef International, L.L.C., 1330 Leopard St., Suite 26, Corpus Christi, Texas, 78410, at (361) 241–2244.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 25, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities.

For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Interventions, comments, and protests 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3204 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–156 –000]

Vector Pipeline L.P.; Notice of Annual Fuel Use Report

February 5, 2002.

Take notice that on January 31, 2002, Vector Pipeline L.P. tendered for filing an annual report of its monthly fuel use ratios for the period December 1, 2000 through December 31, 2001.

Vector states that this filing is made pursuant to Section 11.4 of the General Terms and Conditions of the Vector Gas Tariff and Section 154.502 of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link, select "Docketi" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3213 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–46–000, et al.]

Harbor Cogeneration Company, et al.; Electric Rate and Corporate Regulation Filings

February 1, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Harbor Cogeneration Company; South Coast Energy Company; Black Hills Long Beach, Inc.

[Docket No. EC02–46–000]

Take notice that on January 29, 2002, Harbor Cogeneration Company (Harbor Cogeneration), South Coast Energy Company (South Coast Energy) and Black Hills Long Beach, Inc. (BH Long Beach) tendered for filing a joint application for authorization for South Coast Energy to transfer its Partnership Interests in Harbor Cogeneration to BH Long Beach.

Comment Date: 02-07-02 February 19, 2002.

2. Southern California Edison Company and California Independent System Operator Corporation

[Docket No. EC02–45–000]

Take notice, that on January 28, 2002, Southern California Edison Company (SCE) and the California Independent System Operator Corporation (ISO) tendered for filing in accordance with part 33 of the Federal Energy Regulatory Commission's Regulations (18 CFR part 33) a joint application pursuant to section 203 of the Federal Power Act for authority to transfer operational control of certain facilities from SCE to the ISO. The transmission facilities primarily consist of capacitors, capacitor banks and circuit breakers that have been added to the transmission system. The subject transfers will have no effect on SCE's or the ISO's other jurisdictional facilities or services and are compatible with the public interest.

SCE is seeking privileged treatment of certain single line diagrams, required by the Commission's regulations to be attached as an Exhibit to the Application, that depict the jurisdictional facilities at issue.

SCE and the ISO request that the Commission accept this Application for filing, to become effective 45 days after the date of filing. A copy of this filing was served upon the Public Utilities Commission of the State of California and the ISO.

Comment Date: 02-07-02 February 19, 2002.

3. Arizona Public Service Company

[Docket No. ER02–494–000]

Take notice that on January 29, 2002, Arizona Public Service Company (APS) tendered for filing a request to withdraw the filing of a service agreement under the Western Systems Power Pool with the Bonneville Power Administration in the above docket.

A copy of this filing has been served on the Bonneville Power Administration and the Arizona Corporation Commission.

Comment Date: 02-07-02 February 19, 2002.

4. Xcel Energy Services Inc.

[Docket No. ER02–873–000]

Take notice that on January 30, 2002, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and Madison Gas and Electric. NSP proposes the Agreement be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, First Revised Volume No. 1, as Service Agreement 203-NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreement effective January 1, 2002, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment Date: 02-07-02 February 19, 2002.

5. Xcel Energy Services Inc.

[Docket No. ER02–874–000]

Take notice that on January 29, 2002, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing two Firm Point-to-Point Transmission Service Agreements between NSP and Alliant Energy Corporate Services Inc.. NSP proposes the Agreements be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, First Revised Volume No. 1, as Service Agreement 195-NSP and 204-NSP, pursuant to Order No. 614.

NSP requests that the Commission accept the agreements effective January 1, 2002, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment Date: 02-07-02 February 19, 2002.

6. Xcel Energy Services Inc.

[Docket No. ER02–875–000]

Take notice that on January 30, 2002, Public Service Company of Colorado (PSCo), wholly-owned utility operating company subsidiary of Xcel Energy Inc., tendered for filing Non-Firm and Short-Term Firm Point-to-Point Transmission Service Agreements between PSCo and Southwestern Public Service Company. PSCo proposes the Agreements be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, First Revised Volume No. 1, as Service Agreement Nos. 118-PSCo and 119-PSCo, pursuant to Order No. 614.

PSCO requests that the Commission accept the agreements effective January 4, 2002, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment Date: 02-07-02 February 19, 2002.

7. Cinergy Services, Inc.

[Docket No. ER02–876–000]

Take notice that on January 29, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Confirmation Letter to the Market-Based Service Agreement filed under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Wabash Valley Power Association, Inc. (Wabash).

Cinergy and Wabash are requesting an effective date of January 1, 2002.

Comment Date: 02-07-02 February 19, 2002.

8. Cinergy Services, Inc.

[Docket No. ER02–877–000]

Take notice that on January 29, 2002 Cinergy Services, Inc. (Cinergy) tendered for filing a Wholesale Market-Based Service Agreement and a Confirmation Letter for long term service under Cinergy's Wholesale Market-Based Power Sales Standard Tariff, No. 9 -MB (the Tariff) entered into between Cinergy and Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. and Hoosier Energy Rural Electric Cooperative, Inc. (Alliance).

Cinergy and Alliance are requesting an effective date of January 1, 2002.

Comment Date: 02-07-02 February 19, 2002.

9. Xcel Energy Services Inc.

[Docket No. ER02–878–000]

Take notice that on January 29, 2002, Northern States Power Company and Northern States Power Company (Wisconsin) (jointly NSP), wholly-owned utility operating company subsidiaries of Xcel Energy Inc., tendered for filing eight Firm Point-to-Point Transmission Service Agreements between NSP and NSP Energy Marketing. NSP proposes the Agreements be included in the Xcel Energy Operating Companies FERC Joint Open Access Transmission Tariff, First Revised Volume No. 1, as Service Agreement Nos. 196-NSP, 197-NSP, 198-NSP, 199-NSP, 200-NSP, 201-NSP, 202-NSP, and 205-NSP, pursuant to Order No. 614.

NSP requests that the Commission accept all the agreements effective January 1, 2002, except 205-NSP is to be effective May 1, 2002, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment Date: 02-07-02 February 19, 2002.

10. Progress Energy Inc.On behalf of Carolina Power & Light Company

[Docket No. ER02–879–000]

Take notice that on January 29, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Old Dominion Electric Cooperative. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of January 7, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: 02-07-02 February 19, 2002.

11. Entergy Services, Inc.

[Docket No. ER02–880–000]

Take notice that on January 29, 2002, Entergy Services, Inc. (Entergy), acting as agent for Entergy Arkansas, Inc. (EAI), tendered for filing, six copies of the Letter Agreement executed by Entergy, on behalf of EAI, and Associated Electric Cooperative, Inc. (AECI), for the purchase and sale of limited firm capacity and associated energy, and a Notice of Termination for that agreement.

Comment Date: 02-07-02 February 19, 2002.

12. Southwest Power Pool, Inc.

[Docket No.ER02–881–000]

Take notice that on January 29, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing four executed service agreements for Firm Point-to-Point transmission Service with Southwestern Public Service Company d.b.a. Xcel Energy (Transmission Customer). SPP seeks an effective date of January 1, 2002 for each of these service agreements.

A copy of this filing was served on the Transmission Customer.

Comment Date: 02-07-02 February 19, 2002.

13. Southwest Power Pool, Inc.

[Docket No. ER02–882–000]

Take notice that on January 29, 2002, Southwest Power Pool, Inc. (SPP) tendered for filing an executed service agreement for Network Integration Transmission Service and an executed Network Operating Agreement with Kansas Gas and Electric Company (Network Customer). SPP seeks an effective date of January 1, 2002 for these service agreements.

A copy of this filing was served on the Network Customer.

Comment Date: 02-07-02 February 19, 2002.

14. Public Service Company of New Mexico

[Docket No. ER02–883–000]

Take notice that on January 30, 2002, Public Service Company of New Mexico (PNM) submitted for filing on behalf of itself and Tucson Electric Power Company (TEP) amendments to the Amended Interconnection Agreement between PNM and TEP. In addition, in compliance with Order No. 614, PNM submits cover pages for the applicable PNM and TEP service agreements. The

revisions, for which PNM and TEP request an effective date of January 1, 2002, provide certain changes to the reserve sharing provision of the Amended Interconnection Agreement agreed to by PNM and TEP for 2002. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to TEP and to the New Mexico Public Regulation Commission.

Comment Date: 02-07-02 February 20, 2002.

15. Exelon Generation Company, LLC

[Docket No. ER02–884–000]

Take notice that on January 30, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and EnergyUSA-TPC Corp. under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: 02-07-02 February 20, 2002.

16. American Transmission Systems, Incorporated

[Docket No.ER02–885–000]

Take notice that on January 30, 2002, American Transmission Systems, Incorporated (ATSI), filed revised specifications to its network integration service and operating agreements with American Municipal Power-Ohio, Inc., and designated as 2nd Revised Service Agreement No. 214.

The proposed effective date for the revised service agreement is April 1, 2002.

Copies of this filing have been served on AMP-Ohio and the public utility commissions of Ohio and Pennsylvania.

Comment Date: 02–07–02 February 20, 2002.

17. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–886–000]

Take notice that on January 30, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing an amendment to a Confirmation Agreement between Deseret and Utah Associated Municipal Power Systems (UAMPS) for a firm power sale pursuant to Schedule C of the Western Systems Power Pool Agreement.

Deseret requests an effective date of January 2, 2002.

A copy of this filing has been served on UAMPS and counsel to the WSPP.

Comment Date: 02–07–02 February 20, 2002.

18. California Independent System Operator Corporation

[Docket No. ER02–887–000]

Take notice that on January 30, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Riverside, California.

The ISO requests that the UDC Operating Agreement be made effective as of October 25, 2001.

The ISO has served copies of this filing upon the City of Riverside, California and the Public Utilities Commission of the State of California.

Comment Date: 02–07–02 February 20, 2002.

19. California Independent System Operator Corporation

[Docket No. ER02–888–000]

Take notice that on January 30, 2002, the California Independent System Operator Corporation (ISO) submitted for filing, for informational purposes only, an executed Termination and Release Agreement between the ISO and DG Power, Inc., concerning Summer Reliability Agreements relating to the Border, El Cajon, Escondido, Midway, Mission, Panoche, and Vaca-Dixon generating plants.

The ISO has served copies of this filing upon DG Power, Inc., the Public Utilities Commission of the State of California, the California Energy Commission, and the California Electricity Oversight Board.

Comment Date: 02–07–02 February 20, 2002.

20. Ameren Services Company

[Docket No. ER02–889–000]

Take notice that on January 30, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Western Resources, Cinergy Services, Inc., Xcel Energy, on behalf on Northern States Power Company and Illinois Power Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: 02–07–02 February 20, 2002.

21. PPL Wallingford Energy LLC

[Docket No. ER02–890–000]

Take notice that on January 30, 2002, PPL Wallingford Energy LLC (PPL Wallingford), filed with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Wallingford and PPL EnergyPlus, LLC under PPL Wallingford's Market-Based Rate Tariff, FERC Electric Tariff, Revised Volume No. 1.

PPL Wallingford requests an effective date of December 31, 2001 for the Power Sales Agreement.

PPL Wallingford states that a copy of this filing has been provided to PPL EnergyPlus, LLC.

Comment Date: 02–07–02 February 20, 2002.

22. Southern California Edison Company

[Docket No. ER02–891–000]

Take notice, that on January 24, 2002, Southern California Edison Company (SCE) tendered for filing revisions to the Amended and Restated Power Contract, the Amended and Restated Firm Transmission Service Agreement, and the Amended and Restated Mojave Siphon Additional Facilities and Firm Transmission Agreement (collectively, Agreements) between SCE and the State of California Department of Water Resources (CDWR). The revisions to the Agreements reflect SCE's and CDWR's agreement to remove provisions regarding SCE performing scheduling and dispatching services for CDWR since CDWR now schedules its own transactions with the California Independent System Operator.

SCE requests the Commission to assign an effective date March 25, 2002 to the revisions to the Agreements. Copies of this filing were served upon the Public Utilities Commission of California and CDWR.

Comment Date: 02–07–02 February 14, 2002.

23. PPL Montana, LLC

[Docket No. ER02–892–000]

Take notice that on January 30, 2002, PPL Montana, LLC (PPL Montana), filed with the Federal Energy Regulatory Commission a Confirmation Agreement between PPL Montana and Constellation Power Source, Inc. (CSPI) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Revised Volume No. 1.

PPL Montana requests an effective date of January 1, 2002 for the Confirmation Agreement.

PPL Montana states that a copy of this filing has been provided to CPSI.

Comment Date: 02–07–02 February 20, 2002.

24. Dorman Materials, Inc.

[Docket No. ER02–893–000]

Take notice that on January 30, 2002, Dorman Materials, Inc. (DMI) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of DMI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-rates; and the waiver of certain Commission regulations.

DMI intends to engage in wholesale electric power and energy transactions as a marketer. DMI is not in the business of generating or transmitting electric power. DMI is a Minority Business Enterprise involved in electric energy marketing, with its primary purpose of serving retail and wholesale energy customers.

Comment Date: 02–07–02 February 20, 2002.

25. Generation Power, Inc.

[Docket No. ER02–894–000]

Take notice that on January 30, 2002, Generation Power, Inc. petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Generation Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Generation Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. Generation Power is not in the business of generating or transmitting electric power. Generation Power does not have any affiliates as defined at 18 CFR 161.2.

Comment Date: 02–07–02 February 20, 2002.

26. Duquesne Light Company

[Docket No. ER02–895–000]

Take notice that on January 30, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated January 1, 2002 with ValuSource Energy Services, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds ValuSource Energy Services, LLC as a customer under the Tariff.

DLC requests an effective date of January 1, 2002 for the Service Agreement.

Comment Date: 02–07–02 February 20, 2002.

27. Wisconsin Power and Light Company

[Docket No. ER02–896–000]

Take notice that on January 30, 2002, Wisconsin Power and Light Company (WPL), tendered for filing a Service Agreement with Wisconsin Rapids.

WPL indicates that copies of the filing have been provided to Wisconsin Rapids and the Public Service Commission of Wisconsin.

Comment Date: 02–07–02 February 20, 2002.

28. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER02–897–000]

Take notice that on January 30, 2002, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), whose principal place of business is located at 220 West Main Street, Louisville, Kentucky 40202, filed with the Federal Energy Regulatory Commission a short-term interconnection agreement with LG&E Capital Trimble County LLC (TCLC).

Under the agreement, TCLC will be permitted, on a temporary basis, to interconnect certain generating facilities to the LG&E and KU transmission system so as to allow TCLC to operate and maintain the facilities during their start-up and testing phase this spring. TCLC's interconnection rights pursuant to the terms of the agreement extend only until the completion of the start-up and testing phase of the facilities or until ownership of the facilities is transferred to LG&E and KU pursuant to Certificate of Convenience and Necessity filed by the utilities with the Kentucky Public Service Commission on January 23, 2002. The Agreement terminates automatically on the earlier of these dates.

Comment Date: 02–07–02 February 20, 2002.

29. Ameren Services Company

[Docket No. ER02–889–000]

Take notice that on January 30, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Western Resources, Cinergy Services, Inc., Xcel Energy, on behalf on Northern States Power Company and Illinois Power Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: 02–07–02 February 20, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docketi" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3202 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–900–000, *et al.*]

Mirant Sugar Creek, L.L.C., *et al.*; Electric Rate and Corporate Regulation Filings

February 4, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Mirant Sugar Creek, L.L.C.

[Docket No. ER02–900–000]

Take notice that on January 30, 2002, Mirant Sugar Creek, L.L.C. (Sugar Creek) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for an order accepting its FERC Electric Tariff No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. Sugar Creek requested expedited Commission consideration.

Sugar Creek requested that its Rate Schedule No. 1 become effective upon the earlier of the date the Commission authorizes market-based rate authority, or February 22, 2002. Sugar Creek also filed its FERC Electric Tariff No. 1.

Comment Date: February 20, 2002.

2. West Texas Utilities Company, American Electric Power Service Corporation

[Docket No. ER02–901–000]

Take notice that on January 30, 2002, West Texas Utilities Company (WTU) and American Electric Power Service Corporation (AEPSC), as designated agent for Central Power and Light Company and WTU, submitted for filing (1) a service agreement (the OATT Service Agreement) under which The City Of Colemen, Texas (Coleman) will take transmission service pursuant to Part IV of the Open Access Transmission Service Tariff of the American Electric Power System (AEP OATT); and (2) an Interconnection Agreement (Interconnection Agreement) between WTU and Coleman, implementing new arrangements attendant to converting the former Coleman Points of Delivery on WTU to Points of Interconnection with WTU.

WTU and AEPSC seek an effective date of January 1, 2002 for the two agreements and, accordingly, seek waiver of the Commission's notice requirements. Copies of the filing have been served on Coleman and on the Public Utility Commission of Texas.

Comment Date: February 20, 2002.

3. LG&E Power Monroe LLC

[Docket No. ER02–902–000]

Take notice that January 30, 2002, Progress Ventures, Inc., on behalf of LG&E Power Monroe LLC (LG&E Monroe), filed a tolling agreement between LG&E Monroe and LG&E Energy Marketing, Inc. (the Customer) under Section 205 of the Federal Power Act.

Copies of the filing were served upon the Customer and the Georgia Public Service Commission.

Comment Date: February 20, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–903–000]

Take notice that on January 30, 2002, pursuant to Section 205 of the Federal Power Act and Section 35.16 of the Commission's regulations, 18 CFR 35.16 (2001), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing a Notice of Succession for certain Transmission Service Agreements and Network Transmission Service and Operating Agreements held by Otter Tail Power Company (OTP).

Copies of this filing were sent to all applicable customers under the OTP Open Access Transmission Tariff by placing a copy of the same in the United States mail, first-class postage prepaid.

Comment Date: February 20, 2002.

5. Entergy Nuclear Generation Company

[Docket Nos. ER02–904–000]

Take notice that on January 30, 2002, Entergy Nuclear Generation Company (ENGC) tendered for filing with the Federal Energy Regulatory Commission (Commission) three long-term service agreements under its market-based rate tariff under which ENGC will make sales to Connecticut Municipal Electric Energy Cooperative and Constellation Power Source, Inc. This filing is made as an informational filing in response to filing requirements in the order granting ENGC's market-based rate authority.

Comment Date: February 20, 2002.

6. PPL Montana, LLC

[Docket No. ER02–905–000]

Take notice that on January 30, 2002, PPL Montana, LLC (PPL Montana), filed with the Federal Energy Regulatory Commission (Commission) a Confirmation Agreement between PPL Montana and Constellation Power Source, Inc. (CSPI) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Revised Volume No. 1.

PPL Montana requests an effective date of January 1, 2002 for the Confirmation Agreement. PPL Montana states that a copy of this filing has been provided to CPSI.

Comment Date: February 20, 2002.

7. Camden Cogen, L.P.

[Docket No. ER02–906–000]

Take notice that on January 30, 2002, pursuant to Section 205 of the Federal Power Act, 16 USC 824d, and its market based rate authority, Camden Cogen, L.P. (Camden) submitted for filing a tolling agreement (designated as Service Agreement No. 1) between itself and El Paso Merchant Energy. Camden Cogen seeks an effective date for the service agreement of December 12, 2001.

Comment Date: February 20, 2002.

8. Arizona Public Service Company

[Docket No. ER02–499–001]

Take notice that on January 28, 2002, Arizona Public Service Company (APS) tendered for filing a request to withdraw the cancellation of Service Agreement FERC No. 198 to providing Firm Point-to-Point Transmission Service to Ak Chin Electric Utility Authority (AkChin) under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

Comment Date: February 19, 2002.

9. Southern Company Services, Inc.

[Docket No. ER02–907–000]

Take notice that on January 30, 2002, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Full Requirements Service Agreement between Georgia Power and the City of Hampton, Georgia (City of Hampton) (the Service Agreement), as a service agreement under the Market-Based Rate tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4) (the Market Based Rate Tariff) and is designated as Service Agreement No. 135. The Service Agreement provides the general terms and conditions for capacity and energy sales from Georgia Power to the City of Hampton commencing on January 1, 2002, and terminating on December 31, 2006.

Comment Date: February 20, 2002.

10. Southern Company Services, Inc.

[Docket No. ER02–908–000]

Take notice that on January 30, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed four (4) long-term firm point-to-point service agreements under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff) with the following Transmission Customers: (1) Calpine Energy Services, LP for OASIS request 309193; (2) Coral Power, LLC for OASIS request 303682; (3) Calpine Energy Services, LP for OASIS request 310827; and (4) Carolina Power & Light Company for OASIS request 301344. For all four (4) agreements, Southern Companies request an effective date of January 1, 2002, which corresponds with the date upon which service commenced under each agreement.

Comment Date: February 20, 2002.

11. Arizona Public Service Company

[Docket No. ER02–909–000]

Take notice that on January 30, 2002, Arizona Public Service Company (APS) tendered for filing a Service Agreement to provide Network Integration

Transmission Service under APS'' Open Access Transmission Tariff to Pinnacle West Capital Corp. Marketing and Trading (Pinnacle).

A copy of this filing has been served on Pinnacle and the Arizona Corporation Commission.

Comment Date: February 20, 2002.

12. PJM Interconnection, L.L.C.

[Docket No. ER02–910–000]

Take notice that on January 30, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following seven executed agreements: (i) one umbrella agreement for short-term firm point-to-point transmission service with American Municipal Power-Ohio, Inc. (AMP-Ohio); and (ii) one umbrella agreement for non-firm point-to-point transmission service for AMP-Ohio.

PJM requested a waiver of the Commission's notice regulations to permit effective dates for the agreements that are within 30 days of the date of this filing. Copies of this filing were served upon AMP-Ohio, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: February 20, 2002.

13. Elwood Energy III, LLC

[Docket No. ER02–911–000]

Take notice that on January 30, 2002, Elwood Energy III, LLC tendered for filing a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1. Elwood III requests an effective date of January 31, 2002.

Comment Date: February 20, 2002.

14. American Electric Power Service Corporation

[Docket No. ER02–913–000]

Take notice that on January 30, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing (1) executed Long-Term Firm Point-to-Point Transmission Service Agreement Specifications for AEPSC's Merchant Organization Power Marketing and Trading Division, Allegheny Energy Supply Company, American Municipal Power—Ohio, Cleveland Public Power, Consumers Energy Company, Constellation Power Source, Inc., Dynegy Power Marketing, Inc., Engage Energy America Corporation, and Exelon Generation Company, LLC, (2) an unexecuted Network Integration Transmission Service Agreement for Southern Indiana Gas and Electric d/b/a/ Vectren Energy Delivery, Inc., Hoosier Energy Rural Electric Cooperative, and Southern Indiana Rural Electric Cooperative, collectively operating as the "Joint Operating Group'', and (3) a Notice of Cancellation of a Network Integration Transmission Service Agreement previously designated as Service Agreement No. 167. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Second Revised Volume No. 6. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after January 1, 2002.

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: February 20, 2002.

15. PJM Interconnection, L.L.C.

[Docket No. ER02–917–000]

Take notice that on January 30, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following seven executed agreements: (i) One network integration transmission service agreement with PPL Energy Plus, LLC (PPL); (ii) three firm point-to-point transmission service agreements with Exelon Generation Company, LLC (Exelon) for long-term firm transmission service; (iii) one umbrella agreement for firm point-to-point transmission service for J. Aron & Co. (J. Aron); (iv) one umbrella agreement for non-firm point-to-point transmission service for J. Aron; (v) one umbrella agreement for non-firm point-to-point transmission service agreement for AmerGen Energy Company, L.L.C. (AmerGen); (vi) one umbrella agreement for non-firm point-to-point transmission service for TEC Trading, Inc. (TEC); and (vii) one network integration service agreement for Allegheny Energy Supply Co., LLC (Allegheny). PJM requested a waiver of the Commission's notice regulations to permit effective dates for the agreements that are within 30 days of this filing.

Copies of this filing were served upon PPL, Exelon, J. Aron, AmerGen, TEC, and Allegheny, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: February 20, 2002.

16. Elwood Energy II, LLC

[Docket No. ER02–920–000]

Take notice that on January 30, 2002, Elwood Energy II, LLC tendered for filing a Notice of Cancellation of its Market-Based Rate Schedule, FERC Electric Tariff, Original Volume No. 1. Elwood II requests an effective date of January 31, 2002.

Comment Date: February 20, 2002.

17. PJM Interconnection, L.L.C.

[Docket No. ER02–921–000]

Take notice that on January 30, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to Schedules 9–2 and 9–7 of the PJM Open Access Transmission Tariff that will implement PJM West (PJM Interconnection FERC Electric Tariff Fifth Revised Volume No. 1). Schedule 9–2 is amended to directly assign Actual Costs for Non-Divisional Costs of projects instituted for the PJM Reliability Assurance Agreement Among Load Serving Entities or the PJM West Reliability Assurance Agreement Among Load Serving Entities in the PJM Region to whichever is applicable. Similarly, Schedule 9–7 is amended to directly assign Actual Costs of Non-Divisional Costs of Capacity Resource and Obligation Management (CROM) Service for the PJM Control Area to the East CROM Service Rate and to directly assign Actual Costs for Non-Divisional Costs of service provided for the PJM West Region to the West CROM Service Rate.

PJM requests a waiver of the Commission's notice regulations to permit an effective date of March 1, 2002, for the amendments, but recognizes that the amendments will not become effective until the Commission designates an effective date for PJM West.

Copies of this filing were served upon all PJM members, each state electric utility regulatory commission in the PJM control area, and all parties listed on the official service list in FERC Docket No. RT01–98–000.

Comment Date: February 20, 2002.

Standard Paragraph:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest 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). All such motions or protests should be filed on or before the comment date. 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. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link,

select "Docketi" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Maglaie R. Salas,

Secretary.

[FR Doc. 02–3201 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–37–000]

Williston Basin Interstate Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Grasslands Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

February 5, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Grasslands Project involving construction, operatiou, and abandonment of facilities by Williston Basin Interstate Pipeline Company (WBI).[1] WBI proposes to construct new pipeline and appurtenant facilities in Wyoming, Montana, and North Dakota to transport 120,000 thousand cubic feet per day (Mcf/d) of natural gas from the Powder River Basin to its storage facilities in Montana and to the Northern Border Pipeline Company's system in North Dakota. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The FERC will be the lead Federal agency for the preparation of the EIS. The Miles City Field Office of the U.S. Department of the Interior's Bureau of Land Management (BLM), the Medora Ranger District of the U.S. Department of Agriculture's Forest Service (FS), and the Montana Department of Environmental Quality (MTDEQ) will be cooperating with us in the preparation of the EIS. Meetings with the MTDEQ, BLM, and FS were held January 14, 15, and 16, 2002, respectively, to discuss procedural and potential environmental issues for this project.[2] Other Federal, state, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues may also request cooperating agency status.

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 WBI 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 website (*www.ferc.gov*).

This notice is being sent to landowners of property crossed by and adjacent to WBI's proposed route; tenants and lessees on affected public land; Federal, state, and local agencies; elected officials; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; environmental and public interest groups; and local libraries and newspapers. 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.

Summary of the Proposed Project

The proposed facilities consist of about 248 miles of pipeline and 12,540 horsepower (hp) of compression. WBI also is seeking to abandon certain other pipeline facilities in Wyoming and Montana. Specifically, WBI seeks authority to:

- Construct approximately 219 miles of new 16-inch-diameter pipeline from near Belle Creek, Montana, to the proposed Manning Compressor Station in Dunn County, North Dakota;
- Construct approximately 28 miles of 16-inch-diameter pipeline loop[3] adjacent to its existing Bitter Creek supply lateral pipeline in Wyoming;
- Increase the maximum allowable operating pressure operate on approximately 40 miles of its existing 8-inch-diameter Recluse-Belle Creek supply lateral pipeline in Wyoming and Montana from 1,203 pounds per square inch gauge (psig), to 1,440 psig and abandon in place segments of existing pipe at nine road crossings and replace them with heavier walled pipe;
- Construct 4,180 hp of gas fired compression (comprised of two 2,090 hp compressors) at each of three new compressor stations located in Campbell County, Wyoming (East Fork Compressor Station); Fallon County, Montana (Cabin Creek South Compressor Station); and Dunn County, North Dakota (Manning Compressor Station);
- Construct 0.9 mile of 12-inch-diameter pipeline from the proposed Cabin Creek South Compressor Station to the existing Cabin Creek Compressor Station in Fallon County, Montana;
- Construct 1.0 mile of 16-inch-diameter pipeline from the proposed Manning Compressor Station to interconnect with Northern Border's Compressor Station 5 in Dunn County, North Dakota; and
- Construct various additional facilities, including 14 mainline valves, 4 cathodic protection units, 10 pig launchers/receivers, 7 metering stations, and 5 regulators.

In addition to the proposed facilities, WBI indicates that it may build an amine treatment facility to remove carbon dioxide from incoming gas supply before it enters WBI's system. If needed, this facility would likely be built within the 10-acre site of the proposed East Fork Compressor Station.

The general location of the project facilities is shown in appendix 1.[4]

Land Requirements for Construction

Construction of WBI's proposed pipeline facilities would require about 3,065.2 acres of land including the construction right-of-way, extra

[1] WBI's application was filed with the Commission under Sections 7(b) and (c) of the Natural Gas Act.

[2] Summaries of these meetings have been placed in the public file in this docket.

[3] A loop is a segment of pipeline that is usually installed adgacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[4] The apprendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

workspaces, and contractor/pipe yards, and access roads. WBI proposes to use a 100-foot-wide construction right-of-way. Following construction and restoration of the right-of-way and temporary work spaces, WBI would retain a 50-foot-wide permanent pipeline right-of-way. Total land requirements for the permanent right-of-way and one permanent access road would be about 1,517.7 acres, some of which would overlap existing rights-of-way.

WBI proposes to acquire 10 acres for each of the three proposed compressor stations. At each compressor station, the entire 10 acre parcel could be disturbed during construction and would be fenced following construction.

The EIS 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 [5] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS 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 EIS. All comments received are considered during the preparation of the EIS. 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.

Our independent analysis of the impacts that could occur as a result of the construction and operation of the proposed project will be in the Draft EIS. We will also evaluate possible alternatives to the proposed project or portions or the project, and make recommendations on how to lessen or avoid impacts on the various resources. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, Indian tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the environmental information provided by WBI and discussions with the cooperating agencies. This preliminary list of issues may be changed based on your comments and our analysis.

- *Geology*
  - —Impact on mineral resources
  - —Paleontological concerns
- *Cultural Resources*
  - —Impact on the proposed Custer-Sully Historic Corridor.
- *Soils and Vegetation*
  - —Construction on steep slopes
  - —Noxious weeds
  - —Seed mixes for restoration
  - —Loss of riparian vegetation
- *Water Resources and Wetlands*
  - —Use of directional drilling
  - —Ensuring pipe is placed below scour depth
- *Wildlife and Fisheries*
  - —Impact on bighorn sheep habitat
  - —Impact on raptor nesting and roosting areas
  - —Impact on sage grouse habitat
- *Endangered and Threatened Species*
  - —Impact on Federally-listed species
  - —Impact on FS, BLM, and state sensitive species
- *Socioeconomic Impacts*
- *Cumulative Impacts*
  - —Discussion of regional coal bed methane development
- *Public Safety*
- *Air Quality and Noise*
  - —Visibility degradation
  - —Compressor station emissions
  - —Noise from compressor stations
- *Alternative Routes and Site Locations*
  - —Co-location with other pipelines may not be feasible in certain areas across Little Missouri National Grasslands
  - —Abandonment method for road crossings (in-place vs. removal)
  - —Alternate site may be needed for the East Fork Compressor Station due to access issues
- *Land Use*
  - —Use of access roads on public land
  - —Impact on planned residential or commercial development
  - —Ensuring access across the right-of-way for cattle during construction

Public Participation and Scoping Meetings

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 EIS 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., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of OEP—Gas 1, PJ–11.1.
- Reference Docket No. CP02–37–000.
- Mail your comments so that they will be received in Washington, DC on or before March 7, 2002 .

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 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 an account which can be created by clicking on "Login to File" and then "New User Account."

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to stay informed and receive copies of the Draft and Final EISs, you must return the attached Information Request (appendix 3). If you do not send comments or return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below.

Schedule of Public Scoping Meetings for the Grasslands Project Environmental Impact Statement

February 19, 2000, 7:00 PM, Best Western—Tower West Lodge,109 N. U.S. Highway 14/16, Gillette, Wyoming, (307) 686–2210 or 1–800–762–7375.

[5] "We", "us" and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

February 20, 2000, 7:00 PM, Fallon County Fairgrounds, Exhibit Hall, Baker, Montana, (406) 778–2451.

February 21, 2000, 7:00 PM, Travelodge Hotel, 532 15th St. W., Dickinson, North Dakota, (701) 483–5600 or 1–800–422–0949.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. WBI representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

Site Visit

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS 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).[6] 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.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Magalie R. Salas,

Secretary.

[FR Doc. 02–3203 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

[6] 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

Project Nos. 2778–005, 2777–007, 2061–004, 1975–014

Idaho Power Company, Notice of Intention to Hold a Public Meeting February 28th in Boise, Idaho for Discussion of the Draft Environmental Impact Statement for the Mid-Snake River Hydroelectric Projects

February 4, 2002.

On January 17, 2002, the Commission staff delivered the Mid-Snake River Hydroelectric Projects (Shoshone Falls, Upper Salmon Falls, Lower Salmon Falls and Bliss) Draft Environmental Impact Statement (DEIS) to the U.S. Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. The DEIS evaluates the environmental consequences of the continued operation of the Mid-Snake River Hydroelectric Projects in Idaho.

The DEIS was noticed in the **Federal Register** and comments are due March 27, 2002.

Commission staff will conduct a public meeting to present the DEIS findings, answer questions about the findings and solicit public comment on the DEIS. The public meeting will be recorded by a court reporter, and all meeting statements (oral or written) will become part of the Commission's public record of this proceeding.

The meeting will be held Thursday, February 28, 2002 in the Merlins Room, at the Boise Centre on the Grove, 850 West Front Street, (Grove Plaza Entrance), Boise Idaho. Two meeting times are scheduled: 9:30a.m.—4:00 p.m. for agencies and organizations and 7:00—9:30 p.m. for the public. Anyone may attend one or both meetings.

For further information, please contact John Blair, at (202) 219–2845, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First Street NE, Washington, DC 20426.

Magalie R. Salas

Secretary

[FR Doc. 02–3210 Filed 2–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 6, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 13, 2002, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

785th—Meeting February 13, 2002, Regular Meeting 10 A.M.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD02–10, 000, RTO Update
Other#s RT01–75, 000, Entergy Services, Inc.,
RT01–77, 000, Southern Company Services, Inc.,
RT01–100, 000, Regional Transmission Organizations

Markets, Tariffs and Rates—Electric

E–1.
Docket# AD01–3, 000, California Infrastructure Update
Docket# ER02–545, 000, Pacific Gas and Electric Company
E–3.
Docket# ER02–602, 000, American Electric Power Service Corporation
Other#, ER01–2658, 000, American Electric Power Service Corporation;
ER01–2977, 000, American Electric Power Service Corporation;
ER01–2980, 000, American Electric Power Service Corporation;
ER02–371, 001, American Electric Power Service Corporation
E–4.
Docket# ER02–600, 000, Delta Energy Center, LLC
E–5.
Docket# ER02–605, 000, Puget Sound Energy, Inc.
E–6.
Docket# ER02–608, 000, Southern California Edison Company
E–7.
Docket# ER02–648, 000, Sithe New Boston, LLC
E–8.
Omitted
E–9.
Omitted
E–10.
Docket# ER01–1593, 000, Entergy Services, Inc.
Other#s ER01–1593, 001, Entergy Services, Inc.; ER01–1866, 000, Entergy Services, Inc.
E–11.
Docket# ER01–2032, 000, Central Maine Power Company
E–12.
Docket# ER01–2099, 000, Neptune Regional Transmission System, LLC
E–13.
Docket# ER01–2985, 000, Commonwealth Edison Company
Other#s ER01–2985, 001, Commonwealth Edison Company
E–14.
Docket# ER02–488, 000, Midwest Independent Transmission System Operator, Inc.
E–15.
Docket# ER01–2992, 000, Commonwealth Edison Company
Other#s ER01–2993, 000, Virginia Electric and Power Company; ER01–2995, 000, American Electric Power Service Corporation; ER01–2997, 000, Dayton Power and Light Company; ER01–2999, 000, Illinois Power Company
E–16.
Docket# ER02–597, 000, PJM Interconnection, L.L.C.
E–17.
Docket# ER02–613, 000, San Diego Gas & Electric Company
E–18.
Docket# ER02–406, 000, TransEnergie U.S. Ltd. and Hydro One Delivery Services Inc.
E–19.
Docket# ER02–552, 000, TransEnergie U.S. Ltd.
Other#s ER00–1, 000, TransEnergie U.S. Ltd.
E–20.
Docket#, EL00–62, 032, ISO New England Inc.
Other#s ER98–3853, 010, New England Power Pool; ER98–3853, 011, New England Power Pool; EL00–62, 033, ISO New England Inc.; EL00–62, 034, ISO New England Inc.
E–21.
Docket# EC02–11, 000, Orion Power Holdings, Inc., Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., Twelvepole Creek, L.L.C., Liberty Electric Power, L.L.C. and Reliant Resources, Inc. and Reliant Energy Power Generation Merger Sub, Inc.
E–22.
Docket# EC02–30, 000, Northwest Natural Gas Company and Portland General Electric Company
E–23.
Docket# TX97–8, 000, PECO Energy Company
E–24.
Omitted
E–25.
Docket# ER98–1438, 009, Midwest Independent Transmission System Operator, Inc.
Other#s EC98–24, 006, Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company and Kentucky Utilities Company
E–26.
Docket# ER01–2462, 003, PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC
E–27.
Omitted
E–28.
Docket# ER01–2536, 002, New York Independent System Operator, Inc.
E–29.
Docket# ER98–1438, 008, Midwest Independent Transmission System Operator, Inc.
Other#s EC98–24, 005, Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company and Kentucky Utilities Company
ER01–479, 002, Midwest Independent Transmission System Operator, Inc.
E–30.
Docket# ER01–2020, 003, Carolina Power & Light Company and Florida Power Corporation
Other#s ER01–1807, 005, Carolina Power & Light Company and Florida Power Corporation; ER01–1807, 006, Carolina Power & Light Company and Florida Power Corporation; ER01–2020, 002, Carolina Power & Light Company and Florida Power Corporation
E–31.
Docket# AC01–47, 001, El Paso Electric Company
E–32.
Docket# EL00–95, 052, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 046, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
E–33.
Omitted
E–34.
Docket# EL02–8, 000, Mirant Americas Energy Marketing, L.P., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY Gen, LLC v. New York Independent System Operator, Inc.
Other#s ER02–638, 000, New York Independent System Operator, Inc.
E–35.
Docket# EL02–5, 000, Arizona Public Service Company
E–36.
Omitted
E–37.
Docket# EL02–40, 000, Cargill-Alliant, LLC v. Midwest Independent Transmission System Operator, Inc.
E–38.
Docket# EL02–4, 000, American National Power, Inc.
E–39.
Docket# EL01–88, 000, Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation, Entergy Services, Inc., Entergy Arkansas, Inc., EntergyLouisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., EntergyGulf States, Inc. and System Energy Resources, Inc.
E–40.
Docket# EL02–2, 000, PPL EnergyPlus, LLC
E–41.
Omitted
E–42.
Docket# EC02–23, 000, Trans-Elect, Inc., Michigan Transco Holdings, LP, Consumers Energy Company and Michigan Electric Transmission Company
Other#s ER02–320, 000, Trans-Elect, Inc., Michigan Transco Holdings, LP, Consumers Energy Company and Michigan Electric Transmission Company
E–43.
Docket# EL00–95, 051, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets

Operated by the California Independent System Operator Corporation and the California Power Exchange
Other#s EL00–98, 045, Investigation of Practices of the California Independent System Operator Corporation and the California PowerExchange

E–44.
Docket# ER02–607, 000, Michigan Electric Transmission Company

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP97–374, 003, Northwest Pipeline Corporation

G–2.
Omitted

G–3.
Docket# RP00–397, 000, Questar Pipeline Company
Other#s RP01–33, 000, Questar Pipeline Company;
RP01–33, 001, Questar Pipeline Company;
RP01–33, 002, Questar Pipeline Company

G–4.
Docket# RP02–86, 000, Southern Natural Gas Company

G–5.
Docket# RP99–195, 005, Equitrans, L.P.

G–6.
Docket# RP99–301, 039, ANR Pipeline Company

G–7.
Docket# RP99–301, 036, ANR Pipeline Company

G–8.
Docket# RP99–301, 037, ANR Pipeline Company

G–9.
Docket# RP01–350, 006, Colorado Interstate Gas Company
Other#s RP01–200, 004, Colorado Interstate Gas Company;
RP01–350, 007, Colorado Interstate Gas Company

G–10.
Docket# IS02–46, 001 SFPP, L.P.
Other#s IS02–82, 001, SFPP, L.P.

G–11.
Docket# RP00–260, 008, Texas Gas Transmission Corporation
Other#s RP00–260, 000, Texas Gas Transmission Corporation;
RP00–260, 001, Texas Gas Transmission Corporation;
RP00–260, 002, Texas Gas Transmission Corporation

Energy Projects—HYDRO

H–1.
Docket# P–2436, 154, Consumers Energy Company
Other#s, P–2447, 144, Consumers Energy Company;
P–2448, 148, Consumers Energy Company;
P–2449, 127, Consumers Energy Company;
P–2450, 124, Consumers Energy Company;
P–2451, 129, Consumers Energy Company;
P–2452, 134, Consumers Energy Company;
P–2453, 154, Consumers Energy Company;
P–2468, 130, Consumers Energy Company;
P–2580, 172, Consumers Energy Company;
P–2599, 141, Consumers Energy Company

H–2.
Docket# P–11944, 001, Symbiotics, LLC

H–3.
Docket# DI99–2, 002, Alaska Power & Telephone Company

H–4.
Docket# P–1984, 076, Wisconsin River Power Company

H–5.
Omitted

H–6.
Omitted

H–7.
Docket# P–2114, 102, Public Utility District No. 2 of Grant County, Washington

H–8.
Docket# P–2060, 005, Eric Boulevard Hydropower, L.P.
Other#s P–2060, 002, Eric Boulevard Hydropower, L.P.

H–9.
Docket# P–2330, 007, Eric Boulevard Hydropower, L.P.
Other#s P–2060, 002, Eric Boulevard Hydropower, L.P.;
P–2084, 006, Eric Boulevard Hydropower, L.P.;
P–2320, 012, Eric Boulevard Hydropower, L.P.;
P–2330, 033, Eric Boulevard Hydropower, L.P.

H–10.
Docket# P–2084, 020, Eric Boulevard Hydropower, L.P.
Other#s P–2084, 006, Eric Boulevard Hydropower, L.P.

H–11.
Docket# P–2320, 005, Eric Boulevard Hydropower, L.P.
Other#s P–2320 012, Eric Boulevard Hydropower, L.P.

Energy Projects—Certificates

C–1.
Docket# CP01–388, 000, Transcontinental Gas Pipe Line Corporation
Other#s CP01–388, 001, Transcontinental Gas Pipe Line Corporation

C–2.
Docket# CP01–440, 000, Dominion Transmission, Inc.

C–3.
Docket# CP01–434, 000, Seneca Lake Storage, Inc.
Other#s CP01–435, 000, Seneca Lake Storage, Inc.;
CP01–436, 000, Seneca Lake Storage, Inc.

C–4.
Omitted

C–5.
Docket# CP01–396, 000, Equitrans, LP and Equitable Field Services, LLC

C–6.
Docket# CP00–40, 003, Florida Gas Transmission Company
Other#s CP00–40, 004, Florida Gas Transmission Company;
CP00–40, 005, Florida Gas Transmission Company

C–7.
Docket# CP01–69, 002, Petal Gas Storage, L.L.C.

C–8.
Docket# CP01–404, 001 Tennessee Gas Pipeline Company

C–9.
Docket# CP01–70, 003, Columbia Gas Transmission Corporation

Magalie R. Salas,

Secretary.

[FR Doc. 02–3293 Filed 2–6–02; 4:19 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7140–1]

Investigator Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2002 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Biomarkers for the Assessment of Exposure and Toxicity in Children, (2) Lifestyle and Cultural Practices of Tribal Populations and Risks from Toxic Substances in the Environment, (3) Developing Regional-Scale Stressor-Response Models for Use in Environmental Decision-making, (4) Superfund Minority Institutions Program Hazardous Substance Research, (5) Airborne Particulate Matter Health Effects: Cardiovascular Mechanisms, (6) Valuation of Environmental Impacts on Children's Health, and (7) Environmental Futures Research in Nanoscale Science, Engineering and Technology.

Contacts: (1) Biomarkers for the Assessment of Exposure and Toxicity in Children: Kacee Deener, (202) 564–8289, *Deener.kathleen@EPA.gov*; (2) Lifestyle and Cultural Practices of Tribal Populations and Risks from Toxic Substances in the Environment: Nigel Fields, 228–688–1981,

Fields.Nigel@EPA.gov; (3) Developing Regional-Scale Stressor-Response Models for Use in Environmental Decision-making: Barbara Levinson, 202–564–6911, *Levinson.Barbara@EPA.gov*; (4) Superfund Minority Institutions Program Hazardous Substance Research, Nora Savage, 202–564–8228, *Savage.Nora@EPA.gov*; (5) Airborne Particulate Matter Health Effects: Cardiovascular Mechanisms: Katz.Stacey, 202–564–8201, *Katz.Stacey@EPA.gov*; (6) Valuation of Environmental Impacts on Children's Health: Matthew Clark, 202–564–6842, *Clark.MAtthew@EPA.gov;* and (7) Environmental Futures Research in Nanoscale Science, Engineering and Technology: Barbara Karn, 202–564–6824, *Karn.Barbara@EPA.gov*.

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncerqa*, under "announcements." The required forms for applications with instructions are accessible on the Internet at http://es.epa.gov/ncerqa/rfa/forms/downlf.html. Forms may be printed from this site.

Dated: February 6, 2002.

Approved for publication.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–3189 Filed 2–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting, Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, February 13, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

Matters To Be Considered During Portions Open to the Public

- Final Rule: Rules of Practice and Procedure for New Enforcement Authorities
- Proposed Rule Amending the Definition of "Non-Mortgage Assets" for Purposes of the Leverage Limit Requirement of Section 966.3(a) of the Regulations
- Technical Corrections Amendment: All Finance Board Regulations
- Proposed Rule: Amendments to 12 CFR. 985.8(b)—Minimum Number of Scheduled Office of Finance Board meetings
- Resolution Establishing Dates for Board Consideration of the Capital Plans

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–3290 Filed 2–6–02; 4:10 pm]

BILLING CODE 6725–01–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 March 8, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BFM Bancshares, Inc., Kingman, Kansas; to acquire 100 percent of the voting shares of Citizens National Bank and Trust, Anthony, Kansas.

Board of Governors of the Federal Reserve System, February 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–3258 Filed 2–8–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date:

8:30 a.m. to 5 p.m., February 11, 2002.

8:30 a.m. to 1 p.m., February 12, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Populations, NCVHS, is holding a hearing on February 11–12, 2002 to discuss issues relating to statistics for the determination of health disparities in racial and ethnic populations. The focus will be large population-based surveys conducted by the federal government. Invited panelists will address the measurement of race and ethnicity, use of mixed race data, measurement of ethnic identity and perspectives on variables beyond race and ethnicity needed to determined health disparities in racial and ethnic groups.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Susan G. Queen, Ph.D., Deputy Director, Division of Information and Analysis, Health Resources and Services Administration, Room 11–05, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–1129; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: January 30, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–3251 Filed 2–8–02; 8:45 am]

BILLING CODE 4151–05–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Coordinated Community Response to Prevent Intimate Partner Violence—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

A random digit dial survey will be conducted with 12,000 male and female adults in the communities of ten experimental sites and ten control sites (600 per site). The survey will determine whether adding resources to a community to develop a coordinated community response to intimate partner violence (IPV), leads to increased knowledge about IPV such as where to go for help and how to assist a victim, child witness and/or perpetrator of IPV. A base survey instrument will be administered along with an addendum from the sites that wish to address other research needs in their experiment and control communities.

While previous surveys such as the National Violence Against Women Survey (1996) have collected information on intimate partner violence, no previous survey has explored the effects of a coordinated community response, enhanced services, and public awareness campaigns between experimental and control sites.

Interviews will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Non-residential numbers are ineligible for the sample and will not be interviewed. Female interviewers will be used and bi-lingual Spanish interviewers will conduct interviews in Spanish to reduce language barriers to participation. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden (in hours)
Individuals interviewed (main qz)	6,000	1	13/60	1,300
Individuals interviewed (main qx plus addendum questions)	6,000	1	16/60	1,600
Total				2,900

Dated: January 30, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–3149 Filed 2–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Pretest for the Canada/U.S. Joint Health Survey (CUJHS Pretest)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). A pretest is planned to test and evaluate the joint survey data collection system. This involves five major areas: (1) Sample integration, (2) case management (3) the CATI system, (4) questionnaire design, and (5) comparability across the three languages. This involves five major areas: (1) Sample integration, (2) case management (3) the CATI system, (4)

questionnaire design, and (5) comparability across the three languages. The sample integration involves screening for eligibility and selection of sample respondents. The CATI system requires testing the instrument's ability to check whether a response is within a legitimate range, to follow skip patterns, to fill country-specific information in questions as applicable, and to employ pick lists for response categories. Case management involves correct classification of survey responses, quality control, and interviewer monitoring. Questionnaire design review checks for problems in concepts, flow, order and content of questions and answers. The comparability and accuracy of the English, French and Spanish versions of the questionnaire will be carefully assessed.

The Canada/U.S. Joint Health Survey (CUJHS) is a one-time collaborative effort of Statistics Canada and the U.S. National Center for Health Statistics to conduct a telephone survey in both countries using the same questionnaire. Approximately 3,000 adults will be interviewed in Canada and 5,000 adults in the U.S. The questionnaire will cover chronic health conditions, functional status and limitations, smoking, height and weight, cancer screening, access to health care, and demographics.

The project will be jointly funded with each agency covering the costs of data collection of their own sample and the sharing of all other costs. The purpose of the survey is to move the national health surveys of both countries toward closer comparability so the health status among residents of countries can be compared in a more concrete manner. This will allow researchers to study the effect of variations in health systems on health care, health status and functional status. This effort can also serve as a model for improving comparability among national health studies generally.

A need for such comparability has been noted by the World Health Organization, the Centers for Disease Control and Prevention and the Robert Wood Johnson Foundation who is funding the study in part. The specific data from the CUJHS may well contribute toward meeting some of the research needs directly. Its longer term impact will be to demonstrate best practices for use in bi-national and multi-national health surveys. There is no cost to respondents other than their time.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden response (in hours)	Total burden (in hours)
United States	100	1	20/60	33
Total				33

Dated: February 1, 2002.

Julie Fishman,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–3150 Filed 2–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–17–02]

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) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: EEOICPA Dose Reconstruction Interviews and Form—Extension—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). On October 30, 2000, the Energy Employees Occupational Illness Compensation Program Act of 2000 (Public Law 106–398) was enacted. This Act established a federal compensation program for employees of the Department of Energy (DOE) or certain of its contractors, subcontractors and vendors, who have suffered cancers and other designated illnesses as a result of exposures sustained in the production and testing of nuclear weapons.

Executive Order 13179 was issued on December 7, 2000; it delegated authorities assigned to the President under the Act to the Departments of Labor, Health and Human Services, Energy, and Justice. The Department of Health and Human Services (DHHS) was delegated the responsibility of establishing methods for estimating radiation doses received by eligible claimants with cancer applying for compensation. NIOSH is to apply these methods to estimate the radiation doses of such individuals applying for compensation.

In performance of its dose reconstruction responsibilities under the Act, NIOSH will interview claimants (or their survivors) individually and provide them with the opportunity, through a structured interview, to assist NIOSH in documenting the work history of the employee (characterizing the actual work tasks performed), identifying incidents that may have resulted in undocumented radiation exposures, characterizing radiologic protection and monitoring practices, and identifying co-workers and other witnesses as may be necessary to confirm undocumented information. In this process, NIOSH will use a computer assisted telephone interview (CATI) system, which will allow interviews to be conducted more efficiently and quickly than would be the case with a paper-based interview instrument.

NIOSH will use the data collected in this process to complete an individual dose reconstruction that accounts as fully as possible for all possible radiation dose incurred by the employee in the line of duty for DOE nuclear weapons production programs. After dose reconstruction, NIOSH will also perform a brief final interview with the claimant, to explain the results and to allow the claimant to confirm or question the record NIOSH has compiled. This will also be the final opportunity for the claimant to supplement the dose reconstruction record.

At the conclusion of the dose reconstruction process, the claimant will need to submit a form (OCAS–1) to confirm that all information available to the claimant has been provided. The form will notify the claimant that signing the form allows NIOSH to

forward a dose reconstruction report to DOL and to the claimant, and closes the record on data used for the dose reconstruction. The dose reconstruction results will be supplied to the claimant and to the DOL which will factor them into its determination whether the claimant is eligible for compensation under the Act.

On October 31, 2001, the Office of Management and Budget approved DHHS' request for emergency Paperwork Reduction Act clearance, so that NIOSH could begin its dose reconstruction duties under the Act. That emergency clearance expires on April 30, 2002. This notice pertains to DHHS request for normal Paperwork Reduction Act clearance to permit NIOSH to continue conducting dose reconstruction activities after April 30, 2002. The total annual burden for this data collection is 16,250 hours.

Respondents	Number of respondents	Number of responses	Average burden per response (in hrs)
Initial interview	15,000	1	60/60
Conclusion form	15,000	1	5/60

Dated: February 1, 2002.

Julie Fishman,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–3151 Filed 2–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10051]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the MassHealth Insurance Partnership; *Form No.:* CMS–10051 (OMB# 0938–NEW); *Use:* This collection will be used to evaluate the Massachusetts' 1115 Waiver Demonstration, including Insurance Partnership program, offering subsidies to small employers to encourage them to offer health insurance coverage to employees. The purpose of the survey is to determine the factors influencing an employer's decision to participate or not, in the IP program and their respective characteristics.; *Frequency:* Other: One-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Farms; *Number of Respondents:* 2,016; *Total Annual Responses:* 2,016; *Total Annual Hours:* 336.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 8, 2002.

Dawn M. Willinghan,

Acting, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–3252 Filed 2–8–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0036]

Aventis Pharmaceuticals et al.; Withdrawal of Approval of 12 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 12 new drug applications (NDAs). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective March 13, 2002.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

NDA No.	Drug	Applicant
8–102	Tace (chlorotrianisene).	Aventis Pharmaceuticals, 399 Interpace Pkwy., P.O. Box 663, Parsippany, NJ 07054.
9–925	Dyclone (dyclonine hydrochloride (HCl)) Topical Solution, 0.5% and 1%.	AstraZeneca LP, 1800 Concord Pike, P.O. Box 8355, Wilmington, DE 19803–8355.
11–444	Tace (chlorotrianisene) Capsules, 25 milligrams (mg).	Aventis Pharmaceuticals
14–322	Meprobamate Tablets, 200 mg and 400 mg.	IMPAX Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544.
16–235	Tace (chlorotrianisene) Capsules, 72 mg.	Aventis Pharmaceuticals
17–829	Diprosone (betamethasone dipropionate) Aerosol.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
19–188	Gastrocrom (cromolyn sodium) Capsules.	Celltech Pharmaceuticals, Inc., 755 Jefferson Rd., P.O. Box 31710, Rochester, NY 14603–1710.
19–399	Total Parenteral Nutrition Electrolytes.	Abbott Laboratories, D–389 Bldg. AP30, 200 Abbott Park Rd., Abbott Park, IL 60064–3537.
20–227	Normiflo (ardeparin sodium) Injection.	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
50–370	Ilotycin Gluceptate (erythromycin gluceptate).	Eli Lilly and Co., Lilly Corp. Center, Indianapolis, IN 46285.
50–579	Monocid (cefonicid sodium) Injection.	SmithKline Beecham Pharmaceuticals, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101–7929.
50–581	Mefoxin (cefoxitin sodium) Premixed IV Solution.	Merck & Co., Inc., P.O. Box 4, BLA-20, West Point, PA 19486.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective March 13, 2002.

Dated: January 18, 2002.

Steven K. Galson,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 02–3199 Filed 2–8–02; 8:45 am]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02F–0042]

Ecolab, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ecolab, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on meat parts, trim, and organs.

DATES: Submit written comments on the petitioner's environmental assessment by March 13, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4731) has been filed by Ecolab, Inc., Ecolab Center, 370 Wabasha St., St. Paul, MN 55102. The petition proposes to amend the food additive regulations in Part 173 *Secondary Direct Food Additives Permitted in Food for Human Consumption* (21 CFR part 173) to provide for the safe use of a mixture of peroxyacetic acid, octanoic acid, acetic acid, hydrogen peroxide, peroxyoctanoic acid, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on meat parts, trim, and organs.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by March 13, 2002. Two copies of any comments are to be submitted, except that individuals may submit one 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: January 22, 2002.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–3139 Filed 2–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5347]

Draft "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Intimate Contacts;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Intimate Contacts" dated February 2002. The draft guidance document provides recommendations to all registered blood and plasma establishments, and establishments engaged in manufacturing plasma derivatives. The draft guidance document, when finalized, is intended to provide recommendations regarding the disposition of blood products manufactured from a donor who is retrospectively discovered to have received a xenotransplantation product or to have been an intimate contact of a xenotransplantation product recipient. This is the second draft guidance document and it incorporates revisions based on public comments received on the first draft guidance document by the same name announced in the **Federal Register** of December 30, 1999 (64 FR 73562).

DATES: Submit written or electronic comments on the draft guidance to ensure their adequate consideration in preparation of the final document by May 13, 2002. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised, second draft document entitled "Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Intimate Contacts" dated February 2002. The draft guidance document provides FDA's recommendations to all registered blood and plasma establishments, and establishments engaged in manufacturing plasma derivatives. The draft guidance document, when finalized, is intended to provide recommendations regarding the disposition of blood products manufactured from a donor who is retrospectively discovered to have received a xenotransplantation product or to have been an intimate contact of a xenotransplantation product recipient. This second draft guidance document incorporates revisions based on public comments received on the first draft document by the same name announced in the **Federal Register** of December 30, 1999, due to the number of changes made to the previous version of the draft guidance.

FDA issues this draft guidance consistent with the good guidance practices regulation (21 CFR 10.115). This draft guidance document represents the agency's current thinking on precautionary measures to reduce the possible risk of transmission of zoonoses by xenotransplantation product recipients and their contacts, through blood and blood products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

FDA is distributing this draft document for comment purposes only and does not intend to implement the draft guidance at this time. To ensure adequate consideration in preparation of the final document, interested persons may submit written comments to the Dockets Management Branch (address above) by May 13, 2002. Submit two copies of any comments, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cber/guidelines.htm.*

Dated: January 30, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–3200 Filed 2–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4728–N–01]

Notice of Certain Operating Cost Adjustment Factors for Fiscal Year 2002

AGENCY: Office of the Secretary, HUD.

ACTION: Publication of Fiscal Year (FY) 2002 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes factors used in calculating rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of

1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Regina Aleksiewicz, Housing Project Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Multifamily Housing, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000; extension 2600 (This is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of the FY 1998 HUD Appropriations Act, requires HUD to establish guidelines for rent adjustments based on an operating cost adjustment factor (OCAF). The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to "operating cost factors established by the Secretary." The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: Wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the State level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated State-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.*, the most current local wage data are for 1996). The data sources for the nine cost indicators selected used were as follows:

Labor Costs—6/00 to 6/01 Bureau of Labor Statistics (BLS), "Employment Cost Index, Private Sector Wages and Salaries Component at the National Level."

Employment Benefit Costs—6/00 to 6/01 (BLS), "Employment Cost Index, Employee Benefits at the National Level."

Property Taxes—6/00 to 6/01 (BLS), "Consumer Price Index, All Items Index."

Goods, Supplies, Equipment—6/00 to 6/01 (BLS), "Producer Price Index, Finished Goods Less Food and Energy."

Insurance—6/00 to 6/01 (BLS), "Consumer Price Index, Residential Insurance Index."

Fuel Oil—Energy Information Agency, Petroleum Marketing Annual 2000, Table 18, "Prices of No.2 Distillate to Residences by PAD District and Selected States," (Petroleum Administration for Defense District (PADD) average changes were used for the States with too little fuel oil consumption to have values.)

Electricity—Energy Information Agency, Electric Power Annual Volume 1, 2000, Table 22 "Retail Sales of Electricity, Revenue and Average Revenue per Kilowatt-hour (and RSEs) by U.S. Electric Utilities to Ultimate Consumers by Census Division and State, 1999–2000—Residential."

Natural Gas—Energy Information Agency, Natural Gas Annual, 2000, Table 22, "Average Price of Natural Gas Delivered to Residential Consumers by State, 1996–2000 (Preliminary)."

Water and Sewer—6/00 to 6/01, (BLS), "Consumer Price Index—Detailed Report."

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant State-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from June 2000 to June 2001, the wage increase component of the Virginia OCAF for FY 2002 would be 2.0 percent (4% × 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the FY 2001 OCAF for Virginia. These types of calculations were made for each State for each of the nine cost components, and are included as the Appendix to this Notice.

II. MAHRA and LIHPRHA OCAF Procedures

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (title V of Pub. L. 105–65, approved October 7, 1997; 42 U.S.C. 1437f note (MAHRA)) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of Federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities; or (3) comparable market rents for the market area.

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the

portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: February 4, 2002.

Mel Martinez,

Secretary.

Appendix—FY 2002 Operating Cost Adjustment Factors

State	FY 2002 OCAF (percent)
ALABAMA	3.6
ALASKA	5.1
ARIZONA	2.6
ARKANSAS	3.5
CALIFORNIA	4.0
COLORADO	3.7
CONNECTICUT	4.7
DELAWARE	3.6
DIST. OF COLUMBIA	4.0
FLORIDA	3.6
GEORGIA	7.2
HAWAII	5.1
IDAHO	3.6
ILLINOIS	5.0
INDIANA	4.1
IOWA	4.4
KANSAS	4.4
KENTUCKY	4.0
LOUISIANA	4.5
MAINE	5.3
MARYLAND	3.7
MASSACHUSETTS	4.7
MICHIGAN	3.2
MINNESOTA	5.6
MISSISSIPPI	4.1
MISSOURI	4.0
MONTANA	2.8
NEBRASKA	4.1
NEVADA	3.2
NEW HAMPSHIRE	5.2
NEW JERSEY	3.5
NEW MEXICO	5.2
NEW YORK	5.0
N. CAROLINA	3.5
N. DAKOTA	4.3
OHIO	4.0
OKLAHOMA	4.7
OREGON	3.7
PENNSYLVANIA	2.9
RHODE ISLAND	5.4
S. CAROLINA	3.5
S. DAKOTA	5.2
TENNESSEE	3.4
TEXAS	4.7
UTAH	3.9
VERMONT	4.6
VIRGINIA	2.9
WASHINGTON	3.6
W. VIRGINIA	3.3
WISCONSIN	4.2
WYOMING	5.9
PACIFIC ISLANDS	3.8
PUERTO RICO	3.6
VIRGIN ISLANDS	3.4
U.S. AVERAGE	4.2

[FR Doc. 02–3221 Filed 2–8–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Indian Affairs, Office of Special Trustee for American Indians, Office of Indian Trust Transition; Tribal Consultation on Indian Trust Asset Management

AGENCY: Office of the Secretary, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Office of Indian Trust Transition, Interior.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, and the Office of Indian Trust Transition gave public notice in the **Federal Register** of January 31, 2002, (67 FR 4703) of a tribal consultation meeting in Portland, Oregon, to be held on February 14, 2002. The time of the consultation meeting was in error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Wayne R. Smith, Deputy Assistant Secretary—Indian Affairs, 1849 C Street, NW, MS 4240 MIB, Washington, DC 20240 (202/208–7163).

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on January 31, 2002, there was an error in the scheduled time of the consultation meeting. The Department is correcting the document as follows:

In notice document (**Federal Register** document 02–2303) make the following correction:

On page 4730, in the third column, 16 lines from the bottom of the column, the time for the consultation meeting should read "1:00 p.m."

Dated: February 6, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–3283 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of permits issued.

SUMMARY: This notice contains a list of Recovery Permits issued under the Endangered Species Act in Region 2 of the Fish and Wildlife Service (Arizona, New Mexico, Oklahoma, and Texas) during 2001.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Chief, Endangered Species Division, Ecological Services, P. O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; (505) 248–6788.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Region 2 of the U.S. Fish and Wildlife Service has issued the following permits, between January 1, 2001, and December 31, 2001, for scientific purposes, enhancement of propagation or survival, or interstate commerce of endangered species from applications duly received according to section 10(a)(1)(A) of the Endangered Species Act of 1973 (Act), as amended. Each permit issued was granted only after it was determined to be applied for in good faith, and that it was consistent with the Act and applicable regulations.

Permittee	Permit No.	Issuance Date
Dennis P. Humphrey	TE035179	01/03/01
ECO Plan Associates, Inc	TE830213	01/03/01
Westland Resources, Inc	TE834782	01/03/01
Lockheed Martin Environmental Services	TE025197	01/03/01

Permittee	Permit No.	Issuance Date
La Tierra Environmental Consulting	TE842583	01/18/01
SWCA, Inc., Environmental Consultants-Tucson	TE798107	02/07/01
The Nature Conservancy of Texas	TE820085	02/12/01
James R. Dixon	TE004472	02/21/01
Bureau of Land Management-Tucson FO	TE828830	02/22/01
Angelo State University	TE006210	03/09/01
Gladys Porter Zoo	TE830271	03/09/01
Jay K. Esler	TE037684	03/15/01
Robert H. Perrill	TE038048	03/15/01
Scott Edward Carroll	TE037118	03/15/01
Trevor A. Hare	TE038050	03/15/01
USDA-Natural Resources Conservation Services	TE038052	03/15/01
University of New Mexico	TE038055	03/16/01
James C. Cokendolpher	TE035143	03/19/01
Tohono O'odham Nation Wildlife and Vegetation Management Project	TE036912	03/19/01
Helen K. Yard	TE037789	03/22/01
Southwest Texas State University	TE802211	03/23/01
Border Wildlife Consultants	TE005180	03/26/01
Lincoln National Forest	TE841927	03/26/01
The Institute for Bird Populations	TE013143	03/30/01
USGS-BRD Sonoran Desert Field Station	TE038608	04/02/01
Jack L. Childs	TE038604	04/09/01
Viva Environmental, Inc	TE040344	04/09/01
Arthur M. Phillips	TE041301	04/10/01
Gulf South Research Corporation	TE009926	04/10/01
Hualapai Tribe	TE819549	04/17/01
Bureau of Reclamation-Denver	TE819475	04/24/01
Apache-Sitgreaves National Forest	TE820337	04/25/01
Cibola National Forest	TE842565	04/30/01
Travis County Transportation and Natural Resources	TE819451	04/30/01
Bureau of Land Management-Phoenix, AZ	TE826091	05/01/01
Dallas Zoo and Dallas Aquarium	TE829995	05/01/01
Terrell H. Johnson	TE798104	05/01/01
Texas A&M University-Galveston	TE776123	05/01/01
Loomis Austin, Inc	TE841353	05/04/01
David W. Willey	TE041871	05/09/01
New Mexico Energy, Minerals, and Natural Resources Department	TE820730	05/09/01
Bio/West, Inc	TE037155	05/10/01
Cecelia M. Smith	TE03968	05/10/01
John "Rusty" Mase	TE827369	05/10/01
Rocky Mountain Research Station-Albuquerque Lab	TE829118	05/11/01
USDA Natural Resources Conservation Service	TE039144	05/11/01
SWCA, Inc., Environmental Consultants-Flagstaff, AZ	TE028605	05/17/01
Fitz, Inc	TE819491	05/18/01
National Parks Service-Saguaro National Park	TE010927	05/18/01
Michael R. J. Forstner	TE039544	05/22/01
USGS-Colorado Plateau Research Station	TE826897	05/22/01
Western New Mexico University	TE000948	05/22/01
USGS-BRD Arizona Cooperative Fish &Wildlife Research Unit	TE039466	05/23/01
Environmental Defense	TE039731	05/23/01
Hawks Aloft	TE835139	05/23/01
Organ Pipe Cactus National Monument	TE819458	05/23/01
Pima County Parks and Recreation	TE039469	05/23/01
Stantec Consulting, Inc	TE828642	05/23/01
Sverdrup, Inc.	TE007874	05/23/01
The Kauffman Group	TE040346	05/23/01
Arizona State University	TE039716	05/24/01
Debra A. Yazzie	TE042678	05/24/01
Taschek Environmental Consulting, Inc	TE819477	05/24/01
Bat Conservation International, Inc	TE039139	06/01/01
Logan Simpson Design, Inc	TE006655	06/08/01
Celia A. Cook	TE825591	06/18/01
Steiner C. Kierce	TE004131	06/18/01
USGS-BRD Arizona Cooperative Fish &Wildlife Research Unit	TE039467	06/19/01
Bureau of Land Management-Las Cruces Field Office	TE829761	06/20/01
Freese and Nichols, Inc	TE024791	06/20/01
George Veni	TE026436	06/20/01
Lower Colorado River Authority	TE800900	06/20/01
Marc A. Baker	TE841795	06/20/01
Northwestern Resources Co.	TE037780	06/21/01
USDA Forest Service-Coconino National Forest	TE026711	06/21/01
SWCA-Phoenix, AZ	TE022749	06/22/01
TRC Co., Inc	TE021881	06/22/01

Permittee	Permit No.	Issuance Date
SORA (Southwestern Ornithological Researchand Adventures)	TE023159	06/25/01
Charles A. Bergman	TE042679	06/25/01
Kevin L. Hamann	TE041868	06/25/01
Kathleen E. Conway	TE042663	06/25/01
Marty R. Stratman	TE042659	06/25/01
Lynn Cudlip	TE041873	06/26/01
University of New Mexico	TE001623	06/26/01
Hicks & Company	TE799103	06/27/01
University of New Mexico	TE034087	07/03/01
SWCA Environmental Consultants	TE819471	07/05/01
US Army Headquarters III CORPS and Ft. Hood	TE023643	07/05/01
USGS-Denver Field Station	TE826124	07/05/01
USGS-Padre Island National Seashore	TE840727	07/05/01
Eagle Environmental Consulting, Inc	TE043399	07/06/01
Kirk O. Winemiller	TE043061	07/09/01
Senna Environmental Services	TE013086	07/09/01
Loreen Woolstenhulme	TE041876	07/10/01
Marlis R. Douglas	TE042961	07/10/01
Thomas Staudt	TE013149	07/10/01
Chris Thibodaux	TE028649	07/12/01
Arboretum at Flagstaff	TE009792	07/13/01
Department of the Army	TE826118	07/13/01
Glenn Arthur Proudfoot	TE008218	07/13/01
Barbara French	TE039527	07/23/01
Peter Sprouse	TE014168	07/23/01
Connors State College	TE828963	07/26/01
USDA Forest Service-Wildlife Habitat Silviculture Lab	TE832201	07/27/01
Charles Rex Wahl	TE042093	07/30/01
Gena K. Janssen	TE042662	07/30/01
Southland Consulting Services, LLC	TE041877	07/30/01
USGS-Biological Resources Division	TE008233	07/30/01
Westwater Engineering	TE041874	07/30/01
Hubbs-Sea World Research Inst.	TE024429	07/31/01
New Mexico Department of Game and Fish	TE815409	07/31/01
North Wind Environmental, Inc	TE040342	07/31/01
Regional Director, Region 2	TE676811	07/31/01
The Louis Berger Group	TE041869	07/31/01
U. S. Forest Service-Coronado National Forest	TE822998	07/31/01
Anthony F. Amos	TE830177	08/03/01
Damian Fagan	TE043210	08/08/01
Environmental Planning Group	TE036436	08/08/01
JBR Environmental Consultants, Inc	TE043231	08/08/01
Oklahoma Department of Environmental Quality	TE044654	08/08/01
Enercon Services, Inc	TE044359	08/15/01
Rocky Mountain Research Station	TE814833	08/20/01
SWCA, Inc., Environmental Consultants-Austin, TX	TE800611	08/20/01
Christiana J. Manville	TE043791	08/29/01
URS Corporation	TE833868	08/29/01
Philip W. Hedrick	TE044783	09/01/01
Cincinnati Zoo & Botanical Garden	TE841901	09/04/01
SMS Consulting	TE004811	09/04/01
James P. Collins	TE043941	09/06/01
City of Austin-Watershed Protection Department	TE833851	09/06/01
Southwest Research	TE042958	09/06/01
USDA FS-Carson National Forest	TE839848	09/10/01
Arizona State University	TE814837	09/12/01
PBS&J	TE820022	09/12/01
Oklahoma Cooperative Fish & Wildlife Research Unit	TE820283	09/14/01
Arizona-Sonoran Desert Museum	TE022190	09/20/01
Oklahoma Museum of Natural History	TE799158	09/24/01
U. S. Army Corps of Engineers, Albuquerque District	TE797127	10/02/01
Engineering & Environmental Consulting, Inc	TE020844	10/10/01
William Charles Larson	TE040341	10/10/01
SWCA, Inc., Environmental Consultants-Albuquerque, NM	TE045236	10/12/01
Albuquerque Biological Park	TE004439	10/19/01
Turner Collie & Braden, Inc	TE020819	10/24/01
USGS Columbia Environmental Research	TE021847	10/25/01
Bureau of Reclamation-Albuquerque Area Office	TE813088	10/26/01
The Institute for Bird Populations	TE046937	10/26/01
USGS New Mexico Cooperative Fish & Wildlife Research Unit	TE046517	10/31/01
Bureau of Land Management-Arizona State Office	TE819538	10/31/01
Bureau of Land Management-Kingman Field Office	TE024755	11/01/01
Geo-Marine, Inc	TE010472	11/01/01

Permittee	Permit No.	Issuance Date
Harris Environmental Group	TE828640	11/01/01
Andrea R. Wickham-Rowe	TE016215	11/06/01
Greystone Environmental Consultants, Inc	TE042955	11/23/01
Nelson Consulting, Inc.	TE046941	11/23/01
U. S. Forest Service-Tonto National Forest	TE827726	11/23/01
Michael Rigney	TE048609	11/26/01
Garcia and Associates	TE039571	11/30/01
Janine A. Spencer	TE020661	11/30/01
Los Alamos National Laboratory	TE800892	12/11/01
US Geological Survey, Cerc. Brd Yankton FRS	TE046447	12/11/01
US Bureau of Reclamation-Yuma Area Office	TE040345	12/11/01
Michael J.Terrio	TE839510	12/20/01

Bryan Arroyo,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–3272 Filed 2–8–02; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Indian Affairs, Office of Special Trustee for American Indians, Office of Trust Transition; Tribal Consultation of Indian Trust Asset Management

AGENCY: Office of the Secretary, Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Office of Trust Transition, Interior.

ACTION: Notice of tribal consultation meetings; extension of comment period.

SUMMARY: The Office of the Secretary, the Bureau of Indian Affairs, the Office of the Special Trustee for American Indians, and the Office of Indian Trust Transition have been conducting consultation meetings with the public as noticed in the **Federal Register** publications of December 5, 2001, December 11, 2001, and January 31, 2002. In the **Federal Register** notice of December 5, 2001 (66 FR 234), the Department noted that all written comments must be received by February 15, 2002. This notice extends that comment period to February 28, 2002.

DATES: All written comments must be received by February 28, 2002.

ADDRESSES: Office of the Assistant Secretary—Indian Affairs, 1849 C Street, NW, MS 4140 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wayne R. Smith, Deputy Assistant Secretary—Indian Affairs, 1849 C Street, NW, MS 4140 MIB, Washington, DC 20240 (202–208–7163).

SUPPLEMENTARY INFORMATION: The purpose of the consultation meetings is to involve affected and interested parties in the process of organizing the Department's trust asset management responsibility functions. The Department has determined that there is a need for dramatic change in the management of Indian trust assets. An independent consultant has analyzed important components of the Department's trust reform activities and made several recommendations, including the recommendation that the Department consolidate trust functions under a single entity. The Department has already had seven (7) tribal consultation meetings and has scheduled another one for Portland, Oregon, on February 14, 2002, to discuss the merits of this reorganization. Because of the overwhelming public response to this effort, the Department believes it prudent to extend the comment period to February 28, 2002. The Department may extend this comment period further by additional notice as other meetings may be scheduled. This extension will facilitate the maximum direct participation of all interested persons in this important Departmental process.

Dated: February 6, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–3284 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–933–1430–ET; F–07357]

Public Land Order No. 7510; Partial Revocation of Public Land Order No. 2550; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 72.79 acres of public lands withdrawn for airport purposes for the Federal Aviation Administration at Fairbanks, Alaska. The lands have been conveyed out of Federal ownership to the State of Alaska pursuant to the Airport and Airway Improvement Act of 1982. This action is for record clearing purposes only.

EFFECTIVE DATE: February 11, 2002.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2550, which withdrew public lands for airport purposes, is hereby revoked insofar as it affects the following described lands:

Fairbanks Meridian

Tract XIV, Parcel A

T. 1 S., R. 2 W.,
Sec. 13, W½SW¼SW¼.
This parcel contains 20 acres.

Tract XIV, Parcel B

T. 1 S., R. 2 W.,
Sec. 23, lot 1.
This parcel contains 21.82 acres.

T. 1 S., R. 1 W.,
Three parcels within sec. 18, more particularly described as:

Tract XVIII, Parcel A

Commencing at the North one-quarter (N¼) corner of Section 18, monumented with a BLM brass cap;

Thence S. 00°11′11″ E. along the east boundary of Tract 1 of the Fairbanks International Airport a distance of 121.78 feet, more or less, to the True Point of Beginning;

Thence N. 71°04′49″ E. along a southerly right of way boundary line of Old Airport Road a distance of 275.21 feet, more or less, to a point;

Thence N. 89°54′00″ E. a distance of 37.84 feet, more or less, to a point on the westerly

right of way boundary line of Tract VI, Fairbanks International Airport;

Thence along said boundary S. 18°56'00" E. a distance of 326.83 feet, more or less, to a point;

Thence continuing along said boundary S. 39°19'00" W. a distance of 634.34 feet, more or less, to a point on the east boundary of Tract 1 of said Airport;

Thence N. 00°11'11" W. along the east boundary of said Tract 1 a distance of 710.62 feet, more or less, to a point on the southeasterly right of way boundary for Old Airport Road and the True Point of Beginning.

This parcel contains approximately 4.506 acres.

Tract XVIII, Parcel B

Commencing at the North one-quarter (N¼) corner of said Section 18, monumented with a BLM brass cap;

Thence S. 00°11'11" E. along the east boundary of Tract 1 of the Fairbanks International Airport a distance of 989.59 feet, more or less, to the True Point of Beginning;

Thence N. 39°19'00" E. along the southern right of way boundary of Tract VI, Fairbanks International Airport right of way line a distance of 75.16 feet, more or less, to the southwesterly right of way line of the South Fairbanks Expressway, Project No. F–035–6(12);

Thence along said right of way boundary along a 00°26'44" curve to the right through a central angle of 02°03'30" with a radius of 11,559.16 feet, an arc distance of 415.23 feet, to a point of tangent;

Thence continuing along said right of way line S. 32°51'38" E. a distance of 1294.20 feet, more or less, to a point;

Thence along said right of way line S. 27°39'58" E. a distance of 356.33 feet, more or less, to a point on the north boundary for Tract XVI, Fairbanks International Airport;

Thence S. 89°54'00" W. along the northerly boundary of said Tract XVI a distance of 1653.52 feet, more or less, to the True Point of Beginning.

This parcel contains approximately 23.047 acres.

Tract XVIII, Parcel C

Commencing at the North one-quarter (N¼) corner of Section 18, monumented with a BLM brass cap;

Thence S. 00°11'11" E. along the east boundary line of Tract 1 and Tract XVII, Parcel A, and the west boundary of Tract XVI of the Fairbanks International Airport a distance of 3963.11 feet, more or less, to a point common to the southwest corner of Tract XVI, the most southerly corner of Tract XVII, Parcel A, and the most westerly corner of Tract XVII, Parcel B of said Airport;

Thence N. 89°55'11" E. along the south boundary of said Tract XVI common to the north boundary of Tract XVII, Parcel B and a portion of Tract VII, a distance of 1320.66 feet, more or less, to the southeast corner of said Tract XVI being common to the southwest corner of Tract XV (University Avenue) of said Airport and the True Point of Beginning;

Thence N. 00°11'13" W. along a portion of the east boundary line of said Tract XVI a distance of 910.00 feet, more or less, to a point on the westerly right of way boundary of the South Fairbanks Expressway Project No. F–035–6(12).

Thence S. 27°37'50" E. along said westerly right of way line a distance of 287.00 feet, more or less, to a point;

Thence continue S. 20°19'55" E. along said westerly right of way line a distance of 460.98 feet, more or less, to a point;

Thence S. 28°18'50" W. along said westerly right of way line a distance of 106.13 feet, more or less, to a point on the northwesterly right of way boundary of Tract XV (University Avenue) of said Airport;

Thence S. 61°35'17" W. along the northwesterly boundary of Tract XV a distance of 273.00 feet, more or less, to the southeast corner of Tract XVI, and the True Point of Beginning.

This parcel contains approximately 3.417 acres.

The areas described aggregate approximately 72.79 acres.

2. The lands have been conveyed out of Federal ownership to the State of Alaska pursuant to the Airport and Airway Improvement Act of 1982. This action is for record clearing purposes only.

Dated: January 29, 2002.

J. Steven Griles,

Deputy Secretary.

[FR Doc. 02–3194 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Interior established a Royalty Policy Committee on the Minerals Management Advisory Board to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals-related policies. Committee membership includes representatives from States, Indian tribes and allottee organizations, minerals industry associations, the general public, and Federal departments. At this 14th meeting, the committee will elect a Chairperson, Vice-Chairperson, and a Parliamentarian and receive subcommittee reports on sodium/potassium, coal, and marginal properties. The MMS will present reports on the Strategic Petroleum Reserve initiative, MMS activities associated with the Department's strategic planning initiative, and the impact of the Internet shut-down on constituents and industry. Guest presenters will discuss the Administration's energy legislation and management reform initiatives.

DATES: The meeting will be held on Tuesday, March 12, 2002, 8:30 a.m. to 5 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at the Las Vegas Marriott Suites, 325 Convention Center Drive, Las Vegas, Nevada 89109, hotel telephone number, (702) 650–2000, hotel fax number (702) 650–9466.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Fields, Royalty Policy Committee Coordinator, Minerals Revenue Management, Minerals Management Service, P.O. Box 25165, MS 300B3, Denver, CO 80225–0165, telephone number (303) 231–3102 or fax number (303) 231–3781.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advance registration on a space available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to Mr. Fields at the mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. Transcripts of committee meetings will be available 2 weeks after each meeting for public inspection and copying at MMS's Minerals Revenue Management, Building 85, Denver Federal Center, Denver, Colorado. These meetings are conducted under the authority of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: January 28, 2002.

Milton K. Dial,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–3193 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Realty Action—Competitive Bulk Sale of Federal Land; Amendment of Notice

AGENCY: Bureau of Reclamation, Interior.

ACTION: Amendment of notice.

SUMMARY: This notice amends the Notice of Realty Action, Competitive

Bulk Sale of Federal Land, published in the **Federal Register** October 18, 2001 (66 FR 52933, Oct. 18, 2001). The subject property is located along the north half of the east and west shores of Canyon Ferry Reservoir, about 20 miles east of Helena, Montana.

DATES: This amendment extends the date for a period of 90 days from the publication of this amendment in the **Federal Register**. Interested parties may request notification of future sale dates, and may request a copy of the bid package from the Montana Area Office, Bureau of Reclamation, until May 13, 2002.

ADDRESSES: Address all requests concerning this notice to Montana Area Office, Bureau of Reclamation, Attention: Susan Stiles, Realty Specialist, P.O. Box 30137, Billings, MT 59107–0137.

FOR FURTHER INFORMATION CONTACT: Susan Stiles at (406) 247–7316.

SUPPLEMENTARY INFORMATION: The original time frame for this notice has expired. Due to a delay in the sale process, the time frame is being extended.

Dated: January 24, 2002.

Susan Kelly,

Area Manager, Montana Area Office, Bureau of Reclamation.

[FR Doc. 02–3174 Filed 2–8–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The proposed information collection is a 3-year extension, pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), of the current "generic clearance" (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: countervailing duty, antidumping, escape clause, market disruption, NAFTA safeguard, and "interference with programs of the USDA." Comments concerning the proposed information collections are requested in accordance with 5 CFR 1320.8(d); such comments are described in greater detail in the section of this notice entitled supplementary information.

DATES: To be assured of consideration, written comments must be received not later than April 19, 2002.

ADDRESSES: Signed comments should be submitted to Marilyn Abbott, Acting Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collections (and related instructions) and draft Paperwork Reduction Act Submission and Supporting Statement to be submitted to the Office of Management and Budget may be obtained from either of the following persons: Debra Baker, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3180, or Lynn Featherstone, Director, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3160. The draft Supporting Statement is also on the Commission's website (at *http://info.usitc.gov/OINV/INVEST/OINVINVEST.NSF*).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other technological forms of information technology, *e.g.*, permitting electronic submission of responses).

Summary of the Proposed Information Collections

(1) Need for the Proposed Information Collections

The Commission conducts countervailing duty and antidumping investigations under provisions of Title VII of the Tariff Act of 1930 to determine whether domestic industries are being materially injured or threatened with material injury by reason of imports of products which are subsidized (countervailing duty cases) or sold at less than fair value (antidumping cases). Five-year reviews of antidumping and countervailing duty orders and suspended investigations are conducted to determine whether revocation of the existing orders would be likely to lead to continuation or recurrence of material injury to the domestic industry. The Commission conducts escape-clause investigations to determine whether increased imports are a substantial cause of serious injury or threat of serious injury to a domestic industry. NAFTA safeguard investigations are conducted under the authority of the North American Free Trade Agreement and examine whether increased imports from Canada or Mexico are a substantial cause of serious injury or threat of serious injury to a domestic industry. Market disruption investigations are conducted to determine whether imports of an article produced in a Communist country are causing material injury to a domestic industry. The Commission also conducts investigations to determine whether imports are interfering with programs of the Department of Agriculture for agricultural commodities or products. Specific investigations are almost always instituted in response to petitions received from U.S. manufacturers of the product(s) in question. Data received in response to the questionnaires (specifically, producer, importer, purchaser, and foreign producer questionnaires) issued under the terms of the proposed generic clearance are consolidated and form much of the statistical base for the Commission's determinations in these statutorily-mandated investigations.

Included in the proposed generic clearance are the institution notices for the five-year reviews of antidumping and countervailing duty orders and suspended investigations. Responses to the institution notices will be evaluated by the Commission and form much of the record for its determination to conduct either an expedited or full review.

(2) Information Collection Plan

Using the sample "generic clearance" questionnaires as a guide, questionnaires for specific investigations are prepared and are sent to U.S. producers manufacturing the product(s) in question. Importer and purchaser questionnaires are also sent to all significant importers/purchasers of the product(s). Finally, all foreign manufacturers of the product(s) in question that are represented by counsel are sent questionnaires, and, in

addition, the Commission attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and/or other for-profit institutions; responses are mandatory.

The institution notices for the five-year reviews are published in the **Federal Register** and solicit comment from interested parties (*i.e.*, U.S. producers within the industry in question as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

(3) Description of the Information To Be Collected

Producer questionnaires generally consist of the following four parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on capacity, production, inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the production in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. (Questionnaires may, on occasion, also contain part V, an abbreviated version of the above-listed parts, used for gathering data on additional product categories.)

Importer questionnaires generally consist of three parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the producer questionnaire.

Purchaser questionnaires generally consist of five parts: (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm; (part III) market characteristics and purchasing practices; (part IV) comparisons between imported and U.S.-produced product; and (part V) actual purchase prices for specific types of domestic and subject imported products and the names of the firm's vendors.

Foreign producer questionnaires generally consist of (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and set reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

The notices of institution for the five-year reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

The Commission solicits input from petitioners and other potential recipients when preparing questionnaires for individual investigations. Further, the Commission has formalized the process where interested parties comment on data collection and draft questionnaires in final phase countervailing duty and antidumping investigations (including the 5-year reviews). Interested parties are provided approximately 2 weeks to provide comments to the Commission on the draft questionnaires. All efforts are made to minimize burden to the firms that will be receiving the questionnaires.

(4) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 143,000 burden hours on 3,500 respondents (i.e., recipients that provide a response to the Commission's questionnaires or the notices of institution of five-year reviews). Table 1 lists the projected annual burden for each type of information collection for the period August 2002–July 2005. As indicated in table 1, the caseload estimates are derived from the current Commission budget estimates. The caseload is, however, expected to vary from year to year, with the highest number of cases falling into FY 2005 (which roughly corresponds to the August 2004–July 2005 period). Table 1 also lists projected annual burden figures for August 2004–July 2005. It is these figures that are listed on the Form 83–I to ensure that the Commission response burden will remain below the approved burden total in any one year.

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, AUGUST 2002–JULY 2005

Item	Producer questionnaires [1]	Importer questionnaires [2]	Purchaser questionnaires [3]	Foreign producer questionnaires [4]	Institution notices for 5 year reviews [5]	Total
Estimated burden hours imposed annually for August 2002–July 2005						
Number of respondents	887	1,186	778	639	24	3,514
Frequency of response	1	1	1	1	1	1
Total annual responses	887	1,186	778	639	24	3,514
Hours per response	57.5	44.0	28.0	28.0	7.4	40.7
Total hours	51,002	52,184	21,784	17,892	178	143,040
Estimated burden hours imposed for August 2004–July 2005 [6]						
Number of respondents	1,278	1,708	1,264	920	46	5,216
Frequency of response	1	1	1	1	1	1
Total annual responses	1,278	1,708	1,264	920	46	5,216
Hours per response	57.5	44.0	28.0	28.0	7.4	40.3
Total hours	73,485	75,152	35,392	25,760	340	210,129

[1] Producer questionnaires.—Estimates based upon the following variables: number of respondents (anticipated caseload (x) number of producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 91 percent of the total producer questionnaire burden (52.3 hours per response), outside review burden accounts for 6 percent of the total burden, and third-party disclosure burden accounts for the remaining 3 percent. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[2] Importer questionnaires.—Estimates based upon the following variables: number of respondents (anticipated caseload (x) number of importer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 98 percent of the total importer questionnaire burden (43.1 hours per response), outside review burden and third-party disclosure burden each account for about 1 percent of the total burden. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of parties; such averages for all questionnaires are not meaningful.)

[3] *Purchaser questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (x) number of purchaser respondents per case) and hours per response (responding firm burden). See definitions below. Purchasers are not interested parties to investigations by statute and rarely engage outside counsel. Therefore, there is no measurable outside review burden nor third-party disclosure burden for purchasers.

[4] *Foreign producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (x) number of foreign producer respondents per case) and hours per response(responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 34 percent of the total foreign producer questionnaire burden (35.9 hours per response), outside review burden accounts for another 34 percent, and third-party disclosure burden accounts for 32 percent of the total burden.

[5] *Institution notices for 5-year reviews.*—Estimates based upon the following variables: anticipated five-year review caseload, number of respondents to each notice, and responding firm burden. The Commission based its estimate of the number of respondents upon the number of responses per review received to date. Responding firm burden is estimated based on a comparison of the amount of information contained in notices received to date to completed producer questionnaires.

[6] Twelve-month period during which the greatest response burden is anticipated.

Note.—Above estimates include questionnaires for specific investigations where the mailing list consists of fewer than 10 firms. In such instances the majority or all firms within the industry under investigation may be said to receive questionnaires. According to the Paperwork Reduction Act of 1995, "(a)ny collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons."

DEFINITIONS AND METHODOLOGY

Anticipated caseload.—Derived from current Commission budget estimates.

Number of respondents per case.—Defined as the number of firms which return *completed* (see note 3 to table 3) questionnaires to the Commission. Current estimates of "number of respondents per case" for the questionnaires were derived, in part, from the number of respondents to Commission questionnaires that were issued under the current generic clearance.

Responding firm burden.—Defined as the time required by the firm which received the questionnaire to review instructions, search data sources, and complete and review its response. Commission questionnaires do not impose the burden of developing, acquiring, installing and utilizing technology and systems, nor require adjusting existing methodology or training personnel. Current estimates of "responding firm burden" for the questionnaires were derived from the actual burden reported by firms that responded to Commission questionnaires issued under the current generic clearance.

Outside review burden.—Time devoted by outside legal and financial advisors to reviewing questionnaires completed by the responding firms who are their clients prior to submitting them to the Commission. Commission staff conducted a survey of fewer than 10 law firms which have appeared before the Commission to derive a "petitioner" review burden estimate per party questionnaire and a "respondent" review burden estimate. Staff also reviewed a number of past investigations (33) to determine the average number of "parties" (i.e., respondent interested parties who were represented by outside counsel) per investigation and calculated the total number of review burden hours that would be incurred annually. The "petitioner/producer" review burden was applied to the producer questionnaire burden figures and the "respondent" review burden was divided among the importer and foreign producer questionnaires.

Third-party disclosure burden.—Time required for outside legal advisors to serve their clients' questionnaires on other parties to the investigation or review under an administrative protective order. Commission staff included in its survey of law firms a request for the average third-party disclosure burden and using the same methodology described above for outside review burden applied the third-party disclosure burden to the hours per response figures for the producer, importer, and foreign producer questionnaires.

The Commission further estimates that it costs responding firms $79.94 per burden hour to complete a specific questionnaire issued under the generic clearance. (This estimate is based upon actual costs reported by respondents to questionnaires issued under the current generic clearance.) More complete information concerning costs to respondents, including costs incurred for the purchase of services, and estimates of the annualized cost to the Commission are presented in the draft Supporting Statement available from the Commission. There is no known capital and start-up cost component imposed by the proposed information collections.

(5) Information Technology

The Commission's collection of data through its questionnaires does not currently involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Completed questionnaires are almost always returned to the Commission in paper-form. While the Commission has explored the use of alternative methods of submission, it has proved most expedient to receive paper copies for a number of reasons. (The draft Supporting Statement available from the Commission addresses this issue in greater detail.) However, while there are certain impediments to the easy *receipt* of data in electronic form, the Commission will, and has in the past, accept electronic submissions when large amounts of "repetitive" data are being requested. Further, the Commission now makes the questionnaires used in specific investigations available to firms on its website in both Word Perfect and pdf formats. Likewise, it is the Commission's experience that it is most expedient that the information provided in response to its notices of institution for the five-year reviews be submitted in document form directly to its Office of the Secretary.

By order of the Commission.

Issued: February 5, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–3197 Filed 2–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–924 (Final)]

Mussels From Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On January 30, 2002, the Department of Commerce published a notice in the **Federal Register** (67 FR 4392) stating that, having received a letter from petitioner in the subject investigation (Great Eastern Mussel Farms, Inc.) withdrawing its petition, Commerce was terminating its antidumping investigation on live processed blue mussels from Canada. Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the subject investigation is terminated.

EFFECTIVE DATE: January 30, 2002.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

Issued: February 5, 2002.
By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–3196 Filed 2–8–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–438]

U.S.-Taiwan FTA: Likely Economic Impact of a Free Trade Agreement (FTA) Between the United States and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 4, 2002.

SUMMARY: Following receipt of a request on January 17, 2002, from the Senate Committee on Finance (Committee), the Commission instituted investigation No. 332–438, U.S.-Taiwan FTA: Likely Economic Impact of a Free Trade Agreement (FTA) Between the United States and Taiwan, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to assess the likely impact of a free trade agreement between the United States and Taiwan. As requested by the Committee, the Commission plans to submit its report by October 17, 2002.

As requested by the Committee, in its report the Commission will provide to the extent possible:

- A general overview of the Taiwan economy;
- An overview of the current economic relationship between the United States and Taiwan, including a discussion of the important industry sectors in each;
- An inventory and analysis of the barriers (tariff and nontariff) to trade between the United States and Taiwan;
- A dynamic, as well as a static, analysis of the economic effects of eliminating all quantifiable trade barriers (tariff and nontariff), with special attention to agricultural goods, on:
- The volume of trade in goods and services between Taiwan and the United States;
- Sectoral output and gross domestic product for Taiwan and the United States;
- Wages and employment across industry sectors for each; and
- Final prices paid by consumers in Taiwan and the United States.
- A qualitative assessment of the effects of removing nonquantifiable trade barriers.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Soamiely Andriamananjara, Project Leader (TEL: 202–205–3252; e-mail: *soamiely@usitc.gov*), Office of Economics, or Jennifer Baumert, Deputy Project Leader (TEL: 205–3450; e-mail: *jbaumert@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects, contact William Gearhart (TEL: 202–205–3091; e-mail: *wgearheart@ustic.gov*), Office of the General Counsel. The media should contact Peg O'Laughlin, Public Affairs Officer (TEL: 202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Background:

In its letter to the Commission, the Committee noted that other major trading nations are moving to conclude preferential trade arrangements that favor their own industries. The Committee also stated that the recent accession of Taiwan to the WTO will strengthen its role in the multilateral trading system, and that Taiwan has one of the most rapidly developing economies in the Asia Pacific region.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 13, 2002. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 30, 2002. Any prehearing briefs (original and 14 copies) should be filed no later than 5:15 p.m., May 7, 2002; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 23, 2002. In the event that, as of the close of business on April 30, 2002, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary of the Commission (202–205–1806) after April 30, 2002, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. The Committee has requested that the Commission prepare a public report (containing no confidential business information). Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be

submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 23, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

List of Subjects

Taiwan, International trade, Free trade agreement, Tariffs, and Non-tariff Barriers.

By order of the Commission.
Issued: February 5, 2002.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–3198 Filed 2–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review census of law enforcement training academies.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 1, 2001, volume 66, page 55205, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Census of Law Enforcement Training Academies.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–52, Bureau of Justice Statistics, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 800 respondents will complete a one hour survey form CJ–52.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the survey is 800 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Byer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW, Washington, DC 20530.

Dated: February 5, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–3219 Filed 2–8–02; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–016]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). The purpose of this collection is to measure the effectiveness of interventions and improvements in general aviation safety.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Mary Connors, Mail Stop 262–4, NASA Ames Research Center, Moffett Field, California 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: National Aviation Operations Monitoring Service.

OMB Number: 2700–0099.

Type of Review: Extension.

Need and Uses: The information developed by the National Aviation Operations Monitoring Service will be used by NASA Aviation Safety Program managers to evaluate the progress of their efforts to improve aviation over the next decade.

Affected Public: Individuals or households.

Number of Respondents: 8,000.

Responses Per Respondent: 1.

Annual Responses: 8,000.

Hours Per Request: Approximately ½ hour.

Annual Burden Hours: 5,455.

Frequency of Report: Quarterly; annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–3154 Filed 2–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[02–018]

Notice of Agency Report Forms Under OMB Review.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides information on Goddard Space Flight Center Visitor Center volunteers.

DATES: Comments on this proposal should be received on or before March 13, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Application for Volunteer Program.

OMB Number: 2700–0057.

Type of review: Extension.

Need and Uses: The application is used to collect information on persons applying to be a Goddard Space Flight Center Visitor Center Volunteer.

Affected Public: Individuals or households, Business or other-for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Number of Respondents: 40.

Responses Per Respondent: 1.

Annual Responses: 30.

Hours Per Request: Approximately ½ hour.

Annual Burden Hours: 20.

Frequency of Report: On occasion.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–3152 Filed 2–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[02–017]

Notice of Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before March 13, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Reports: None.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of Review: Extension.

Need and Uses: NASA employees and contractors can voluntarily and confidentially report to an independent agent, any safety concerns or hazards pertaining to any NASA program or project, which have not been resolved through the normal process.

Affected Public: Federal government.

Estimated Number of Respondents: 75.

Responses Per Respondent: 1.

Estimated Annual Responses: 75.

Estimated Hours Per Request: ¼ hr.

Estimated Annual Burden Hours: 19 hrs.

Frequency of Report: As needed.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–3153 Filed 2–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Colleges and Universities Providing Graduate Degrees and Specializations in Evaluation and Providers of Professional Development Offerings.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the Surveys of Colleges and Universities Providing Graduate Degrees and Specializations in Evaluation, and Providers of Evaluation Professional Development Offerings. A major problem that NSF faces is the lack of qualified evaluators to serve as

resources to NSF-funded projects. Therefore, the Evaluation Program has set as part of its mission the building of capacity in the field of evaluation. NSF's efforts will serve both to guarantee that there will be adequate numbers of trained evaluators to meet NSF's needs and to aid in creating a solid knowledge base for this relatively new professional field. Fundamental to both of these purposes is the collection of data on current capacity in the evaluation field to conduct training. This includes both formal education that leads to the granting of degrees, and informal education that fosters the acquisition of specific knowledge and skills through short courses, workshops, or Internet offerings. The approach encompasses two surveys. One is of university and college-based formal evaluation training programs leading to a major or minor course of graduate degree studies; the other is of professional training activities in evaluation that are regularly provided and may result in continuing education certificates.

Expected Respondents: The expected respondents are twofold. Those responding to the college and university degree programs will be those institutions that offer formal degree or specialization programs in the field of evaluation. Those receiving the second type of survey will be institutions, companies and organizations that provide regular, short-term, intensive training programs, such as institutes and short courses for both current and novice evaluators.

Burden On The Public: The total elements for these two collections are 32 burden hours for a maximum of 120 participants annually, assuming an 80–100% response rate. The average annual reporting burden is under 20 minutes per respondent. The burden on the public is negligible, as the survey is limited to colleges, universities and other entities that provide degrees, areas of specialization, and professional development in the field of evaluation.

Dated: February 5, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–3230 Filed 2–8–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–460]

Energy Northwest Nuclear Project No. 1

Order

Energy Northwest (formerly Washington Public Power Supply, permittee) is the current holder of Construction Permit No. CPPR–134, issued by the U.S. Nuclear Regulatory Commission (NRC) on December 23, 1975, for construction of Nuclear Project No. 1 (WNP–1). The facility is presently in a deferred construction status at the permittee's site at the U.S. Department of Energy's Hanford Reservation in Benton County, Washington, approximately eight miles north of Richland, Washington.

On April 9, 2001, the permittee submitted a request pursuant to section 50.55(b) of Title 10 of the Code of Federal Regulations (10 CFR Section 50.55(b)) that the completion date for WNP–1 be extended from June 1, 2001, to June 1, 2011. In addition, the permittee requested the NRC to update the permit to reflect an administrative change in the permit holder's name from the Washington Public Power Supply System to Energy Northwest. The permittee requested this extension for WNP–1 for the following reasons, as stated in its application:

Increased electrical load in the Pacific Northwest has underscored the need for a flexible range of power generation options and alternatives to meet the region's growing base-load power supply needs. Furthermore, in response to the energy crisis in the Western United States, some of our stakeholders have requested that we conduct a viability study on the completion of the facility. Until the viability study is completed and decisions on generating options to meet future load forecasts are finalized, maintaining WNP–1 as a deferred facility is consistent with our commitment to maintain potential generating resources.

Energy Northwest also stated that the extension request is consistent with Section A.2 of Generic Letter (GL) 87–15, "Policy Statement on Deferred Plants." The NRC's Policy Statement on Deferred Plants addresses extension of construction permits for plants in a deferred status and states that the staff will consider such extensions in accordance with 10 CFR 50.55(b). Section 50.55(b) does not specify any limit on the length of an extension the staff may grant, but states that "[u]pon good cause shown the Commission will extend the completion date for a reasonable period of time." The staff has concluded that the permitee's stated bases for the requested extension represent good cause, and are reasonable.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on January 30, 2002 (67 FR 4475).

For further details with respect to this action, see the application dated April 9, 2001, and the NRC staff's letter and safety evaluation of the request for extension of the construction permit, dated January 30, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and are accessible electronically through the ADAMS public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

It is hereby ordered that the latest completion date for Construction Permit No. CPPR–134 is extended from June 1, 2001, to June 1, 2011, and that the permit holder's name be changed from Washington Public Power Supply System to Energy Northwest.

Dated at Rockville, Maryland, this 30th day of January 2002.

For the Nuclear Regulatory Commission.

Jon R. Johnson,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3227 Filed 2–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–6, issued to Entergy Operations, Inc. (Entergy, or the licensee), for operation of Arkansas Nuclear One, Unit 2 (ANO–2) located in Pope County, Arkansas.

The proposed amendment would revise the technical specifications by

replacing the peak linear heat rate safety limit with a peak fuel centerline temperature safety limit.

The amendment request was submitted on an exigent basis because the proposed revision to the ANO–2 safety limit for conformance to 10 CFR 50.36, which is in response to an issue that was only recently identified by the NRC, needs to be approved before the NRC can act on the ANO–2 power uprate license amendment request, which the licensee has requested for the April 2002 refueling outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not require any physical change to any plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not require any change in safety analysis methods or results. The change to establish the peak fuel centerline temperature as the Safety Limit is consistent with the licensing basis of ANO–2 for ensuring that the fuel design limits are met. Operations and analysis will continue to be in-accordance-with the ANO–2 licensing basis. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with safety analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The accident analysis in Chapter 15 of the ANO–2 Safety Analysis Report (SAR) where the peak linear heat rate may exceed the limiting safety system setpoint of 21 kw/ft [kilowatts per foot] is the control element assembly withdrawal at subcritical conditions and at hot zero power. The analysis for these anticipated operational occurrences (AOOs) indicates that the peak fuel centerline temperature is not approached or exceeded. The existing safety analysis, which is unchanged, does not affect any accident initiators that would create a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not require any change in safety analysis methods or results. Therefore, by changing the Safety Limit from peak linear heat rate to peak fuel centerline temperature[,] the margin as established in the ANO–2 technical specifications and SAR are unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 31, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of February, 2000.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3224 Filed 2–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Entergy Operations, Inc., (the licensee), for operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3), located in St. Charles Parish, Louisiana.

The proposed amendment would replace the Technical Specification (TS) Safety Limit 2.1.1.2, "Peak Linear Heat Rate," (PLHR) with a Peak Fuel Centerline Temperature Safety Limit and update the Index accordingly. The associated TS Bases changes are also made to appropriately reflect the proposed new Safety Limit.

This License Amendment request was submitted on an exigent basis since this change is required to support License Amendment Requests for "Replacement of Part-Length Control Element Assemblies," dated July 9, 2001 (66 FR 41617, published August 8, 2001), and "Appendix K Margin Recovery—Power Uprate Request," dated September 21, 2001 (66 FR 55017, published October 31, 2001), which have been requested to support the March 2002 refueling outage. The need to conform with 10 CFR 50.36 was recently identified.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not require any physical change to any plant systems, structures, or components nor does it require any change in systems or plant operations. The proposed change does not result in any change to safety analysis methods or results. The change to establish the peak fuel centerline temperature as the Safety Limit is consistent with the Waterford 3 licensing basis for ensuring that the fuel design limits are met. Operations and analysis will continue to be in accordance with the Waterford 3 licensing basis. The peak fuel centerline temperature is the basis for protecting the fuel and is consistent with safety analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Waterford 3 FSAR [Final Safety Analysis Report] Chapter 15 analysis for AOOs [Anticipated Operational Occurrences] where the peak linear heat rate may exceed the existing Safety Limit of 21 kW/ft [Kilowatts/foot] is the CEA [Control Element Assembly] Withdrawal at subcritical and low power conditions. The analysis for these AOOs indicates that the peak fuel centerline temperature is not exceeded. The existing safety analysis, which is unchanged, does not affect any accident initiators that would create a new accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not result in any change to safety analysis methods or results. Therefore, by changing the Safety Limit from peak linear heat rate to peak fuel centerline temperature, the margin as established in the Waterford 3 Technical Specifications and FSAR [is] unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if

proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 31, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this fourth day of February, 2002.

For the Nuclear Regulatory Commission.

Nageswaran Kalyanam,

Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–3225 Filed 2–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NC WARN; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by the petition from Mr. Jim Warren of NC WARN, dated November 5, 2001, the Nuclear Regulatory Commission (NRC) was requested to take immediate actions to protect the public against the possibility of terrorists attacking a rail shipment of spent nuclear fuel being transported by Carolina Power and Light/Progress Energy. NRC has determined that no immediate action is required at this time.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by section 2.206, appropriate action will be taken on this petition within a reasonable time.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 31st day of January, 2002.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–3226 Filed 2–8–02; 8:45 am]

BILLING CODE 7590–01–P

U.S. COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its third regional meeting, the Commission's fifth public meeting, to hear and discuss coastal and ocean issues of concern to the Gulf of Mexico region, covering the coastal area from Alabama to Texas.

DATES: Public meetings will be held Thursday, March 7, 2002 from 8:30 a.m. to 5:30 p.m. and Friday, March 8, 2002 from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting location is the First Floor Auditorium, Port of New Orleans Headquarters Building, 1350 Port of New Orleans Place, New Orleans, LA 70160.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by February 27, 2002 to the meeting Point of Contact. Additional meeting information, including a draft agenda, will be posted as available on the Commission's web site at *http://www.oceancommission.gov*.

Dated: February 5, 2002.

James D. Watkins,

Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 02–3159 Filed 2–8–02; 8:45 am]

BILLING CODE 6820–WM–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement

Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Availability for Work: OMB 3220–0164

Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, "available for work" is defined as being willing and ready for work. This section further provides that a person is "willing" to work if that person is willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. The section also provides that a claimant is "ready" for work if he or she: (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work. In order to determine whether a claimant is: (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38 and UI–38s to obtain information from the claimant and Form ID–8k from his union representative. One response is completed by each respondent. The RRB proposes non-burden impacting editorial changes to Forms UI–38s and ID–8k. No changes are proposed to Form UI–38.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows:]

Form No.	Annual responses	Time (min)	Burden (hrs)
UI–38s:			
In person	250	6	25
By mail	500	10	83
UI–38	3,750	11.5	719
ID–8k	3,100	5	258
Total	7,600	.....	1,085

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–3178 Filed 2–8–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

RUIA Claims Notification and Verification System: OMB 3220–0171

Section 5(b) of the Railroad Unemployment Insurance Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100–647), requires that "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim." The purpose of the claims notification system is to provide to each unemployment and sickness claimant's base year employer or current employer, notice of each application and claim for benefits under the RUIA and to provide an opportunity for employers to convey information relevant to the proper adjudication of the claim. Railroad employers receive notice of applications and claims by one of two options. The first option, Form Letter ID–4K, is a computer generated form letter notice of all unemployment applications, unemployment claims and sickness claims received from employees of a railroad company on a particular day. Form Letters ID–4K are mailed on a daily basis to officials designated by railroad employers. The second option is an Electronic Data Interchange (EDI) version of the Form Letter ID–4K notice. EDI notices of applications are transmitted to participating railroads on a daily basis, generally on the same day that applications are received. Railroad

employees can respond to RRB notices of applications and claims manually by mailing a completed ID–4K back to the RRB or electronically via EDI. No changes are being proposed to Form Letter ID–4K.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

RRB messages	Annual responses	Time (min)	Burden (hrs)
ID–4K (EDI version)	16,100	[1]	377
ID–4K (manual)	2,500	2	83
Total	18,600	.....	460

[1] The burden for the 9 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 377 total hours of burden.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–3179 Filed 2–8–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI–1c, SI–5, ID–3s, ID–3s–1, ID3u, ID–30k, ID–30k–1.

(3) *OMB Number:* 3220–0036.

(4) *Expiration date of current OMB clearance:* 4/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 28,500.

(8) *Total annual responses:* 28,500.

(9) *Total annual reporting hours:* 1,691.

(10) *Collection description:* The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information about the person or company responsible for such payments that is needed to determine the amount of the RRB's entitlement.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–3175 Filed 2–8–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Service and Compensation Reports.

(2) *Form(s) submitted:* BA–3a, BA–4.

(3) *OMB Number:* 3220–0008.

(4) *Expiration date of current OMB clearance:* 3/31/2002.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 579.

(8) *Total annual responses:* 1,028.

(9) *Total annual reporting hours:* 37,980.

(10) *Collection description:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payments of benefits.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–3176 Filed 2–8–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Sick Pay and Miscellaneous Payments Report.

(2) *Form(s) submitted:* BA–10.

(3) *OMB Number:* 3220–0175.

(4) *Expiration date of current OMB clearance:* 3/31/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 239.

(8) *Total annual responses:* 239.

(9) *Total annual reporting hours:* 219.

(10) *Collection description:* The Railroad Retirement Solvency Act of 1983 added section 1(h)(8) to the Railroad Retirement Act expanding the definition of compensation for purposes of computing the Tier 1 portion of an annuity to include sickness payments and certain payments other than sick pay which are considered compensation within the meaning of section 1(h)(8). The collection obtains the sick pay and other types of payments considered compensation within the meaning of Section 1(h)(8).

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting

documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer,

[FR Doc. 02–3177 Filed 2–8–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25409; 812–12296]

Nuveen Exchange-Traded Index Trust, et al.; Notice of Application

February 5, 2002.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) an open-end management investment company, whose portfolios will consist of the component securities of certain domestic or foreign equity securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC ("AMEX") or other national securities exchange; (c) affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and (d) under certain circumstances, certain portfolios that consist of the component securities of foreign equity securities indices to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption.

APPLICANTS: Nuveen Exchange-Traded Index Trust ("Trust"), Nuveen Advisory Corp. ("Advisor"), and Nuveen Investments ("Distributor").

FILING DATES: The application was filed on October 16, 2000, and amended on April 24, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 1, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, at 202–942–0553, or Mary Kay Frech, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust with multiple series ("Index Funds," which term includes Future Index Funds, as defined below). The Advisor, a wholly owned subsidiary of the Distributor, is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser for the initial Index Funds (the "Initial Index Funds"). The Advisor may in the future enter into subadvisory agreements with one or more subadvisors ("Sub-Advisors") with respect to particular Index Funds. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), will serve as the principal underwriter for each Index Fund and will distribute Creation Units (defined below) of Index Fund shares ("Shares") on an agency basis.

2. Each Index Fund will invest in a portfolio of equity securities ("Portfolio Securities") generally consisting of the component securities of a specified domestic or foreign equity securities index (each, an "Underlying Index" and together, the "Underlying Indices").[1] There are three Initial Index Funds, one based on a domestic equity securities index (the "Initial Domestic Fund")[2] and two based on foreign equity securities indices (the "Initial Foreign Funds").[3] In the future, the applicants may offer additional Index Funds based on other domestic or foreign equity securities indices ("Future Domestic Funds" and "Future Foreign Funds," respectively, and collectively "Future Index Funds"). Any Future Index Fund will (a) be advised by the Advisor or an entity controlled by or under common control with the Advisor and (b) comply with the terms and conditions of the order. Future Domestic Funds together with the Initial Domestic Fund are referred to as "Domestic Index Funds," and Future Foreign Funds together with the Initial Foreign Funds are referred to as "Foreign Index Funds." No entity that creates, compiles, sponsors or maintains an Underlying Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Advisor, any Sub-Advisor, the Distributor, or a promoter of an Index Fund.

3. The investment objective of each Index Fund will be to provide investment results that generally correspond, before fees and expenses, to the price and yield performance of the relevant Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day. Each Index Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy. An Index Fund using a replication strategy generally will hold most of the component securities of the Underlying Index in the same approximate proportions as the Underlying Index, but may not hold all of the securities that comprise the Underlying Index in

[1] At least 90% of each Index Fund's assets will be invested in the component securities of its Underlying Index. An Index Fund may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as certain securities not included in the Underlying Index but which the Advisor believes will help the Index Fund track the Underlying Index.

[2] America's Fast Growing Companies™ Index (the "AFGC Index") is the Underlying Index for the Initial Domestic Fund.

[3] The Salomon Smith Barney ("SSB") Panda Index and the SSB Nippon Index are the Underlying Indices for the Initial Foreign Funds.

certain instances. This may be the case when, for example, a potential component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index. An Index Fund using a representative sampling strategy seeks to hold a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.[4] Applicants anticipate that an Index Fund that utilizes a representative sampling strategy will not track the price and yield performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Index Fund will have a tracking error relative to the performance of its respective Underlying Index of less than 5 percent.

4. Shares of the Initial Index Funds will be sold in aggregations of 50,000 Shares, and Shares of Future Index Funds will be sold in aggregations of either 25,000 or 50,000 Shares (such aggregations, "Creation Units"), as specified in the relevant prospectus. The price of a Creation Unit will range from $1,000,000 to $12,500,000. Creation Units may be purchased only by or through a party that has entered into an agreement with the Distributor regarding creations and redemptions of Creation Units (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (transactions effected through such a broker-dealer are referred to as effected through the "Fund Shares Clearing Process"), or (b) a participant in the Depository Trust Company ("DTC") system. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. An Index Fund also may sell Creation Units on a cash-only basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit from an Index Fund will have to transfer to the Index Fund a "Portfolio Deposit" consisting of: (a) A portfolio of securities that has been selected by the Advisor or Sub-Advisor to correspond to the price and yield performance of the relevant Underlying Index ("Deposit Securities"), and (b) a cash payment to equalize any difference between the total aggregate market value per Creation Unit of the Deposit Securities and the net asset value ("NAV") per Creation Unit of the Index Fund (the "Balancing Amount").[5] An investor purchasing a Creation Unit from an Index Fund will be charged a fee ("Transaction Fee") to defray transactions expenses and prevent dilution of the interests of the remaining shareholders resulting from the Index Fund incurring costs in connection with the purchase of the Creation Unit(s).[6] Each Index Fund will disclose in its prospectus the maximum Transaction Fee charged by the Index Fund. Each Index Fund will also disclose the method of calculating the Transaction Fee in its prospectus or statement of additional information ("SAI").

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting orders to each Index Fund. The Distributor will issue, and maintain records of, confirmations of acceptance to purchasers of Creation Units and delivery instructions to the Trust (to implement the delivery of Creation Units). The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from an Index Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Initial Index Funds will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. Future Index Funds will be listed on the AMEX or other U.S. national securities exchange, as defined in section 2(a)(26) of the Act (each, including AMEX, an "Exchange"). One or more member firms of the Exchange ("Specialists") will maintain a market on the Exchange for the Shares trading there. The price of Shares traded on an Exchange will be based on a current bid/offer market. Each Share is expected to have a market value of between $40 and $250. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). In providing for a fair and orderly secondary market for Shares on the Exchange, the Specialist also may purchase Creation Units. Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Units to take advantage of discrepancies between the Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity, which is a function of Creation Units being purchased and redeemed primarily in kind, will provide a pricing "discipline" that will result in a close correspondence between the price at which the Shares trade and their NAV. In other words, applicants do not expect the Shares to trade at a significant premium or discount to their NAV. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[7]

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Index Fund. To redeem, investors will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (a) the Portfolio Securities designated to be delivered for Creation Unit redemptions on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amount of the Cash Redemption Payment may differ from the Balancing Amount if the Redemption Securities are not identical

[4] The stocks selected for inclusion in an Index Fund by the Advisor will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the relevant Underlying Index taken in its entirety.

[5] On each business day, prior to the opening of trading on the AMEX, the Advisor or Sub-Advisor will make available a list of the names and the required number of shares of each Deposit Security required for the Portfolio Deposit for each Index Fund. That Portfolio Deposit will apply to all purchases of Creation Units until a new Portfolio Deposit for an Index Fund is announced. Each Index Fund reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in the quantity replaced for a Portfolio Deposit, ineligible for transfer through the Fund Shares Clearing Process, ineligible for trading by an Authorized Participant or by the investor on whose behalf the Authorized Participant is acting, or in the case of certain Foreign Index Funds, not able to be delivered in-kind. The AMEX or other Exchange (defined below) will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing the sum of the Balancing Amount and the current value of the Deposit Securities on a per Share basis.

[6] When an Index Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

[7] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial ownership of Shares.

to the Deposit Securities on a given day. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as when the investor is constrained from effecting transactions in the Redemption Security by regulation or policy or when, as may be the case with certain Foreign Index Funds, it is not possible to effect transactions in kind in an applicable jurisdiction.[8]

9. A redeeming investor will pay a Transaction Fee to offset transaction costs, whether the redemption proceeds are in kind or cash. When an investor redeems for cash rather than in kind, the investor may pay a higher Transaction Fee. Such Transaction Fee will be calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.

10. Because each Index Fund will principally redeem Creation Units in kind, an Index Fund will not have to maintain significant cash reserves for redemptions. This will allow the assets of each Index Fund to be committed as fully as possible to tracking its Underlying Index. Accordingly, applicants state that each Index Fund will be able to track its Underlying Index more closely than certain other investment products that must allocate a greater portion of their assets to cash redemptions.

11. Applicants state that neither the Trust nor any Index Fund will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Rather, the designation of the Trust and the Index Funds in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund" and "trust" without reference to an "open-end fund" or "mutual fund," except to contrast the Trust and the Index Funds with a conventional open-end management investment company. Any marketing materials that describe the purchase or sale of Creation Units, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may tender Shares for redemption to the Index Fund in Creation Units only. The same type of disclosure will be provided in each Index Fund's prospectus, SAI and all reports to shareholders.[9] The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act. Applicants request relief for the Initial Index Funds as well as Future Index Funds. Any Future Index Fund relying on any order granted pursuant to this application will comply with the terms and conditions stated in the application.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Creation Units from each Index Fund and redeem Creation Units through each Index Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately NAV.

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from non-contract dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involve Index Fund assets, and (b) to the extent different prices exist

[8] Applicants note that certain holders of Shares of a Foreign Index Fund may be subject to unfavorable tax treatment if they are entitled to receive in-kind redemption proceeds. The Trust may adopt a policy with respect to such Foreign Index Funds that such holders of Shares may redeem Creation Units solely for cash.

[9] Applicants state that persons purchasing Creation Units will be cautioned in an Index Fund's prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the purchase of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. An Index Fund's prospectus or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. An Index Fund's prospectus or SAI also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

during a given trading day, or from day to day, such variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

6. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Redemption Securities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for the Foreign Index Funds in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that such Foreign Index Funds may pay redemption proceeds up to 12 calendar days after the tender of Shares for redemption.[10] At all other times and except as disclosed in the prospectus or SAI for a Foreign Index Fund, applicants expect that the Foreign Index Funds will be able to deliver redemption proceeds within seven days.[11] With respect to Future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described herein exist.

7. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Index Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Index Funds. Applicants believe that the Trust will be able to comply with the delivery requirements of section 22(e), except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

8. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems section 22(e) was designed to prevent. Applicants state that the local holidays relevant to each Foreign Index Fund, as in effect in a given year, will be listed in the relevant Foreign Index Fund's prospectus or SAI or both. Applicants further state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and state the maximum number of days needed to deliver the proceeds for each Foreign Index Fund.

9. Section 17(a) of the Act makes it unlawful, except under certain circumstances, for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that because the definition of "affiliated person" includes any person owning 5% or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Index Fund so long as fewer than twenty Creation Units are in existence, and any purchaser that owns 25% or more of an Index Funds' outstanding Shares will be affiliated with the Index Fund. Applicants assert that, from time to time, one or more holders of Shares, including the Specialist, may accumulate more than 5% or more than 25% of an Index Fund's outstanding Shares. Applicants state that section 17(a) may prohibit such affiliated persons of an Index Fund (and affiliated persons of affiliated persons that are not otherwise affiliated with the Trust or the Index Fund) from purchasing or redeeming Creation Units in kind. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit these affiliated persons of the Index Fund (and affiliated persons of these affiliated persons that are not otherwise affiliated with the Trust or the Index Fund) to effect such transactions in Creation Units.

10. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Units. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons, and the affiliated persons of the affiliated persons, described above, of an Index Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Index Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register the Shares of a Future Index Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Index Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Index Fund will be listed on a national securities exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each Index Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Index Funds and that the acquisition of Shares by investment companies is subject to

[10] Specifically, applicants request that the (i) Nuveen Panda Index Fund be permitted to make redemption payments up to 11 calendar days after the tender of a Creation Unit for redemption, and (ii) Nuveen Japan Index Fund be permitted to make redemption payments up to 12 calendar days after the tender of a Creation Unit for redemption.

[11] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. *See In the Matter of WEBS Index Series, Inc., et al.*, Investment Company Act Release No. 23860, 1999 WL 3621843 (June 7, 1999). Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a national securities exchange.

4. Neither the Trust nor any Index Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Index Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Index Fund and tender those Shares for redemption to the Index Fund in Creation Units only.

5. The website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Index Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

6. The prospectus and annual report for each Index Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the Index Fund's prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Index Fund), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Underlying Index.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45384; File No. SR–OPRA–2001–03]

Options Price Reporting Authority; Order Approving Amendment to OPRA Plan to Exclude Foreign Currency Options from the Calculation of Capacity Allocation Provided for in the OPRA Plan

February 1, 2002.

I. Introduction

On December 10, 2001, Options Price Reporting Authority ("OPRA"),[1] filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[2] an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The amendment would exclude foreign currency options ("FCOs") from the calculation of capacity allocation provided for in the OPRA Plan.

The proposed amendment was published for comment in the **Federal Register** on January 4, 2002.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed amendment.

II. Description of the Proposal

OPRA proposes to revise certain provisions of Section III, "Definitions" and Section V(d), "Quarterly Calculation of Capacity Allocation" in order to exclude FCOs from the calculation of system capacity allocation that is provided for in the OPRA Plan and make available exclusively for the processing and dissemination of FCO market data a fixed amount of system capacity as determined by OPRA from time to time. The proposed amendment provides that the capacity available for FCO market data will be capable of handling at least 350 messages per second ("mps"), the amount currently assigned by OPRA to FCO market data. OPRA represents that such capacity is sufficient to meet the anticipated needs of the FCO market. OPRA represents that the proposed amendment would make no substantive change to the provisions of the OPRA Plan.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed OPRA Plan amendment is consistent with section 11A of the Act[5] and Rule 11Aa3–2[6] thereunder in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that the capacity available for FCO market data should be capable of handling at least 350 mps, which is the amount currently assigned by OPRA to FCO market data. OPRA has represented that such capacity is sufficient to meet the anticipated needs of the FCO market. The Commission also notes that OPRA has been advised by its Processor that exclusive of capacity set aside for the FCO market, the remaining capacity of the OPRA System is capable of handling at least 24,000 mps to process and disseminate market data for stock and index options. OPRA represents that this amount of system capacity is more than enough to fulfill OPRA's needs until the next planned increase in total capacity. Based on OPRA's representations, the Commission believes that it is reasonable for OPRA to exclude FCOs from the calculation of system capacity allocation and to separately determine a fixed amount of capacity for FCO market data. Accordingly, the Commission finds that the proposal is consistent with the Act.[7]

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 under the Act,[8] that the

[1] OPRA is a national market system plan approved by the Commission pursuant to section 11A of the Exchange Act, 15 U.S.C. 78k–1, and Rule 11Aa3–2 thereunder, 17 CFR 240.11Aa3–2. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 SEC Docket 484 (March 31, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five signatories to the OPRA Plan that currently operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc., is a signatory to the OPRA Plan, but sold its options business to the Chicago Board Options Exchange, Inc. in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[2] 17 CFR 240.11Aa3–2.

[3] Securities Exchange Act Release No. 45207 (December 28, 2001), 67 FR 619.

[4] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 240.11A3–2.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 240.11Aa3–2.

proposed amendment (SR–OPRA–2001–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3236 Filed 2–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45389; File No. SR–CBOE–00–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to SPX Combination Orders

February 4, 2002.

I. Introduction

On August 17, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder.[2] The CBOE amended its proposal on August 16, 2001,[3] September 27, 2001,[4] November 14, 2001,[5] and January 11, 2002.[6] As discussed more fully below, the proposal, as amended, will allow a member holding an "SPX Combo Order"[7] to execute and print the SPX Combo Order at the prices originally quoted within two hours after the time of the original quotes, provided that the prices originally quoted satisfy the requirements of CBOE Rule 24.20(b)(1).[8]

The proposed rule change was published for comment in the **Federal Register** on October 24, 2000.[9] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment Nos. 1, 2, 3, and 4 to the proposal.

II. Description of the Proposal

A. Revised Text of CBOE Rule 24.20

In Amendment Nos. 1, 2, 3, and 4, the CBOE proposes the following amendments to the text of proposed CBOE Rule 24.20, as published in the October Release. Additions are italicized and deletions are in [brackets].

SPX Combination Orders

Rule 24.20 (a) For purposes of this rule, the following terms shall have the following meanings:

(1) An "SPX combination" is [an order combining] a long SPX call and a short SPX put [of the same series, or an order combining a short SPX call and a long SPX put of the same series] *having the same expiration date and strike price.*

(2) A "delta" is the *positive (negative)* number of SPX combinations *that must be sold (bought)* [required] to establish a [delta] market neutral hedge with an SPX option position[, based on the value of the underlying S&P 500 futures contract].

(3) An "SPX Combo Order" is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

(b) [Notwithstanding any other rules of the Exchange, orders for SPX options executed in conjunction with SPX combination orders] *An SPX Combo Order* may be transacted in the following manner:

([i]*1*) *When* [A]a member holding an [order(s) to purchase or sell SPX options must indicate the delta of the option and] *SPX Combo Order* [must] *and* bid*ding* or offer*ing* [for each option and each of the legs of a combination order(s)] *in a multiple of the minimum increment* on the basis of [the] *a* total debit or credit *for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed on the SPX limit order book or by the displayed quotes of the crowd, then the order may be executed at the best net debit or credit so long as* [At the time they are originally quoted, the prices quoted for the options and each leg of the combination order(s) must be such that none] *(A) no leg of the order* would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX [customer] limit order book *and (B) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.*

([ii]*2*) [The option order(s) and each leg of the combination order(s) may be executed immediately or at any time during the trading day. If the orders are not executed immediately, the option order(s) and each leg of the combination order(s) may be printed at their originally quoted prices in order to achieve the total debit or credit agreed to for the entire transaction.] *Notwithstanding any other rules of the Exchange, if an SPX Combo Order is not executed immediately, the SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within 2*

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[9] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division of Market Regulation ("Division"), Commission, dated August 14, 2001 ("Amendment No. 1"). Amendment No. 1 revises the text of CBOE Rule 24.20, "SPX Combination Orders," to define the term "SPX Combo Order" and to indicate that, as long as the conditions in CBOE Rule 24.20 are satisfied, an SPX Combo Order may be executed and printed at the prices originally quoted for each of the component option series within two hours after the time of original quotes, rather than at any time during the trading day, as the proposal had originally provided. Amendment No. 1 also provides additional information concerning the need for the proposed rule.

[4] See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated September 26, 2001 ("Amendment No. 2"). Amendment No. 2 revises the text of CBOE Rule 24.20 to make the numbering of paragraph 24.20(b) consistent with the numbering of paragraph 24.20(a) and to indicate that SPX Combo Orders may be executed and printed at the originally quoted prices, rather than printed and executed at the originally quoted prices.

[5] See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated November 13, 2001 ("Amendment No. 3"). Amendment No. 3 revises CBOE Rule 24.20(b)(1) to provide that when a member holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total net debit or credit has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes in the crowd, the order may be executed at the best net debit or credit so long as: (1) no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids of offers in the SPX limit order book; and (2) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.

[6] See letter from Jaime Galvan, Attorney, Legal Division, CBOE, to Yvonne Fraticelli, Division, Commission, dated January 10, 2002 ("Amendment No. 4"). Amendment No. 4 revises the text of proposed CBOE Rule 24.20(a) to: (1) define an "SPX combination" as a long SPX call and a short SPX put having the same expiration date and strike price; (2) define "delta" as the positive (negative) number of SPX conbinations that must be sold (bought) to establish a market neutral hedge with an SPX option position; and (3) indicate that an "SPX Combo Order" is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

[7] The proposal defines an "SPX Combo Order" as an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta. *See* Amendment No. 4, *supra* note 6.

[8] Telephone conversation between Jaime Galvan, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 28, 2001.

[9] See Securities Exchange Act Release No. 43452 (October 17, 2000), 65 FR 63658 ("October Release").

hours after the time of the original quotes.

B. Amendment No. 1

In Amendment No. 1 the CBOE revises the text of CBOE Rule 24.20 to, among other things, add a definition of "SPX Combo Order" and to provide that an SPX Combo Order that is not executed immediately may be executed at the prices originally quoted for each of the component option series within two hours after the time of the original quotes. In addition, Amendment No. 1 provides information concerning the need for the proposed rule. In this regard, Amendment No. 1 states that when SPX traders and customers trade SPX options, they hedge their underlying risk with either S&P 500 Index futures contracts traded at the Chicago Mercantile Exchange ("CME") or with SPX call and put options traded as combinations.[10] An options position can be hedged by trading the number of combos equivalent to the delta [11] of the particular option multiplied by the number of options in the transaction.[12]

The CBOE notes that an SPX trader or customer hedging an SPX options position with S&P 500 Index futures must execute two separate trades in two separate markets, first trading SPX options at the CBOE, then submitting an order to the CME to trade the appropriate number of S&P 500 Index futures to hedge the SPX options trade. According to the CBOE, traders and customers prefer not to hedge SPX options by using S&P 500 Index futures because of the execution risk involved in trading in two separate markets. Specifically, the trader or customer is exposed to the risk of the S&P 500 Index moving significantly before the hedging futures transaction can be executed.[13]

The CBOE states that SPX traders and customers prefer to hedge an SPX options position with SPX combinations because all of the required transactions can be effected as a package in one market, the CBOE. Hedging SPX options with SPX combinations avoids the execution risk and the increased costs involved in trading in the futures market. In addition, the CBOE notes that SPX traders and customers prefer to use SPX combinations because an options order can be "tied" to a particular level of the S&P 500 Index to establish the hedge price.[14] The CBOE states that when SPX options are tied to SPX combinations, the underlying hedge level of the S&P 500 Index is established and traders and customers can determine the exact implied volatilities of their options trades.[15] According to the CBOE, hedging SPX options with SPX combinations acts as an incentive to market makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, the CBOE maintains that customers who trade SPX options tied to SPX combinations enjoy tighter and more liquid markets.

According to the CBOE, certain market activity occurs occasionally that makes it difficult to effect these types of trades. The CBOE notes that an order may not trade immediately if, for example, the customer submitting the order wants to show the order to other market participants to improve the initial quote received or a member firm needs time to locate a customer that it believes might like to participate in the trade. In a volatile market, the S&P 500 Index can move substantially in one direction so that the originally quoted prices for the SPX options and the SPX combinations are no longer within the current market quotes. In such market conditions, the parties are unable to consummate the trade because CBOE rules preclude trading the legs of a combination outside of the currently displayed market quotes ("out-of-range").

The purpose of CBOE Rule 24.20 is to permit the trading of out-of-range SPX Combo Orders under certain conditions. If the SPX Combo Order is not traded immediately, CBOE Rule 24.20(b)(2) would permit the SPX Combo Order to be executed and printed outside of the current market quotes at the originally quoted prices within two hours after the time of the original quotes, provided that the originally quoted prices for the SPX Combo Order comply with the requirements of CBOE Rule 24.20(b)(1).

The CBOE believes that the two-hour time window is necessary to provide SPX traders and customers with sufficient relief from the requirement to trade at or within the current market quotes when they attempt to trade SPX Combo Orders in a volatile market. The CBOE states that when SPX Combo Orders do not trade immediately, market conditions later may change so that the parties become willing to consummate the trade as originally designed.[16]

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[10] CBOE Rule 6.53(e) defines a combination order as an order involving a number of call option contracts and the same number of put option contracts in the same underlying security. A combination ("combination" or "combo") is a long combo when it combines a long call and a short put of the same series, and it is a short combo when it combines a short call and a long put of the same series.

[11] The delta is the number of SPX combinations required to establish a market neutral hedge with an SPX option contract based on the value of the underlying S&P 500 Index futures contract. *See* CBOE Rule 24.20(a)(2).

[12] For example, a customer that purchases 100 SPX calls that have a delta of "30" (expressed as 30% or .30) may hedge against a downward movement in the S&P 500 Index by either selling S&P 500 Index futures on the CME or by trading short combos. If combos are used to hedge, the customer will need to trade 30 short combos (.30 x 100). The appropriate ratio of combos in this example is to sell 30 SPX calls and buy 30 SPX puts with the same strike price and expiration date. If futures are used to hedge, the customer will need to sell 12 S&P 500 Index futures on the CME ((.30 x 100)/2.5 = 12), where 2.5 is the multiplier used to convert SPX options positions to the equivalent S&P 500 Index futures position (one S&P 500 Index future equals 2.5 SPX combos).

[13] Using the example in footnote 11, suppose the customer completes the purchase of the 100 SPX calls but the S&P 500 Index declines sharply before the customer can trade the futures. As a result of the market declines, the customer must sell the futures at a much lower price to complete the hedge.

[14] Again using the example in footnote 11, the customer will request a market from a market maker for the calls that the customer wishes to purchase based on a specified underlying level of the S&P 500 Index. The customer specifies an underlying level of the S&P 500 Index to allow the market maker to determine the delta (in this case 30) and a theoretical value for the calls. The market maker will then give his or her market for the 30 delta calls and for the component call and put options that will make up the combos. The combos portion of the order is equivalent to an order to trade futures at the underlying value of the S&P 500 Index that has been specified by the parties. The prices quoted for the call and put option components of the combos establish the hedge price for the transaction. When the foregoing occurs, SPX traders and customers say that the calls have been "tied" to combos.

[15] Implied volatility is the volatility percentage that justifies an option's price. When the customer and the market maker establish the underlying hedge level of the S&P 500 Index and a market price for the calls, the market maker and the customer are able to use option pricing models to determine the implied volatility of the calls. The CBOE states that knowing the implied volatility that is being quoted in the market is useful to customers and traders because customers and traders frequently take positions in the market based on the implied volatility level.

[16] According to the CBOE, an example of such market action in the S&P 500 Index occurred on March 22, 2001. The S&P 500 Index traded as low as 1081.19 as late as 1:50 p.m. From that point, the market rallied about 40 points to a high of 1121.43 through the end of the trading day and never went below 1088.73 after 2 p.m. or below 1101.11 after 2:40 p.m. Had a customer entered an order options tied to combos at an S&P 500 Index equivalent of 1082 at 1:45 p.m., the order could not have been filled during the ensuing rally because the original quoted prices of the options would trade out-of-range of the current market quotes. The customer might have been unable or unwilling to change his or her prices. Additionally, the order flow that accompanies a 40-point rally in the S&P 500 Index will often enable the market maker to provide the liquidity necessary to fill the customer's order. The proposed rule would enable the parties in this scenario to trade the order for options tied to combos as the 1082 S&P 500 Index level at any time before the end of the trading day (because the order came in with 1½ hours left in the trading day, and assuming a two-hour time window), notwithstanding the fact that the market rally had taken the originally quoted prices out-of-range.

Although the CBOE believes that CBOE Rule 24.20 will result in an increase in the number of SPX Combo Orders, the CBOE does not believe that the number of trades reported out-of-range will be significant. The CBOE believes that CBOE Rule 24.20 will not be used very often because the relief provided by the rule normally would be required only during times of market volatility. On trading days during which the S&P 500 Index moves very little, it is unlikely that members would need to invoke CBOE Rule 24.20. The CBOE believes that SPX traders will use CBOE Rule 24.20 to accommodate large orders of primarily institutional customers.

The CBOE notes that orders for the component series of an SPX Combo Order will be price reported to the trading floor and to the Options Price Reporting Authority ("OPRA") using an indicator. When orders are traded out-of-range pursuant to CBOE Rule 24.20, the indicator attached to the reported prices will be notice to the public that the reported prices were part of an out-of-range combo trade. Therefore, the CBOE believes that price discovery should not be adversely affected by the operation of CBOE Rule 24.20.

The CBOE believes that proposed CBOE Rule 24.20 will enable the CBOE to better compete with futures exchanges such as the CME, which has a rule that permits options spreads and combinations to trade at prices outside the current market quotes.[17] The CBOE states that it will issue a regulatory circular to its membership to explain the operation of CBOE Rule 24.20. In the regulatory circular, the CBOE will remind its membership that the adoption of CBOE Rule 24.20 does not lessen the obligation of members to obtain best execution of options orders for their customers.

C. Amendment No. 2

Amendment No. 2 revises the text of CBOE Rule 24.20 to provide consistent numbering in paragraphs (a) and (b) and to indicate that SPX Combo Orders may be executed and printed at the originally quoted prices, rather than printed and executed at the originally quoted prices.

D. Amendment No. 3

In Amendment No. 3, the CBOE clarifies that CBOE Rule 24.20 is an exception to paragraph (e) of CBOE Rule 6.45, "Priority of Bids and Offers," CBOE Rule 6.46, "Transactions Outside Book's Last Quoted Range," and any other applicable CBOE rules when an SPX Combo Order is transacted out-of-range pursuant to CBOE Rule 24.20. In addition, Amendment No. 3 revises CBOE Rule 24.20(b)(1) to state the priority requirement for SPX Combo Orders in the same manner as CBOE Rule 6.45(e).[18] Specifically, CBOE Rule 24.20(b)(1) provides that when a member holding an SPX Combo Order and bidding or offering in a multiple of the minimum increment on the basis of a total net debit or credit has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the SPX limit order book or by the displayed quotes in the crowd, the order may be executed at the best net debit or credit so long as: (1) No leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX limit order book; and (2) at least one leg of the SPX combination would trade at a price that is better than the corresponding bid or offer in the SPX limit order book.

In Amendment No. 3, the CBOE maintains that SPX Combo Orders should be given priority over orders in the SPX limit order book for several reasons. First, the CBOE notes that SPX traders will continue to be required under CBOE Rule 24.20(b)(1) to check the limit order book when an order is first entered and before trading the order. Second, the CBOE states that CBOE Rule 24.20 would likely be used only during times of market volatility to provide liquidity to large orders of primarily institutional customers. The CBOE believes that the benefit of accommodating these large customer orders outweighs any disadvantage to customer orders that could be placed into the limit order book after an SPX Combo Order has been represented and quoted. Third, the CBOE notes that each component leg of an SPX Combo Order will be price reported to the trading floor and OPRA using an indicator that will act as notice to the public that the reported prices are part of an SPX Combo Order.

E. Amendment No. 4

Amendment No. 4 revises the text of proposed CBOE Rule 24.20(a) to: (1) Define an "SPX combination" as a long SPX call and a short SPX put having the same expiration date and strike price; (2) define "delta" as the positive (negative) number of SPX combinations that must be sold (bought) to establish a market neutral hedge with an SPX option position; and (3) indicate that an "SPX Combo Order" is an order to purchase or sell SPX options and the offsetting number of SPX combinations defined by the delta.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5)[19] in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.[20] Specifically, the Commission believes that the proposal will contribute to the maintenance of a fair and orderly market by helping market participants to execute SPX Combo Orders during times of market volatility. According to the CBOE, market participants prefer to use SPX combinations, rather than S&P 500 Index futures, to hedge positions in SPX options to avoid the increased cost and execution risk associated with trading in the futures market.[21] However, the CBOE maintains that in a volatile market the originally quoted prices for an SPX Combo Order may be out-of-range by the time the parties to a trade are prepared to complete the transaction.[22] CBOE Rule 24.20(b)(2) is designed to address this issue by permitting members to execute out-of-range SPX Combo Orders at the originally quoted prices within two hours after the time of the original quotes.

The Commission believes that CBOE Rule 24.20(b)(2) should facilitate transactions in SPX Combo Orders while limiting the out-of-range transactions that may occur. In this regard, the Commission notes that CBOE

[17] *See* CME Rule 542.

[18] CBOE Rule 6.45(e) provides a limited exception from the normal time and price priority rules for spread, straddle, and combination orders. Specifically, CBOE Rule 6.45(e) states that when a member holding a spread, straddle, or combination order and bidding or offering in a multiple of the minimum increment on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions with the bids and offers displayed in the customer limit order book or announced by members in the trading crowd, then the order may be executed as a spread, straddle, or combination at the total debit or credit with one other member without giving priority to bids or offers of members in the trading crowd that are not better than the bids or offers comprising such total debit or credit and bids and offers in the customer limit order book provided at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the book.

[19] 15 U.S.C. 78f(b)(5).

[20] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* Amendment No. 1, *supra* note 3.

[22] *See* Amendment No. 1, *supra* note 3.

Rule 24.20(b)(2) provides a member with a limited amount of time, two hours from the time of the originally quoted prices, within which to execute the SPX Combo Order. In addition, the prices originally quoted for the SPX Combo Order must satisfy the requirements of CBOE Rule 24.20(b)(1), which provides, among other things, that the order must be quoted so that no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the SPX limit order book.[23] The Commission believes that CBOE Rule 24.20(b)(2) will provide market participants with flexibility to execute SPX Combo Orders and may help market participants to hedge positions in SPX options during times of market volatility.

The Commission finds that CBOE Rule 24.20(b)(1) clarifies the procedures that a member holding an SPX Combo Order must follow. The procedures specified in CBOE Rule 24.20(b)(1) are the same as the procedures set forth in CBOE Rule 6.45(e) and, accordingly, do not raise new regulatory issues.[24]

Each component series of an out-of-range SPX Combo Order will be price reported to the CBOE's trading floor and to OPRA with an indicator that will provide notice to the public that the reported prices were part of an out-of-range SPX Combo Order trade. The Commission believes that the indicator should help to avoid investor confusion regarding out-of-range SPX Combo Order trades and minimize any negative impact on price discovery. In addition, the indicator should help the CBOE to monitor the trading of SPX Combo Orders.

The Commission believes that that the CBOE has adopted surveillance procedures that are adequate to monitor compliance with the requirements of CBOE Rule 24.20.

Finally, the Commission notes that in its regulatory circular to members explaining the operation of CBOE Rule 24.20, the CBOE will remind its members that the adoption of CBOE Rule 24.20 does not diminish the obligation of CBOE members to obtain best execution for their customers.[25]

[23] Telephone conversation between Jaime Galvan, Attorney, Legal Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on November 28, 2001.

[24] In addition, CBOE Rule 24.19, "OEX-SPX Spread Orders," contains similar requirements for members holding OEX-SPX spread orders.

[25] *See* Amendment No. 1, *supra* note 3.

Accelerated Approval of Amendment Nos. 1, 2, 3, and 4

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 strengthens the CBOE's proposal by limiting the time for executing an out-of-range SPX Combo Order to two hours after the time of the original quotes. Amendment No. 2 clarifies the CBOE's proposal by providing consistent numbering in paragraphs (a) and (b) of CBOE Rule 24.20. Amendment No. 3 strengthens the CBOE's proposal by adopting the requirements in CBOE Rule 24.20(b)(1) for members holding SPX Combo Orders. Amendment No. 4 strengthens the proposal by clarifying the definitions of "SPX combination," "delta," and "SPX Combo Order." Accordingly, the Commission finds that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[26] to approve Amendment Nos. 1, 2, 3, and 4 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, 3, and 4, including whether Amendment Nos. 1, 2, 3, and 4 are 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 CBOE. All submissions should refer to file number SR-CBOE–00–40 and should be submitted by March 4, 2002.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–00–40), as amended, is approved.

[26] 15 U.S.C. 78f(b)(5) and 78s(b).

[27] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3231 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45364; File No. SR–MSRB–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Transactions With Sophisticated Municipal Market Professionals

January 30, 2002.

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 January 25, 2002, the Municipal Securities Rulemaking Board ("MSRB") 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 MSRB. 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

Interpretive Notice Regarding Sophisticated Municipal Market Professionals IntroductionIndustry participants have suggested that the MSRB's fair practice rules should allow dealers[3] to recognize the different capabilities of certain institutional customers as well as the varied types of dealer-customer relationships. Prior MSRB interpretations reflect that the nature of the dealer's counter-party should be considered when determining the specific actions a dealer must undertake to meet its duty to deal fairly. The MSRB believes that dealers may consider the nature of the institutional customer in determining what specific actions are necessary to meet the fair practice standards for a particular transaction. This interpretive notice

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

[3] The term "dealer" is used in this notice as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Act. The use of the term in this notice does not imply that the entity is necessarily taking a principal position in a municipal security.

concerns only the manner in which a dealer determines that it has met certain of its fair practice obligations to certain institutional customers; it does not alter the basic duty to deal fairly, which applies to all transactions and all customers. For purposes of this interpretive notice, an institutional customer shall be an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management.

Sophisticated Municipal Market Professionals

Not all institutional customers are sophisticated regarding investments in municipal securities. There are three important considerations with respect to the nature of an institutional customer in determining the scope of a dealer's fair practice obligations. They are:

- Whether the institutional customer has timely access to all publicly available material facts concerning a municipal securities transaction;
- Whether the institutional customer is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and
- Whether the institutional customer is making independent investment decisions about its investments in municipal securities.

When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion, the institutional customer can be considered a sophisticated municipal market professional ("SMMP"). While it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, as will be discussed later, by making a reasonable determination that an institutional customer is an SMMP, then certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled. In addition, as discussed below, the fact that a quotation is made by an SMMP would have an impact on how such quotation is treated under Rule G–13.

Considerations Regarding The Identification Of Sophisticated Municipal Market Professionals

The MSRB has identified certain factors for evaluating an institutional investor's sophistication concerning a municipal securities transaction and these factors are discussed in detail below. Moreover, dealers are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction, as discussed in detail below.

Access to Material Facts

A determination that an institutional customer has timely access to the publicly available material facts concerning the municipal securities transaction will depend on the customer's resources and the customer's ready access to established industry sources (as defined below) for disseminating material information concerning the transaction. Although the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer has timely access to publicly available information could include:

- The resources available to the institutional customer to investigate the transaction (*e.g.*, research analysts);
- The institutional customer's independent access to the NRMSIR system,[4] and information generated by the MSRB's Municipal Securities Information Library® (MSIL®) system[5] and Transaction Reporting System ("TRS"),[6] either directly or through services that subscribe to such systems; and
- The institutional customer's access to other sources of information concerning material financial developments affecting an issuer's securities (e.g.., rating agency data and indicative data sources).

Independent Evaluation of Investment Risks and Market Value

Second, a determination that an institutional customer is capable of independently evaluating the investment risk and market value of the municipal securities that are the subject of the transaction will depend on an examination of the institutional customer's ability to make its own investment decisions, including the municipal securities resources available to the institutional customer to make informed decisions. In some cases, the dealer may conclude that the institutional customer is not capable of independently making the requisite risk and valuation assessments with respect to municipal securities in general. In other cases, the institutional customer may have general capability, but may not be able to independently exercise these functions with respect to a municipal market sector or type of municipal security. This is more likely to arise with relatively new types of municipal securities and those with significantly different risk or volatility characteristics than other municipal securities investments generally made by the institution. If an institution is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular municipal security, the scope of a dealer's fair practice obligations would not be diminished by the fact that the dealer was dealing with an institutional customer. On the other hand, the fact that a customer initially needed help understanding a potential investment need not necessarily imply that the customer did not ultimately develop an understanding and make an independent investment decision.

[4] For purposes of this notice, the "NRMSIR system" refers to the disclosure dissemination system adopted by the Commission in Rule 15c2–12. Under Rule 15c2–12, as adopted in 1989, participating underwriters provide a copy of the final official statement to a Nationally Recognized Municipal Securities Information Repository ("NRMSIR") to reduce their obligation to provide a final official statement to potential customers upon request. In the 1994 amendments to Rule 15c2–12, the Commission determined to require that annual financial information and audited financial statements submitted in accordance with issuer undertakings be delivered to each NRMSIR and to the State Information Depository ("SID") in the issuer's state, if such depository has been established. The requirement to have annual financial information and audited financial statements delivered to all NRMSIRs and the appropriate SID was included in Rule 15c2–12 to ensure that all NRMSIRs receive disclosure information directly. Under the 1994 amendments, notices of material events, as well as notices of a failure by an issuer or other obligated person to provide annual financial information, must be delivered to each NRMSIR or the MSRB, and the appropriate SID.

[5] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB Rule G–36, as well as certain secondary market material event disclosures provided by issuers under SEC Rule 15c2–12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.

[6] The MSRB's TRS collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.

While the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer is capable of independently evaluating investment risk and market value considerations could include:

- The use of one or more consultants, investment advisers, research analysts or bank trust departments;
- The general level of experience of the institutional customer in municipal securities markets and specific experience with the type of municipal securities under consideration;
- The institutional customer's ability to understand the economic features of the municipal security;
- The institutional customer's ability to independently evaluate how market developments would affect the municipal security that is under consideration; and
- The complexity of the municipal security or securities involved.

Independent Investment Decisions

Finally, a determination that an institutional customer is making independent investment decisions will depend on whether the institutional customer is making a decision based on its own thorough independent assessment of the opportunities and risks presented by the potential investment, market forces and other investment considerations. This determination will depend on the nature of the relationship that exists between the dealer and the institutional customer. While the following list is not exhaustive, the MSRB notes that relevant considerations in determining that an institutional customer is making independent investment decisions could include:

- Any written or oral understanding that exists between the dealer and the institutional customer regarding the nature of the relationship between the dealer and the institutional customer and the services to be rendered by the dealer;
- The presence or absence of a pattern of acceptance of the dealer's recommendations;
- The use by the institutional customer of ideas, suggestions, market views and information relating to municipal securities obtained from sources other than the dealer; and
- The extent to which the dealer has received from the institutional customer current comprehensive portfolio information in connection with discussing potential municipal securities transactions or has not been provided important information regarding the institutional customer's portfolio or investment objectives.

Dealers are reminded that these factors are merely guidelines which will be utilized to determine whether a dealer has fulfilled its fair practice obligations with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular dealer/customer relationship, assessed in the context of a particular transaction. As a means of ensuring that customers continue to meet the defined SMMP criteria, dealers are required to put into place a process for periodic review of a customer's SMMP status.

Application of SMMP Concept to Rule G–17's Affirmative Disclosure Obligations

The SMMP concept as it applies to Rule G–17 recognizes that the actions of a dealer in complying with its affirmative disclosure obligations under Rule G–17 when effecting non-recommended secondary market transactions may depend on the nature of the customer. While it is difficult to define in advance the scope of a dealer's affirmative disclosure obligations to a particular institutional customer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with the affirmative disclosure aspects of Rule G–17.

When the dealer has reasonable grounds for concluding that the institutional customer is an SMMP, the institutional customer, by definition, is already aware, or capable of making itself aware of, material facts and is able to independently understand the significance of the material facts available from established industry sources.[7] When the dealer has reasonable grounds for concluding that the customer is an SMMP then the dealer's obligation when effecting non-recommended secondary market transactions to ensure disclosure of material information available from established industry sources is fulfilled. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. In those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation or asking the dealer to undertake additional investigation.

This interpretation does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under Rule G–17 or under the federal securities laws. In essence, a dealer's disclosure obligations to SMMPs when effecting non-recommended secondary market transactions would be on par with inter-dealer disclosure obligations. This interpretation will be particularly relevant to dealers operating electronic trading platforms, although it will also apply to dealers who act as order takers over the phone or in-person.[8] This interpretation recognizes that there is no need for a dealer in a non-recommended secondary market transaction to disclose material facts available from established industry sources to an SMMP customer that already has access to the established industry sources.[9]

As in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of Rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

Application of SMMP Concept to Rule G–18 Interpretation—Duty To Ensure That Agency Transactions Are Effected at Fair and Reasonable Prices

Rule G–18 requires that each dealer, when executing a transaction in municipal securities for or on behalf of

[7] The MSRB has filed a related notice regarding the disclosure of material facts under Rule G–17 concurrently with this filing. *See* File No. SR–MSRB–2002–01. The MSRB's Rule G–17 notice provides that a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction (regardless of whether such transaction had been recommended by the dealer) made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in municipal securities (collectively, "established industry sources").

[8] For example, if an SMMP reviewed an offering of municipal securities on an electronic platform that limited transaction capabilities to broker-dealers and then called up a dealer and asked the dealer to place a bid on such offering at a particular price, the interpretation would apply because the dealer would be acting merely as an order taker effecting a non-recommended secondary market transaction for the SMMP.

[9] In order to meet the definition of an SMMP an institutional customer must, at least, have access to established industry sources.

a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.[10] The actions that must be taken by a dealer to make reasonable efforts to ensure that its non-recommended secondary market agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer.

If a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions are effected at fair and reasonable prices.[11] By making the determination that the customer is an SMMP, the dealer necessarily concludes that the customer has met the requisite high thresholds regarding timely access to information, capability of evaluating risks and market values, and undertaking of independent investment decisions that would help ensure the institutional customer's ability to evaluate whether a transaction's price is fair and reasonable.

This interpretation will be particularly relevant to dealers operating alternative trading systems in which participation is limited to dealers and SMMPs. It clarifies that in such systems, Rule G–18 does not impose an obligation upon the dealer operating such a system to investigate each individual transaction price to determine its relationship to the market. The MSRB recognizes that dealers operating such systems may be merely aggregating the buy and sell interest of other dealers or SMMPs. This function may provide efficiencies to the market. Requiring the system operator to evaluate each transaction effected on its system may reduce or eliminate the desired efficiencies. Even though this interpretation eliminates a duty to evaluate each transaction, a dealer operating such system, under the general duty set forth in Rule G–18, must act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer may be subject to Rule G–18 violations if it fails to take actions to address system or participant pricing abuses.

If a dealer effects agency transactions for customers who are not SMMPs, or has held itself out to do more than provide anonymity, communication, matching and/or clearance services, or performs such services with discretion as to how and when the transaction is executed, it will be required to establish that it exercised reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices.

Application of SMMP Concept to Rule G–19 Interpretation—Suitability of Recommendations and Transactions

The MSRB's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Dealers' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Dealers are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer. Rule G–19, on suitability of recommendations and transactions, requires that, in recommending to a customer any municipal security transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer.

This guidance concerns only the manner in which a dealer determines that a recommendation is suitable for a particular institutional customer. The manner in which a dealer fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a dealer will fulfill such "customer-specific suitability obligations" under Rule G–19. This interpretation does not address the obligation related to suitability that requires that a dealer have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers. In the case of a recommended transaction, a dealer may, depending upon the facts and circumstances, be obligated to undertake a more comprehensive review or investigation in order to meet its obligation under Rule G–19 to have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers.[12]

The manner in which a dealer fulfills its "customer-specific suitability obligations" will vary depending on the nature of the customer and the specific transaction. While it is difficult to define in advance the scope of a dealer's suitability obligation with respect to a specific institutional customer transaction recommended by a dealer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with Rule G–19. Where the dealer has reasonable grounds for concluding that an institutional customer is an SMMP, then a dealer's obligation to determine that a recommendation is suitable for that particular customer is fulfilled.

This interpretation does not address the facts and circumstances that go into determining whether an electronic communication does or does not constitute a customer-specific "recommendation."

Application of SMMP Concept to Rule G–13, on Quotations

New electronic trading systems provide a variety of avenues for disseminating quotations among both dealers and customers. In general, except as described below, any quotation disseminated by a dealer is

[10] This guidance only applies to the actions necessary for a dealer to ensure that its agency transactions are effected at fair and reasonable prices. If a dealer engages in principal transactions with an SMMP, Rule G–30(a) applies and the dealer is responsible for a transaction-by-transaction review to ensure that it is charging a fair and reasonable price. In addition, Rule G–30(b) applies to the commission or service charges that a dealer operating an electronic trading system may charge to effect the agency transactions that take place on its system.

[11] Similarly, the MSRB believes the same limited agency functions can be undertaken by a broker's broker toward other dealers. For example, if a broker's broker effects agency transactions for other dealers and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the broker's broker is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.

[12] *See e.g.*, Rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, *MSRB Rule Book* (July 1, 2001) at 135; *In re F.J. Koufmon ond Compony of Virginio*, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989). The Commission', in its discussion of municipal underwriters' responsibilities, also noted that "a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation." *Municipol Securities Disclosure*, Exchange Act Release No. 26100 (September 22, 1988) (the "1988 SEC Release") at text accompanying note 72.

presumed to be a quotation made by such dealer. In addition, any "quotation" of a non-dealer (*e.g.*, an investor) relating to municipal securities that is disseminated by a dealer is presumed, except as described below, to be a quotation made by such dealer.[13] The dealer is affirmatively responsible in either case for ensuring compliance with the bona fide and fair market value requirements with respect to such quotation.

However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. Furthermore, if an SMMP makes a "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer; rather, the dealer is held to the same standard as if it were disseminating a quotation made by another dealer.[14] In either case, the disseminating dealer's responsibility with respect to such quotation is reduced. Under these circumstances, the disseminating dealer must have no reason to believe that either: (i) the quotation does not represent a bona fide bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.

While Rule G–13 does not impose an affirmative duty on the dealer disseminating quotations made by other dealers or SMMPs to investigate or determine the market value or bona fide nature of each such quotation, it does require that the disseminating dealer take into account any information it receives regarding the nature of the quotations it disseminates. Based on this information, such a dealer must have no reason to believe that these quotations fail to meet either the bona fide or the fair market value requirement and it must take action to address such problems brought to its attention. Reasons for believing there are problems could include, among other things, (i) complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of a dealer or SMMP failing to update, confirm or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of a dealer or SMMP effecting transactions at prices that depart materially from the price listed in the quotations in a manner that consistently is favorable to the party making the quotation.[15]

In a prior MSRB interpretation stating that stale or invalid quotations published in a daily or other listing must be withdrawn or updated in the next publication, the MSRB did not consider the situation where quotations are disseminated electronically on a continuous basis.[16] In such case, the MSRB believes that the bona fide requirement obligates a dealer to withdraw or update a stale or invalid quotation promptly enough to prevent a quotation from becoming misleading as to the dealer's willingness to buy or sell at the stated price. In addition, although not required under the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.

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 MSRB 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 MSRB 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

The MSRB decided to issue interpretive guidance to address the issues surrounding the development of electronic trading as an outgrowth of a May 2000 MSRB-hosted roundtable discussion about the use of electronic trading systems in the municipal securities market. Industry discussion at the roundtable, as well as subsequent industry comments, made it apparent that the municipal securities market, like the equity market, is in the process of developing alternative models of trading relationships between dealers and customers. In addition, technological innovation is spearheading the development of trading platforms that hope to increase liquidity, transparency and efficiency in the municipal securities market. All of these developments essentially flow from the belief that there is a demand for trading methodologies that allow a dealer to act as an order taker when effecting transactions with customers.

Based on the comments from the industry as well as the MSRB's review of market developments, the MSRB concluded that in order for innovation to occur, the industry needs interpretive guidance on the application of certain MSRB rules to these new trading methodologies. Alternative trading systems present the most graphic example of changing dealer/customer relationships and consequent need for regulatory change, but the changing relationships are not necessarily limited to electronic trading venues.

Ultimately, the MSRB determined that a primary purpose of its interpretive guidance should be to interpret MSRB rules to allow the development of trading relationships where the dealer acts as an order taker in secondary market non-recommended municipal securities transactions with sophisticated institutional investors. The MSRB proposed the SMMP concept to illustrate how different fair practice rules would operate when dealers were transacting with sufficiently sophisticated market professionals. The MSRB did not believe that disclosure and transparency in the municipal securities market are sufficiently developed at this time to permit dealers to have only order taker responsibilities when transacting with retail investors and less sophisticated institutional investors.

The interpretive notice defines an "institutional customer" for purposes of the notice and provides that when a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction; (ii) is capable of independently evaluating the investment risk and market value of the

[13] A customer's bid for, offer of, or request for bid or offer is included within the meaning of a "quotation" if it is disseminated by a dealer.

[14] The disseminating dealer need not identify by name the maker of the quotation, but only that such quotation was made by another dealer or an SMMP, as appropriate.

[15] The MSRB believes that, consistent with its view previously expressed with respect to "bait-and-switch" advertisements, a dealer that includes a price in its quotation that is designed as a mechanism to attract potential customers interested in the quoted security for the primary purpose of drawing such potential customers into a negotiation on that or another security, where the quoting dealer has no intention at the time it makes the quotation of executing a transaction in such security at that price, could be a violation of rule G–17. *See* Rule G–21 Interpretive Letter—Disclosure Obligations, MSRB Interpretation of May 21, 1998, *MSRB Rule Book* (July 1, 2001) at p. 139.

[16] *See* Rule G–13 Interpretation, Notice of Interpretation of Rule G–13 on Published Quotations, April 21, 1988, *MSRB Rule Book* (July 1, 2001) at 91.

municipal securities at issue; and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion, the institutional customer can be considered an SMMP. The guidance also provides that while it is difficult to define in advance the scope of a dealer's fair practice obligations with respect to a particular transaction, as is discussed in the interpretation, by making a reasonable determination that an institutional customer is an SMMP, then certain of the dealer's fair practice obligations (*i.e.*, Rule G–17's affirmative disclosure obligations, Rule G–18's duty to ensure that agency transactions are effected at fair and reasonable prices, and Rule G–19's suitability obligations) remain applicable but are deemed fulfilled.[17] In addition, the fact that a quotation is made by an SMMP would have an impact on how such quotation is treated under Rule G–13.

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

Additionally, the MSRB believes that the proposed rule change is consistent with the Act in that it will allow for the development and growth of new trading methodologies that may lead to increased pooling of liquidity and market based transparency without diminishing essential customer protections.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On September 28, 2000, the MSRB published a notice seeking comment on draft interpretive guidance on dealer responsibilities in connection with both electronic and traditional municipal securities transactions (the "2000 Notice").[18] The 2000 Notice defined a class of customers as "sophisticated market professionals" ("SMPs"). The 2000 Notice presented the MSRB's views regarding the responsibilities of dealers under the MSRB's fair practice, quotation, uniform practice and new issue securities rules. In response to the 2000 Notice, the MSRB received 17 comment letters from different segments of the market.[19]

On March 26, 2001, the MSRB published and filed with the Commission for immediate effectiveness a portion of the 2000 Notice consisting of three interpretive notices on electronic primary offering systems, on uniform practice requirements for a specific type of trading system, and on electronic recordkeeping.[20] On July 6, 2001, the MSRB published for comment a revised draft interpretive guidance notice that covered two related concepts (the "2001 Notice").[21] The first concept concerned rule G–17 and the disclosure of material facts. The second concerned sophisticated municipal market professionals.[22]

In response to the 2001 Notice, the MSRB received eight comment letters; all eight-comment letters addressed the SMMP guidance.[23] After reviewing the comment letters, the Board approved the SMMP notice, with certain modifications and additions, for filing with the Commission.

Comments on the 2000 Notice

The Need for Guidance

Comments Received. The majority of commentators believe that guidance is needed regarding the applicability of MSRB rules in the context of electronic trading systems.[24] In addition, many

[17] However, for purposes of Rules G–17 and G–18, the SMMP concept only applies when the dealer is effecting non-recommended secondary market transactions for SMMP customers.

[18] "Notice and Draft Interpretive Guidance on Dealer Responsibilities in Connection with Both Electronic and Traditional Municipal Securities Transactions," *MSRB Reports*, Vol. 20, No. 2 (November 2000) at 3, *see also* the "Clarification to the Draft Interpretive Guidance," published on November 17, 2000 at the MSRB's web site (http://206.233.231.2/msrb1/archive/etrading.htm).

[19] Letter from Clayton B. Erickson, V.P. Manager, Municipal Bond Trading and Underwriting, A.G. Edwards & Sons, Inc., to Carolyn Walsh and Ernesto Lanza, dated December 1, 2000 ("A.G. Edwards"); letter from Darrick L. Hills, Chair, Municipal Securities Subcommittee, and Maria J.A. Clark, Associate, Association for Investment Management and Research Advocacy, to Ernesto A. Lanza, dated November 30, 2000 ("AIMR"); letter from Olga Egorova, Vice President, Bear Stearns & Co. Inc., to Carolyn Walsh dated November 28, 2000 ("Bear Stearns"); letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Ernesto A. Lanza, dated November 30, 2000 ("Schwab"); letter from Ida W. Draim, Dickstein, Shapiro, Morin & Oshinksy LLP, to Carolyn Walsh, dated October 25, 2000 ("Dickstein, Shapiro"); letter from Michael J. Hogan, General Counsel, DLJ Inc., to Carolyn Walsh, dated December 3, 2000 ("DLJ"); letter from Richard W. Meister, CEO, eBondTrade, to Ernesto A. Lanza, dated November 30, 2000 ("eBondTrade"); letter from Triet M. Nguyen, Senior Vice President Information Services, eBondUSA.com. Inc., to Carolyn Walsh, dated November 29, 2000 ("eBondUSA"); letter from Michael J. Marx, Vice Chairman, First Southwest Company, to Ernesto A. Lanza, dated November 28, 2000 ("First Southwest"); letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Ernesto A. Lanza, dated November 30, 2000 ("ICI"); letter from Jerry L. Chapman, Managing Director, Morgan Keegan & Company, Inc., to Carolyn Walsh, dated November 16, 2000 ("Morgan Keegan"); letter from Bradley W. Wendt, President and Chief Operating Officer, and David L. Becker, General Counsel, MuniGroup.com LLC, to Carolyn Walsh, dated December 1, 2000 ("MuniGroup"); letter from Dina W. Kennedy, Chairman, National Federation of Municipal Analysts, to Carolyn Walsh, dated November 1, 2000 ("NFMA"); letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, to Carolyn Walsh, dated December 4, 2000 ("SIA"); letter from Roger G. Hayes, Chair, The Bond Market Association Municipal Securities Division E-Commerce Task Force, to Ernesto A. Lanza, dated December 1, 2000 ("TBMA"); letter from Lynnette Kelly Hotchkiss, Vice President and Associate General Counsel, The Bond Market Association, to Ernesto A. Lanza, dated January 4, 2001 ("TBMA II"); and letter from William L. Nichols, Chief Operating Officer, ValuBond Securities, Inc., to Carolyn Walsh, dated November 30, 2000 ("ValuBond").

[20] *See* "Interpretation on the Application of Rules G–32 and G–36 to New Issue Offerings Through Auction Procedures," *MSRB Reports*, Vol. 21, No. 1 (May 2001) at 37; "Interpretation on the Application of Rules G–8, G–12 and G–14 to Specific Electronic Trading Systems," *MSRB Reports*, Vol. 21, No. 1 (May 2001) at 39; and "Interpretation on the Application of Rules G–8 and G–9 to Electronic Recordkeeping," *MSRB Reports*, Vol. 21, No. 1 (May 2001) at 41.

[21] "Notice and Draft Interpretive Guidance on Rule G–17—Disclosure of Material Facts and Interpretive Guidance Concerning Sophisticated Municipal Market Professionals," *MSRB Reports*, Vol. 21, No. 2 (July 2001) at 3.

[22] This filing relates only to the SMMP guidance. Concurrently with this filing, the MSRB is filing with the Commission a notice relating to the Rule G–17 interpretive guidance. *See* Filing No. SR–MSRB–2002–01.

[23] Letter from Linda L. Rittenhouse, Staff, Association for Investment Management and Research Advocacy, to Carolyn Walsh, dated October 19, 2001 ("AIMR II"); letter from David C. Witcomb, Jr., Vice President, Compliance Department, Charles Schwab & Co., Inc., to Carolyn Walsh, dated October 11, 2001 ("Schwab II"); letter from Michael J. Marx, Vice Chairman, First Southwest Company, dated October 12, 2001 ("First Southwest II"); letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, dated October 19, 2001 ("ICI II"); letter from Alan Polsky, Chairman, National Federation of Municipal Analysts, dated November 13, 2001 ("NFMA II"); letter from Roger G. Hayes, Chair, The Bond Market Association Municipal Securities Division E-Commerce Task Force, dated October 10, 2001 ("TBMA III"); letter from Thomas S. Vales, Chief Executive Officer, TheMuniCenter, dated October 1, 2001 ("MuniCenter"); and letter from David Levy, Sr. Associate General Counsel, First Vice President, UBS Paine Webber Inc., dated October 19, 2001 ("UBSPW").

[24] *See* A.G. Edwards, AIMR, Bear Stearns, eBondTrade, First Southwest, ICI, MuniGroup, NFMA, Schwab, TBMA, and ValuBond, *supra* note

Continued

commentators commend the MSRB's decision to continue to apply existing rules to the online market.[25]

Application of the SMP Concept to Fair Practice Obligations

Retention of SMP Differentiation

Comments Received. The MSRB received numerous comment letters on the 2000 Notice about the SMP proposal.[26] Those commentators that were opposed to the concept expressed concern that the SMP concept would create two-tiered markets where SMPs and dealers receive prices superior to retail customers and less sophisticated institutions and transactions will be driven to the less regulated market.[27] Seven commentators approved of the MSRB's recognition that certain municipal securities market participants have substantially greater sophistication than others.[28] Those that were in favor of the concept in general remain concerned that as drafted the SMP concept is too difficult to implement in practice. Three commentators called for the MSRB to identify classes of investors who are "otherwise qualified" market professionals (*e.g.*, Qualified Purchasers as defined under the Investment Company Act, Qualified Institutional Buyers as defined under Securities Act Rule 144A, etc.) who will be presumed to be SMPs, or allow dealers to rely upon written representations from institutional investors that they are SMPs.[29] On the other hand, certain institutional investors believe that the SMP criteria, as written, give broker-dealers too much flexibility to determine who is an SMP.[30]

MSRB Response. The MSRB determined to retain the SMP proposal with the revisions in the 2001 Notice.[31] The MSRB believes that certain customers (SMMPs) are sufficiently familiar with the market to participate on a par with dealers when engaging in non-recommended secondary market transactions. In addition, SMMPs are sufficiently sophisticated about financial matters and versed in the municipal securities at issue so that they are not in need of a dealer's customer-specific suitability analysis when a dealer recommends certain municipal securities. They thus should be able to access the market, either through automated systems or otherwise, without the same level of dealer responsibility now required for less sophisticated customers. Such market access should be at a lower cost than the dealer's current "full service." There is support in law and regulatory precedent for differentiating between types of investors.[32] However, the MSRB did not allow classes of "otherwise qualified" market professionals to be presumed to be SMPs and did add a $100 million asset requirement to ensure that only the most sophisticated municipal market professionals would come within the definition of SMMP.

Application of SMP Criteria[33]

Rule G–17: Conduct of Municipal Securities Activities

Comments Received.

a. Disclosure. Several commentators expressed the opinion that SMPs need a dealer to provide G–17 affirmative disclosure information to them about municipal securities transactions.[34] For example, ICI stated:

Furthermore, not all information that is disclosed by an issuer is necessarily filed with or collected by Information Repositories, and such public information as may be available from the Information Repositories may be too sparse or outdated to provide, on its own, an adequate basis for an investor to make an informed credit decision * * *. In those situations, the dealer selling municipal securities may possess, or be in the best position to acquire, public information that is relevant and material to the investor. Due to the fragmented nature of currently "available" information about municipal securities, it cannot be presumed that an investor, however sophisticated, has access to all information that has been gathered by or is available to a dealer, and the duty of a dealer to disclose all such material information remains an important and necessary protection for all investors.[35]

In contrast to such comments, TBMA in its supplemental letter stated:

We believe that it is illogical and without merit to link the quality and adequacy of disclosure with the designation of an investor class as SMPs

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19. For example, AIMR "applauds the timeliness of the MSRB's proposal. We all recognize that electronic trading platforms are the way of the future and, as such, the industry should begin assessing the feasibility of and potential conflicts that may arise from their use."

[25] *See e.g.*, A.G. Edwards, Bear Stearns, eBondTrade, First Southwest, ICI, Schwab and TBMA, *supra* note 19. For example, "Schwab welcomes the MSRB's recognition, parallel to that of all other major US securities regulators, that the online channel of customer access should be subject to the same basic regulatory scheme as traditional means of customer access."

[26] Ten comment letters directly addressed the SMP concept. *See* A.G. Edwards, AIMR, Bear Stearns, eBondTrade, First Southwest, ICI, NFMA, Schwab, TBMA, and ValuBond, *supra* note 19.

[27] *See* ICI, NFMA, and Schwab, *supra* note 19. For example, Schwab stated that:

A consistent disclosure standard for retail and institutional investors would permit firms to build ECN-like trading platforms that allow for participation of all investors, retail and institutional. Such fully integrated trading systems could contribute to improved liquidity, better pricing and fairness for retail investors by avoiding two-tiered markets where institutions and dealers receive superior prices. We urge the MSRB to avoid creating regulatory incentives, which would lock retail investors out of the most cost-efficient and up-to-date online bond trading systems.

[28] *See* A.G. Edwards, AIMR, Bear Stearns, eBondTrade, First Southwest, TBMA, and ValuBond, *supra* note 19. TBMA stated that:

We strongly support the Board's identification of "sophisticated market professionals." The proposed definition of a subset of investors who are "sophisticated market professionals," for whom a firm's customer-specific suitability obligations are presumed met, will promote the development of the online municipal market. Initially, trading platforms will be able to simplify their regulatory obligations, cut costs, and improve their ability to compete by limiting access to sophisticated investors. These limited access platforms will be able to serve as laboratories for technological innovation, and sophisticated investors will benefit from the availability of platforms tailored to their special needs. Ultimately, however, trading methods and technologies developed through these platforms may be extended to retail investors as well, thereby benefiting all investors and improving liquidity throughout the municipal market.

[29] *See* A.G. Edwards, First Southwest, and TBMA, *supra* note 19.

[30] *See* AIMR, *supra* note 19 ("we agree in general with the basic premise in establishing the sophisticated investor criteria. [However,] as written we believe that the criteria give broker/dealers too much flexibility to determine who is and who is not a sophisticated client.").

[31] *See infra* notes 70–71 and accompanying text for a discussion of the MSRB's Response to Comments regarding the retention of the SMMP differentiation in the 2001 Draft Guidance.

[32] For example, the NASD recognized this concept in its approach to determining the scope of a member's suitability obligation in making recommendations to an institutional customer. ("[A] broker/dealer frequently has knowledge about the investment and its risks and costs that are not possessed by or easily available to the investor. Some sophisticated institutional customers, however, may in fact possess both the capability to understand how a particular securities investment could perform, as well as the desire to make their own investment decisions without reliance on the knowledge or resources of the broker/dealer.") *NASD Notice to Members 96–66, "Suitability Obligations to Institutional Investors"* (October 1996).

[33] All of the commentators' written concerns with the SMP concept related to dealers' rule G–17 obligations. No specific written comments were made in regard to the application of the SMP concept to a dealer's rules G–18 and G–19 obligations.

[34] *See e.g.*, AIMR; ICI; and NFMA, *supra* note 19.

[35] *See* ICI, *supra* note 19. Similarly, NFMA stated that the "Draft Interpretive Guidance overestimates the information available to investors of any ilk in the municipal securities market, and underestimates the role of the dealer as a centralized purveyor of available information about particular securities." *Id.* The MSRB has addressed some investor concerns and clarified certain misunderstandings relating to dealers' Rule G–17 affirmative disclosure obligations in its Rule G–17 interpretive notice filed concurrently herewith. *See* File No. SR–MSRB–2002–01.

* * *. [T]he Interpretive Release is not diluting or reducing the amount or type of disclosure available to SMPs. It merely recognized that for this particular investor class, access to information is readily available to both the SMP and the dealer, and that efficiencies could be achieved through the different application of MSRB rules.[36]

b. Rule G–17 Safe Harbor. Several commentators urged the MSRB to afford dealers a safe harbor or other guidance under rule G–17. [37] For example, eBondTrade urged the MSRB "to afford the dealer a safe harbor under Rule G–17 for hyperlinks on the dealers' platforms to other parties such as issuer websites, rating agencies, and other pertinent information sources * * *. [eBondTrade] also recommend[s] that a similar safe harbor be afforded for dealers using indicative data sources provided by such firms as J. J. Kenny, Interactive Data (Muller) and Bloomberg data to create municipal bond descriptions." [38]

Similarly, while Schwab did not suggest a safe harbor *per se*, it urged the MSRB "to resist the temptation of holding online firms to a higher standard than traditional delivery channels." Schwab went on to note that "most current online disclosure practices are more than adequate," and that "[f]or online bond trading systems, several reputable vendors provide descriptive information about bond issues which meets the Rule G–17 disclosure standards." [39] However, DLJ stated:

> If ATSs are exempt from several MSRB rules when linking with dealers or sophisticated market professionals, MSRB interpretations appear to assume that the dealers, including online brokers, may need to comply with these requirements * * *. For example, the interpretation for MSRB's Rule G–17 suggests that ATSs would not be responsible for providing descriptive information to customers. It would be difficult if not impossible for an online firm, displaying to its customers all products listed on the ATS, to ensure that each customer receives all material information at the time the customer is ready to execute a transaction electronically.[40]

MuniGroup, however, asked the MSRB to clarify that in the context of an ATS type-trading platform like MuniGroup, "the underlying responsibility to the customer lies with the broker-dealer with whom the customer maintains his or her account, and not with the electronic trading platform over which the transaction actually occurs." [41]

MSRB Response. In the 2000 Notice, the MSRB stated that the actions of a dealer in complying with its affirmative disclosure obligations under rule G–17 may depend on the nature of the customer. In revising the 2001 Notice, the MSRB retained this concept but clarified that the concept only applies when a dealer is effecting non-recommended secondary market transactions for a customer.

The MSRB also clarified in the 2001 Notice that investors have misunderstood the import of the 2000 Notice by suggesting that it would allow a dealer who had actual knowledge of a material fact that was not accessible to the market to transact with an SMMP without disclosing the information. The 2001 Notice does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under Rule G–17 or under the federal securities laws. Thus, if material information is not accessible to the market but known to the dealer and not disclosed, the dealer may be found to have engaged in an unfair practice. In essence, a dealer's disclosure obligations to SMMPs would be on par with inter-dealer disclosure obligations. There would be no specific requirement for a dealer to disclose all material public facts to a customer that is presumed to know the characteristics of the securities. As in the case of an inter-dealer transaction, in a transaction with an SMMP an intentional failure to disclose an unusual feature of a security not accessible to the market (but known by the dealer) may constitute an unfair practice violative of Rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

As noted in the 2001 Notice, the flow of municipal securities disclosure should not be diminished. The SMMP proposal only will relieve a dealer when effecting non-recommended secondary market transactions of its affirmative disclosure obligation to inform the SMMP customer about the information available from established industry sources where the customer is already aware of, or capable of making itself aware, and can independently understand the significance of the material facts available from established industry sources. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. However, in those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation, or asking the dealer to acquire additional information. Continuing to impose Rule G–17's affirmative disclosure obligations on dealers transacting with SMMPs will not provide the desired additional information. Dealers may not be aware of new or developing material events because issuers have failed to publicly disclose them, or they are not available from established industry sources.

The MSRB believes that this interpretation is consistent with Rule G–17's goal of ensuring that dealers treat customers fairly. It affords dealers flexibility to negotiate understandings and terms with a particular customer when effecting non-recommended secondary market transactions. This approach assists dealers and customers in defining their own expectations and roles with respect to their specific relationship.

The MSRB does not believe that it should provide online dealers with a safe harbor under Rule G–17 for the particular information necessary to fulfill affirmative disclosure obligations when effecting electronic transactions for non-SMMP customers (*e.g.*, hyperlinks to certain indicative data services). Dealers are responsible for disclosing material information to customers. If hyperlinks are not working correctly or indicative data sources have erroneous information, dealers should be liable for the resulting failure to disclose. The MSRB has, however, addressed some commentators concerns about the scope of a dealer's Rule G–17 disclosure obligations in the related Rule G–17 Interpretive Guidance.

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[36] TBMA II, *supra* note 19. TBMA further notes that the MSRB's Draft Guidance "recognizes that premature regulation in an evolving technology will not serve the common goals of the industry."

[37] *See* eBondTrade, TBMA and ValuBond, *supra* note 19. ValuBond states that the Board should "articulate standards for a 'safe harbor' for electronic systems which display data about bonds according to descriptive elements (*e.g.*, by rating, type, issuer), and the extent to which such functionality does or does not constitute rendering of financial advice." TBMA suggests a G–17 hyperlink safe harbor, stating that although it "realizes that the subject of liability for hyperlinks is unsettled, we believe that such a safe harbor is consistent with other regulators' treatment of hyperlinks to date."

[38] eBondTrade, *supra* note 19.

[39] Schwab, *supra* note 19. *See also* eBondUSA, *supra* note 19 ("we would argue that a well–designed market price discovery tool, linked to the appropriate secondary market disclosure sites, will go far toward fulfilling a dealer's 'fair dealing' obligations").

[40] DLJ, *supra* note 19.

[41] Munigroup, *supra* note 19.

Rule G–18: Execution of Transactions

Comments Received. Only two commentators addressed the MSRB's 2000 guidance concerning Rule G–18. MuniGroup stated that it agrees with the guidance that G–18 does not require a dealer operating a platform to review each transaction to ensure that the prices for the transaction are fair and reasonable. MuniGroup also noted, "because of the relatively illiquid nature of the municipal market, there is no way for a platform [serving only registered broker-dealers] to ensure that transactions are effected at fair and reasonable prices." Similarly, TBMA commented, "we believe that Rule G–18 does not necessarily require a dealer to check all posted prices on all accessible web sites to ensure a fair and reasonable price for any given municipal securities transaction."[42]

MSRB Response. Rule G–18 requires that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. The 2000 Notice provided that the actions that must be taken by a dealer when effecting agency transactions to make reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer. In the 2001 Notice, the MSRB made changes to more precisely describe the parameters of the services offered by a dealer if the dealer wishes to avail itself of this interpretation.

Rule G–19: Suitability of Recommendations and Transactions

Comments Received. Many commentators expressed concerns about the MSRB's discussion of implicit recommendations and the possibility that a retail customer may view a sending of an inventory list as the equivalent of a recommendation, which would require the dealer to perform a suitability review before selling the security to the retail customer.[43] For example, the SIA argued that inventory lists are not recommendations and that the 2000 Notice "represents an expansion of the generally accepted definition of recommendation in the context of the suitability rules * * * Regulators have consistently recognized that the distribution of general, impersonal advertising material does not, in itself, give rise to suitability obligations."[44]

A few commentators suggested that the MSRB should conform its recommendation and suitability guidance to the NASD's.[45] These commentators generally take the position that the determination of whether a recommendation has been made or not should focus on whether the "communication is individualized for that particular customer."[46] While these commentators state that brokerages have the general obligation to ensure that they have a reasonable basis for information about the securities available on their websites, citing NASD rules, they argue that generalized recommendations do not trigger an individualized suitability obligation whenever an investor reads or acts on that generalized recommendation.

In addition, the SIA argued that if the MSRB guidance that states that the sophistication of the investor and the nature of the relationship with the firm are relevant factors in determining whether a recommendation has been made was meant to emphasize "those factors at the expense of the content of the communication, then the MSRB guidance will be expanding the definition of suitability."[47]

Some commentators suggested that the MSRB issue guidance that affords dealers permission to rely upon an online customer's electronic representations in determining that an investment is suitable for that customer.[48] Several commentators requested further clarification about whether using filters and allowing customers to employ customer controlled search functions constitutes a recommendation.[49] However, A.G. Edwards cautioned the MSRB to "resist at this time the temptation to adopt specific rules or interpretations that might ultimately dictate what communications give rise, or do not give rise, to suitability obligations."[50]

MSRB Response. In publishing the 2000 Notice and the November Clarification, the MSRB intended to be consistent with existing customer suitability analysis by recognizing that historically the determination of whether a dealer is making a recommendation has been made by reference to all relevant facts and circumstances. However, several commentators noted a need for industry consensus on the definition of an online recommendation. A few commentators specifically stated that the MSRB should conform its recommendation and suitability guidance to the NASD's then soon to be released notice on its suitability rule and online communications.[51] In revising the 2001 Notice for comment, the MSRB determined to remove any discussion concerning the identification of when a dealer makes a recommendation online from the SMMP guidance. The MSRB is reviewing the NASD's release and plans to provide additional guidance in this area.

Draft Interpretive Guidance for Quotation Rule

Comments Received. Three commentators provided substantive comment on the MSRB's discussion relating to quotations.[52]

MuniGroup agreed with the basic concept that a dealer disseminating a quotation made by another dealer has a reduced obligation for ensuring compliance with the bona fide and fair market value requirements. However, it stated that many electronic trading systems are anonymous systems that disseminate quotes of various dealers on an undisclosed basis. MuniGroup believes that the MSRB's requirement that a disseminating dealer label a quotation made by another dealer as such "place[s] the burden of ensuring compliance with the bona fide and fair market value requirements on the dealer operating the electronic trading

[42] *See* MuniGroup and TBMA, *supra* note 19.

[43] *E.g.*, A.G. Edwards; Bear Stearns; DLJ; Schwab; SIA; and TBMA, *supra* note 19. DLJ also argues that the MSRB's assumption that retail customers are unlikely to initiate a transaction on their own "is not consistent with our business model or our experience, and we think it is an incorrect assumption in this day and age." None of the commentators took issue with the MSRB's interpretation exempting dealers from a suitability obligation when transacting with SMPs.

[44] SIA, *supra* note 19. The SIA supported this position by arguing that customers are adequately protected by existing rules, citing a variety of NASD rules on advertising and customer communications.

[45] *E.g.*, DLJ; Schwab; and SIA, *supra* note 19.

[46] SIA, *supra* note 19.

[47] *Id.*

[48] *E.g.*, First Southwest and TBMA, supra note 19. *See also* Morgan Keegan, *supra* note 19 ("How can a dealer operating an electronic trading system possibly know customer specifics other than those given over the computer, and that would probably not hold up under review or arbitration?") and DLJ ("technology is currently not available for online firms to fulfill suitability obligations electronically").

[49] *E.g.*, Bear Stearns; TBMA; DLJ; Schwab; and SIA, supra note 19.

[50] A.G. Edwards, *supra* note 19.

[51] The NASD released its Online Suitability Guidance on March 20, 2001. *See NASD Notice to Members 01–23, Online Suitability—Suitability Rule and Online Communications* (April 2001).

[52] MuniGroup, Schwab and AIMR, *supra* note 19. In addition, First Southwest stated that rule G–13 should "address the assessment responsibility of the electronic trading platforms through which online transactions take place," an apparent reference to Rule A–13's assessments on inter-dealer and customer transactions. First Southwest, *supra* note 19.

system." It argued that, since participants in such an anonymous system are aware that the dealer operating the system is not actually making quotations, "the position of the MSRB should be clarified to make clear that the dealer operating the electronic trading system is not the dealer responsible for ensuring compliance with the bona fide and fair market value requirements." [53]

Schwab stated that it is troubled that a dealer has a higher compliance obligation when disseminating a quote made by a retail customer (which the disseminating dealer must treat as its own quotation) than when disseminating a quote made by a sophisticated market professional (which the disseminating dealer may treat as if made by another dealer if the quote is labeled as having been made by a sophisticated market professional). It argued, "[t]here is no reason to believe that retail investors are more likely than institutions to enter quotes that are not bona fide or are unfairly priced." [54] Schwab noted that Rule G–13, as interpreted by the MSRB, "would allow institutions and dealers to quickly and efficiently enter bids and offers in ECNs. For retail orders, however, the dealer sponsoring the system would have to review and approve the bids and offers before they could be entered into the system." Schwab stated that the pace of online trading might not allow the dealer sufficient time to assess the fair market value of the securities quoted and, if there is no direct relationship between the dealer and the customer, the dealer may not be able to assess whether the quote is bona fide. It suggested that all customer quotes be treated in the manner proposed by the MSRB for sophisticated market professionals.

AIMR suggested that dealers be required to post the time of the most recent change in price posted on a trading platform, which "would automatically alert potential investors to the possible staleness of a quote." [55]

MSRB Response. The 2000 Notice recognized that new electronic trading systems provide a variety of avenues for disseminating quotations among both dealers and customers. The MSRB, in fact, intended that the disseminating dealer only be required to note that the quotation that it was disseminating had been made by another dealer, not that it be required to reveal the actual identity of the dealer making the quotation. The 2001 Notice clarified this point. The 2001 Notice also stated that although not required by the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.

The MSRB did not however, adopt Schwab's suggestion that disseminating dealers be allowed to treat quotes made by retail customers as quotes made by another dealer. The MSRB believes that the structure of the municipal securities market along with the informational disadvantages retail customers have make it reasonable to assume that retail investors are more likely to enter quotes that do not reasonably relate to the fair market value of the securities. Therefore, it is necessary to require dealers who operate systems to review and approve the quotes as bona fide before they can be disseminated by the system.

Comments on the 2001 Notice

Sophisticated Municipal Market Professional—Definition

$100 Million Threshold

Comments Received. Three commentators on the 2001 Notice expressed the opinion that the threshold requirement that an SMMP own or control $100 million in municipal securities "is unnecessarily high, and may deny access to online trading systems to a number of very large institutions with significant municipal holdings that are otherwise capable of participating in these systems." [56] All three commentators suggested changing the threshold to $50 million and noted that this threshold would be consistent with the Board's own definition of "institutional account" in Rule G–8 (a)(xi), and with the NASD's institutional suitability guidelines. TBMA also stated that a $50 million threshold would benefit the markets by providing access to a number of very large institutional investors that are not SMMPs under the proposed standard. Specifically, TBMA stated that reducing the threshold to $50 million would increase the percentage of qualified institutions to 43%, up from less than 29% when the threshold is $100 million.[57]

MSRB Response. The MSRB determined to add the $100 million threshold to the SMMP definition as a way of ensuring that SMMPs are truly the most sophisticated of institutional investors. According to TBMA's data, lowering the threshold to $50 million will result in close to 50% of all large institutional investors being eligible to be an SMMP. Moreover, the comment letters from First Southwest, MuniCenter and TBMA are directly contrary to the comments from AIMR. AIMR believes the $100 million limit is too low and stated that the $100 million limit can easily be met without the "concomitant demonstration of being a sophisticated investor." [58]

Although the comment letters expressed concern about denying electronic trading access to smaller institutions, the SMMP definition should not operate in that fashion. An institutional investor that does not have the level of assets in the definition of the SMMP will not be foreclosed from trading if the dealer offering the platform is providing sufficient information services, beyond transaction execution.[59] Indeed, there is evidence that many dealers are developing electronic trading systems designed to provide extensive informational services and otherwise fulfill dealers' fair practice obligations.[60] Moreover, while many other "sophisticated investor" regulations have lower dollar thresholds, the threshold for qualified institutional buyers ("QIBs") is also set at $100 million, and the Board believes

[53] MuniGroup, *supra* note 19.

[54] Schwab, *supra* note 19. Schwab appeared to assume, incorrectly, that all institutional investors would be treated as sophisticated market professionals.

[55] AIMR, *supra* note 19. AIMR also suggested that market transparency and liquidity would be improved by requiring public disclosure of trades of $1 million or more on a real-time basis, stating that "[n]ext day information * * * provides little insight to the current market depth and trading range that would be relevant for a particular trade investors may be considering at that moment." In addition, ValuBond asked, "How the MSRB will view price discrepancies between actual bond quotations and MSRB trade data or market evaluation?" ValuBond, *supra* note 19.

[56] *See* First Southwest II, MuniCenter, and TBMA III, *supra* note 23. In contrast, AIMR stated that the $100 million dollar threshold is too low and they suggested a two-tiered analysis. An investor could be presumed to be an SMMP if it reached an asset threshold of $1 billion dollars in municipal securities. In the alternative, if the investor has assets of less than $1 billion dollars, but more than $100 million dollars and is able to satisfy additional criteria, it could be treated as an SMMP. *See* AIMR II, *supra* note 23.

[57] *See* TBMA III, *supra* note 23. TBMA's estimates are based on a sample of approximately 1,200 large institutional investors (the top 500 banks, 547 insurance companies, and 150 largest mutual funds). *Id.*

[58] *See* AIMR II, *supra* note 23.

[59] Similarly, dealers that wish to allow their retail customers to view offerings on ATS type platforms may do so. However, the dealers sponsoring retail customers are responsible for providing their customers with Rule G–17 disclosures and for ensuring that the transaction prices are fair and reasonable.

[60] For example, MuniCenter made representations that it "probably exceeds traditional services offered by dealers." MuniCenter, *supra* note 23.

that the purposes behind the QIB threshold are most analogous to the SMMP definition.[61] Therefore, the MSRB has determined to keep the threshold at $100 million.

Presumption of Sophistication

Comments Received. Several commentators suggested that the SMMP definition be altered to allow investors to be presumed sophisticated if they meet the investment threshold.[62] The commentators pointed out that the presumption could be rebutted if the dealer knew or should have known that an investor lacked sophistication concerning a municipal securities transaction as defined in the SMMP guidance. The commentators stated that requiring a dealer to always make individualized judgments that investors meet the definition might hinder dealers' efforts to streamline access to online trading.[63]

MSRB Response. The MSRB believes that there should not be a presumption of SMMP status for those institutions with $100 million or greater in municipal securities. The inclusion of a presumption would make the rest of the SMMP guidance concerning who is, or is not an SMMP meaningless. The MSRB believes that dealers should be required to undertake some level of investigation to determine if a customer meets the SMMP criteria and should not be allowed to presume that an institution is sophisticated just because it meets the $100 million threshold. Indeed, AIMR noted, "[w]ealth alone (as determined by a specific dollar amount of assets under management or within a portfolio) does not translate into investment knowledge."[64]

Requiring Institutional Investors to Attest to SMMP Status

Comments Received. Two commentators, AIMR and UBSPW, also suggested a mechanism for eliminating some of the ambiguity of the "reasonable grounds" test for determining if a customer is an SMMP.[65] AIMR urged the MSRB to "[s]hift the ultimate responsibility from the dealer to the investor to determine and represent that it qualifies as a sophisticated market professional * * *." UBSPW suggested that the SMMP proposal would be improved if the MSRB permits "dealers to rely upon either (1) the representation of a potential user that it has the characteristics the Board has identified as indicative of a sophisticated municipal market professional; or (2) a contract pursuant to which the participant agrees to waive the disclosure, suitability and price 'protections' that would otherwise be afforded that same customer in the context of a recommendation."[66]

MSRB Response. The SMMP Interpretive Guidance is designed to help dealers understand their fair practice obligations when effecting secondary market transactions for certain customers. As the fair practice obligations are the dealers', the MSRB believes it would be inappropriate to shift the ultimate responsibility for determining the scope of those obligations entirely to the customer. While the major rationale of AIMR's suggestion that investors be required to attest to SMMP status was an effort to streamline the process by which dealers determine that a customer is an SMMP, they also raised it as a mechanism to prevent customers who do not want to be considered SMMPs from being treated as such. However, an institution can only be treated as an SMMP, for purposes of Rules G–17 and G–18, if the institution has decided that it wants to engage in a non-recommended secondary market transaction. So, to a large extent, the institutions that can be considered SMMPs are self-selecting—they are the self-directed institutional investors that want to transact with a dealer who will act as an order taker.

As the MSRB recognized in the 2001 Notice, the SMMP interpretation "affords dealers flexibility to negotiate understandings and terms with a particular customer when effecting non-recommended secondary market transactions. This approach assists dealers and customers in defining their own expectations and roles with respect to their specific relationship." Therefore, the MSRB determined that the revised interpretive notice should specifically advise dealers that they may choose to have customers attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP and ensuring that customers are informed as to the consequences of being treated as an SMMP. Of course, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knew or should have known that an investor lacked sophistication concerning a municipal securities transaction as defined in the SMMP guidance.

Confirming SMMP Status

Comments Received. TBMA noted that the 2001 Notice is silent as to how often a dealer must confirm that a customer still qualifies as an SMMP. TBMA recommended that dealers be allowed to confirm SMMP status as part of their regular review of new account information.[67]

MSRB Response. The SMMP interpretive guidance has been revised to include a statement that would clarify that dealers are required to put a process in place for periodic review of customer's SMMP status.

Application of SMMP Interpretation to Fair Practice Obligations

Retention of SMMP Differentiation

Comments Received. Two commentators, Schwab and NFMA, again challenged the MSRB's decision to create the SMMP differentiation. Schwab is concerned that the SMMP proposal "will undoubtedly foster the creation and growth of electronic bond trading systems that cater solely to professional dealers and institutional investors and exclude participation by retail investors.."[68] The NFMA's concerns are two-fold. First, they "are troubled by the notion that certain market participants have enough direct access to information as to make redundant a dealers' affirmative disclosure of material facts * * *." Therefore, they "cannot endorse the SMMP concept as a means of promoting electronic trading before a general strengthening of the existing secondary disclosure structure occurs." Second, the NFMA "remains concerned that the concept of the SMMP as currently developed creates two tiers of investors. * * *. The NFMA is concerned that retail investors and smaller institutional investors will not have access to electronic systems."[69]

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[61] A QIB is an institution of a type listed in Rule 144A that owns or invests on a discretionary basis at least $100 million of certain securities. *See* 17 CFR 230.144A(a)(1). The QIB definition is used to identify institutions that can purchase offerings that are exempt from the registration provisions of the Securities Act and in which the securities are eligible for resale pursuant to Rule 144A under the Securities Act ("Rule 144A offerings").

[62] *See* First Southwest II, TBMA III and AIMR II (albeit at a level of $1 billion dollars), *supra* note 23. TBMA also suggested that "any fund that invests solely in municipal securities should be presumed sophisticated, because such funds in effect hold themselves out to the public as possessing special expertise."

[63] *See e.g.*, AIMR II (suggesting that while in theory asking the dealer to make a determination that a customer is an SMMP may sound reasonable, in many instances it is not practicable, especially for smaller dealers), *supra* note 23.

[64] AIMR II, *supra* note 23.

[65] *See* AIMR II and UBSPW, *supra* note 23.

[66] *Id.*

[67] TBMA III, *supra* note 23.

[68] *See* NFMA II and Schwab II, *supra* note 23.

[69] NFMA II. *See also* AIMR II ("We continue to have concerns about any efforts to decrease disclosure in the municipal securities market."), *supra* note 23.

MSRB Response. As noted above,[70] the MSRB believes that there is considerable merit in differentiating between customers with different degrees of sophistication. The MSRB believes that the SMMP guidance, as revised, is narrowly crafted so as to retain necessary customer protections for both retail and SMMP customers.

Moreover, while both Schwab and the NFMA posited that the MSRB guidance would foster the development of electronic trading systems that cater only to dealers and SMMPs, there is no evidentiary support for that statement. Rather, electronic trading systems area continuing to develop for retail and non-SMMP customers and the SMMP proposal was not intended to prohibit participation by retail participants in the electronic marketplace.[71]

Additionally, although Schwab's comment letter urged the MSRB to foster the development of systems that allow retail investors to be able to trade on an equal footing with dealers and institutions, these comments do not take into account the reality of the municipal securities market. While Schwab noted that there is no need to differentiate between SMMPs and non-SMMPs in certain markets such as the Nasdaq market, there are significant differences between the municipal securities market and other markets. Municipal securities are not part of the national market system. It would be very difficult for a retail investor to know whether a municipal security is being offered at a price that is fair and reasonable. There is, for example, no consolidated tape reporting contemporaneous quotes and transaction prices. Only rarely is a specific municipal security traded with sufficient frequency to allow a less sophisticated investor to obtain transaction information to assist in an analysis of the price being offered. Moreover, there is no mandated issuer disclosure, and very little publicly available and free disclosure information. It is very likely that retail and less sophisticated institutional investors would not even know where to go to independently assess the accuracy or timeliness of information about a municipal security. Given these circumstances, the MSRB believes that most retail and less sophisticated institutional customers at this time continue to need dealers to be specifically obligated to fulfill their fair practice obligations by, *inter alia,* affirmatively disclosing any material fact concerning a municipal security transaction made publicly available through established industry sources and taking reasonable steps to ensure that agency transactions are effected at fair and reasonable prices.

Application of Board Rules to Both Traditional and Electronic Trading Systems

Comments Received. The ICI suggested that the SMMP concept should be limited to electronic trading platforms. The ICI stated, "[w]hile we agree with the MSRB's position that it is appropriate to relieve dealers operating electronic trading platforms of their affirmative disclosure obligations under rule G–17 for the limited purpose of executing non-recommended secondary market transactions, we do not believe that dealers should be relieved of their disclosure obligations when effecting transactions of such securities generally. There has been no demonstrated need to expand the SMMP concept to non-electronic trading, which to date has successfully operated without it."[72]

MSRB Response. The MSRB does not believe that electronic transactions should be subject to different regulation than transactions that take place over the phone or in person. The dealers' obligations should be the same no matter what the medium of communication. While the SMMP interpretation will be particularly relevant to dealers operating electronic trading platforms, it could also apply to dealers who act as order takers in over the phone or in-person transactions.[73]

While the ICI objected to applying the SMMP concept to non-electronic transactions, the ICI has not identified a danger from applying the SMMP concept to telephonic or in-person transactions where the dealer is acting as an order taker and effecting a non-recommended secondary market transaction for an SMMP. Moreover, the MSRB's determination to apply the SMMP concept to both electronic and non-electronic trading is consistent with the efforts of the Commission and other self-regulatory organizations to ensure that the regulatory requirements for dealers to undertake specific investor protection responsibilities should not depend on whether a transaction takes place electronically, over the telephone, or face-to-face. Several commentators commended the MSRB for this approach.[74]

The SMMP Concept Should Not Apply to Securities Exempt UnderRule 15c2–12

Comments Received. The ICI and NFMA suggested that the SMMP concept should not apply to transactions in private placement securities and securities exempt from the disclosure requirements of the Act's Rule 15c2–12, such as variable rate demand obligations (collectively "exempt securities").[75] The ICI stated, "the premise underlying the SMMP concept, *i.e.,* that information about a security is already disclosed generally to the public, is particularly inapplicable to these securities. Because updated information on exempt securities is not required, it would be illogical and potentially harmful to investors to permit them to be traded on an electronic platform."[76]

MSRB Response. The MSRB has determined not to exempt certain types of municipal securities from the application of the SMMP proposal. The ICI's and NFMA's comments are based upon a fundamental misunderstanding of the underpinnings of the SMMP concept. What underlies the SMMP concept is not that material information is always disclosed to the public by the

[70] *See supra* notes 31–32 and accompanying text.

[71] MuniCenter also indicated some confusion about implications in the SMMP proposal, stating that the "SMMP Interpretive Guidance implies that electronic trading platforms are limited to transaction execution." Additionally, MuniCenter stated, "there should not be an implication that if an institutional investor does not have the level of assets in the definition of SMMP, the institutional investor should be foreclosed from electronic trading when the platform is providing significant informational services beyond transaction execution." MuniCenter, *supra* note 23. However, the MSRB's statements have been taken out of context. The MSRB's intent was to recognize the need for SMMP designation because some ATS type systems are being developed as largely transaction execution systems. Such systems may not provide sufficient information about the securities traded, and may not take reasonable steps to ensure that the transaction prices are fair and reasonable (nor do they represent that they perform these functions). The MSRB believes that these types of systems that are limited to transaction execution services should limit access to SMMPs, or at least that the dealer-operator of such systems should be aware that they are obligated to provide affirmative disclosure under rule G–17 and reasonably ensure fair and reasonable transaction prices under rule G–18 for the non-SMMP customers who transact directly within such a system. However, the MSRB believes and has stated that non-SMMP customers should not be foreclosed from electronic trading platforms that provide sufficient informational services.

[72] *See* ICI II, *supra* note 23.

[73] For example, if an SMMP reviewed an offering of municipal securities on an electronic platform that limited transaction capabilities to broker-dealers and then called up a dealer and asked the dealer to place a bid on such offering at a particular price, the interpretation would apply because the dealer would be acting merely as an order taker effecting a non-recommended secondary market transaction for the SMMP.

[74] *See* First Southwest II, MuniCenter and TBMA III, *supra* note 23.

[75] *See* ICI II and NFMA II, *supra* note 23.

[76] *Id.*

issuer, but rather, that the SMMP is aware of, or capable of making itself aware, and can independently understand the significance of, the material facts available from established industry sources. The interpretive notice recognizes that there "may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. However, in those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation, or asking the dealer to acquire additional information."

The MSRB understands that the ICI and NFMA believe that SMMPs generally obtain information about exempt securities through dealers.[77] However, the MSRB is concerned that the commentators may be confusing the role of a dealer effecting primary market transactions for SMMPs, with a dealer that is acting as an order taker effecting non-recommended secondary market transactions for an SMMP. While a dealer acting on behalf of an issuer may have more information about a municipal security than an SMMP, there is no reason to assume that a dealer effecting a non-recommended secondary market transaction would have the same informational advantage.[78] Nonetheless, the SMMP interpretation states that "if material information is not accessible to the market but known to the dealer and not disclosed, the dealer may be found to have engaged in an unfair practice."[79] Continuing to impose rule G–17's affirmative disclosure obligations on dealers transacting with SMMPs will not necessarily create the desired additional information since disclosure information must come from the issuer, not the dealer. In fact, it should be recognized that a dealer operating an ATS is likely to have very little information concerning the security in question if, for example, an institutional customer offers the security for sale through the ATS.

Miscellaneous

Comments Received. MuniCenter and UBSPW both expressed the view that the MSRB should issue definitive guidance about online recommendations.[80] MuniCenter recognized that the MSRB is reserving its guidance on the definition of an online recommendation, but "would like to state our view that an electronic platform listing securities input by institutional sellers and buyers, or the results displayed by a user's defined search criteria are not a recommendation by the platform." UBSPW stated, that the "only way the MSRB can achieve its goal of permitting sophisticated institutional investors to participate in electronic trading platforms 'on par with dealers when engaging in non-recommended secondary market transactions' is to make absolutely clear that the posting of line items coupled with a user-directed search feature and/or dealer controlled filter does not constitute the recommendation of any securities posted."[81]

MSRB Response. The MSRB will take these comments into consideration when it considers appropriate guidance concerning online recommendations.

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 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 submissions, 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 the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–02 and should be submitted by March 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[82]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[77] The MSRB believes that disclosure information may also be available from established industry sources since many issuers of exempt securities (*e.g.*, VRDOs) are also issuers of Rule 15c2–12 issues and thus have Rule 15c2–12 disclosure obligations for those issues that are not exempt.

[78] Moreover, investors' comments may incorrectly assume that remarketing agents usually are effecting secondary market transactions in exempt securities (*i.e.* VRDOs). A "primary offering" is defined in Rule 15c2–12 to mean an offering directly or indirectly by an issuer. Many remarketings of VRDOs meet the definition of a "primary offering" under Rule 15c2–12(c). *See* Pillsbury, Madison & Sutro, SEC No-Action Letter, [1990–1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79, 659 at 78, 027 (Mar. 11, 1991) (cautioning the inquirer not to read the language of Rule 15c2–12(e)(7) too restrictively and instructing that each remarketing of exempt securities should be examined as though it were a new offering to determine if an exemption applies).

[79] The ICI's comment letter applauded the MSRB's clarification of this point in the July SMMP Guidance and recommended that the MSRB remind dealers "of their duty not to mislead customers." ICI II, *supra* note 23.

[80] *See* MuniCenter and UBSPW, *supra* note 23.

[81] *Id.*

[82] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45387; File No. SR–NASD–2002–13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Bid Price Criteria of Nasdaq Listing Standards

February 4, 2002.

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 January 17, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposed rule change as "non-controversial" pursuant to Rule 19b-4(f)(6) of the Act,[3] which renders it effective immediately upon

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the grace period within which an issuer must demonstrate compliance with the bid price criteria on the Nasdaq SmallCap Market and to clarify the procedures pursuant to which Nasdaq National Market issuers transfer to the SmallCap Market for failing to comply with the bid price requirement. Nasdaq further proposes that this rule operate on a pilot basis ending on December 31, 2003. Nasdaq has represented that, during the pilot period, it will assess the effectiveness of these changes.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)—(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)—(7) No change.

(8)(A) A failure to meet the continued inclusion requirement[s] for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance [with the applicable continued inclusion standard]. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30-day compliance period.

(B) A failure to meet the continued inclusion requirement[s] for [minimum bid price and] market value of publicly *held shares* [float] shall be determined to exist only if the deficiency [for the applicable criterion] continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance [with the applicable continued inclusion standard]. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90-day compliance period.

(C) A failure to meet the continued inclusion requirement[s] for market capitalization shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance [with the applicable continued inclusion standard]. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30-day compliance period.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it will be afforded an additional 180 day compliance period, provided that on the 180th day following the notification of the deficiency, the issuer meets any of the three criteria for initial inclusion set forth in Rule 4310(c)(2)(A), based on the issuer's most recent publicly filed financial information. Compliance can be achieved during either 180-day compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

(9)—(29) No change.

(d) No change.

4450. Quantitative Maintenance Criteria

After designation as a Nasdaq National Market security, a security must substantially meet the criteria set forth in paragraphs (a) or (b), and (c), (d), [(e),] and (f) below to continue to be designated as a national market system security. A security maintaining its designation under paragraph (b) need not also be in compliance with the quantitative maintenance criteria in the Rule 4300 series.

(a) Maintenance Standard 1—Common Stock, Preferred Stock, Shares or Certificates of Beneficial Interest of Trusts and Limited Partnership Interests in Foreign or Domestic Issues

(1) " (5) No change

(6) At least two registered and active market makers.

(b)—(d) No change.

(e) *Compliance Periods* [Market Makers]

(1) A failure to meet the continued inclusion requirement for market value of publicly held shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90-day compliance period.

(2) A failure to meet the continued inclusion requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90-day compliance period. If the issuer has not been deemed in compliance prior to the expiration of the 90 day compliance period, it may transfer to The Nasdaq SmallCap Market, provided that it meets all applicable requirements for continued inclusion on the SmallCap Market set forth in Rule 4310(c) (other than the minimum bid price requirement of Rule 4310(c)(4)) or Rule 4320(e), as applicable. A Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market must pay the entry fee set forth in Rule 4520(a). Upon such transfer, a domestic or Canadian Nasdaq National Market issuer transferring to The Nasdaq SmallCap Market will be afforded the remainder of the initial 180 day compliance period set forth in Rule 4310(c)(8)(D) and may thereafter be eligible for the subsequent 180 day compliance period pursuant to that rule. The issuer may also request a hearing to remain on The Nasdaq National Market pursuant to the Rule 4800 Series. The 90-day grace period afforded by this rule and any time spent in the hearing process will be deducted from the applicable grace periods on The Nasdaq SmallCap Market. Non-Canadian foreign issuers that transfer to The Nasdaq SmallCap Market are not subject to the $1 minimum bid price requirement pursuant to Rule 4320. Any issuer (including a non-Canadian foreign issuer) that was formerly listed on The Nasdaq National Market, and which transferred to The Nasdaq SmallCap Market pursuant to this

paragraph, may transfer back to The Nasdaq National Market without satisfying the initial inclusion criteria if it maintains compliance with the $1 bid price requirement for a minimum of 30 consecutive business days prior to the expiration of the compliance periods described in Rule 4310(c)(8)(D) and if it has continually maintained compliance with all other requirements for continued listing on The Nasdaq National Market since being transferred. Such an issuer is not required to pay the entry fee set forth in Rule 4510(a) upon transferring back to The Nasdaq National Market.

(3) [At least two registered and active market makers, except that an issue must have at least four registered and active market makers to satisfy Maintenance Standard 2 under paragraph (b) of this rule.] A failure to meet the continued inclusion requirement[s] for a number of market makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. [with the applicable standard.] Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30-day compliance period.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 27, 2001, the NASD implemented a temporary moratorium on Nasdaq's enforcement of its continued listing requirements relating to the bid price and the market value of the public float.[4] Nasdaq has stated that this moratorium was established to provide greater stability to the marketplace in response to the extraordinary market conditions following the tragedy of September 11th. Authority for the moratorium expired on January 2, 2002. After careful consideration, Nasdaq concluded that the requirements relating to a minimum bid price and market value of the public float continue to be useful. In particular, Nasdaq believes that the 90-day grace period for National Market issuers to regain compliance with these requirements is commensurate with the stature and integrity of the market.

Nasdaq, however, proposes to modify the grace period applicable to the bid price requirement on the SmallCap Market. Generally, the listing standards on the SmallCap Market are lower than those on the Nasdaq National Market. As a result, issuers that become non-compliant with National Market listing standards are often afforded an opportunity to "phase down" to the SmallCap Market to take advantage of the lower standards applicable to that market. In the case of the minimum bid price, however, the standards are currently identical. Thus, a National Market issuer that fails to meet the National Market bid price requirement will also fail to meet the SmallCap bid price requirement and be forced to go to an unlisted, less transparent market. To ameliorate this inconsistency and to provide Nasdaq National Market companies with more time to develop and implement a turn-around plan, Nasdaq is proposing to allow companies up to one year to regain compliance with the minimum bid price requirement. In addition, Nasdaq is proposing to codify procedures pursuant to which a National Market issuer could transfer to the SmallCap Market if it did not meet the National Market bid price requirement.

Specifically, Nasdaq proposes the following changes to the SmallCap Market bid price grace periods:

- Extend the grace period on the SmallCap Market from 90 calendar days to 180 calendar days. Following this grace period, an issuer that demonstrates compliance with the SmallCap Market initial inclusion requirement of $5,000,000 in shareholders' equity; $50,000,000 in market capitalization; or $750,000 in net income in the most recently completed fiscal year or in two of the last three most recently completed fiscal years, will be afforded an additional grace period of 180 calendar days within which to regain compliance.
- If a Nasdaq National Market issuer is unable to regain compliance within the existing grace period of 90 days, the issuer could phase down to the SmallCap Market and be afforded the remainder of the 180 calendar days automatically afforded to all SmallCap issuers. An additional 180 calendar days would then be available, provided the former National Market issuer were able to demonstrate compliance with the SmallCap Market initial inclusion requirement noted above.
- In the event the former National Market issuer were able to demonstrate compliance with the $1 bid price requirement for 30 consecutive trading days prior to the expiration of all the SmallCap Market grace periods, and the issuer could demonstrate that it had maintained compliance with all Nasdaq National Market maintenance requirements (with the exception of minimum bid price) at all times since it was phased-down to the SmallCap Market, it would then be eligible to phase-up to the Nasdaq National Market pursuant to the maintenance criteria.

Nasdaq proposes that these changes be implemented on a pilot basis, through December 31, 2003. This will allow Nasdaq and the Commission to evaluate the effectiveness of these changes on market participants.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Nasdaq has stated that it is proposing this rule change to minimize the impact on issuers in the marketplace and their shareholders, while providing greater transparency and consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR–NASD–2001–61).

[5] Nasdaq has indicated that it "intends to analyze the impact of the proposed rule during the pilot period, to determine whether it makes sense to seek permanent approval of the rule." Letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 31, 2002. Nasdaq also stated that it "would examine those Nasdaq National Market companies that phase down to the SmallCap market, and then are able to return to the National Market pursuant to the provisions of the pilot rule * * * and would share the results of this examination with the Commission staff on a confidential basis prior to seeking authority for a permanent rule." *Id.*

[6] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq asserts that the proposed rule change is effective upon filing pursuant to section 19(b)(3)(A) of the Act[7] and paragraph (f)(6) of Rule 19b–4 thereunder,[8] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

Nasdaq has requested that the Commission waive the 30-day period, which would make the rule operative immediately. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.[10] The Commission believes that no purpose would be served by having 30 days pass before the rule becomes operative because, during the intervening period, issuers and investors could become confused as to which grace periods applied. Allowing the rule to become operative immediately will allow Nasdaq to explain its bid price requirements more clearly to issuers that might have need of the grace period.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 NASD. All submissions should refer to File No. SR–NASD–2002–13 and should be submitted by March 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3235 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)

[9] In addition, Rule 19b–4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of such proposed rule change, or such shorter time as designated by the Commission. Nasdaq filed with the Commission an earlier iteration of the proposed rule change (SR–NASD–2001–94) which was later withdrawn. The Commission deems the submission of SR–NASD–2001–94 to fulfill the five-day pre-filing notice requirement for the present filing, SR–NASD–2002–13.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45382; File No. SR–PCX–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Manner In Which Computer Generated Orders Are Designated

February 1, 2002

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 January 7, 2002, the Pacific Exchange, Inc. ("PCX" 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. On January 25, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.[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 PCX proposes to change the manner in which member firms are required to designate an order as "computer generated." The text of the proposed rule change, as amended, is available at the PCX and 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 Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

The purpose of the proposed rule change, as amended, is to change the manner in which member firms are required to designate an order as "computer generated" to accurately reflect current technological advances.

On September 22, 2000, the Commission approved a PCX proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2002 ("Amendment No. 1"). In Amendment No. 1, the PCX changed the basis for immediate effectiveness for the proposed rule change. Specifically, the PCX re-designed the proposed rule change as a filing made under Rule 19b–4(f)(5) under the Act relating to a change in an existing order-entry or trading system of a self-regulatory organization, as opposed to a filing under Rule 19b–4(f)(1) relating to a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on January 25, 2002, the date the PCX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

rule change relating to option orders that are created and communicated to the Exchange electronically, without manual input ("computer generated orders").[4] Under that proposed rule change, computer generated orders are not eligible for automatic execution via the Exchange's Auto-Ex System. To prevent computer generated orders from being processed through Auto-Ex, Member Firms sending computer generated orders electronically to the Exchange are required to designate them with a "CG" in the "additional instruction" field of the Common Message Switch ("CMS")[5] record layout. Orders so designated are re-routed for representation by a Floor Broker. The Exchange represents that due to changes in technology specifications, the indicator "CG" orders must now be designated on line 3C, field 1, of the CMS record layout. The Exchange represents that Orders so designated will be re-routed for representation by a Floor Broker.

The proposed rule change, as amended, requires member firms to identify CG orders "in a form and manner as prescribed by the Exchange." The PCX represents that this will provide it with flexibility to change the requirements for identifying CG orders with technological advances.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

[4] *See* Securities Exchange Act Release No. 43328 (September 22, 2000), 65 FR 58834 (October 2, 2000) (SR–PCX–00–13).

[5] The CMS is the options order format generally followed by all options exchanges.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[8] and subparagraph (f)(5) of Securities Exchange Act Rule 19b–4[9] thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days after January 25, 2002, 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.[10]

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, as amended, 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 PCX. All submissions should refer to File No. SR–PCX–2002–02 and should be submitted by March 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3237 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(5).

[10] *See* 15 U.S.C. 78(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45388; File No. SR–Phlx–2001–121]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending its Fee Schedule for the Use of the Intermarket Trading System

February 4, 2002.

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 December 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its fee schedule by establishing a fee charged to equity specialists. According to the Exchange, the proposed fees are based on the use of the Intermarket Trading System ("ITS") to execute certain sized customer orders received over the Philadelphia Stock Exchange Automated Communication and Execution ("PACE")[3] system, and sent outbound over ITS with the customer's clearing information. The Exchange also proposes to create a credit to equity specialists for net inbound shares executed over ITS.

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. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a fee charged to Exchange equity specialists for their use of ITS to execute certain sized customer orders received over the PACE system, and create a credit given to equity specialists for net inbound shares executed over ITS. The Exchange proposes to charge equity specialists $0.60 per 100 shares on customer orders received over the PACE system of 500 shares or less that the equity specialist sends away as an ITS commitment marked with the customer's clearing information, to the extent that the order is executed over ITS. Additionally, the Exchange proposes to charge equity specialists $0.30 per 100 shares on customer orders received over the PACE system of 501 to 4,999 shares that the equity specialist sends away as an ITS commitment marked with the customer's clearing information, to the extent that the order is executed over ITS.[4] The Exchange designates this fee as eligible for the Monthly Member Credit.[5]

The Exchange also proposes that equity specialists receive a credit of $0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed by the equity specialist over the number of outbound ITS shares sent by the equity specialist and executed away in the same calendar month.[6] The Exchange proposes to begin charging this fee and applying this credit on trades settling on January 2, 2002. The Exchange proposes to begin chagrining this fee and applying this credit on trades settling on February 1, 2002.[7]

According to the Exchange, equity specialists receiving customer orders over the PACE system may, among other things, choose to execute the order pursuant to Phlx Rule 229, or send an outbound ITS commitment marked with the customer's clearing information for execution at another exchange, pursuant to Phlx Rule 2000, *et seq.* The Exchange represents that members sending customer orders would pay no PACE fees when they route orders to the Exchange through PACE, however, they would incur fees when the specialist chooses to send away an ITS commitment marked with the customer's clearing information.

The Exchange believes that the proposed fee schedule should create an incentive for equity specialists to either execute customer orders under 5,000 shares received over the PACE system and not send an outbound ITS commitment marked with the customer's clearing information for execution at another exchange, or send the order as an outbound ITS commitment marked with the equity specialist's clearing information.[8] According to the Exchange, when equity specialists send outbound ITS commitments with their own clearing information, customers will not be charged a PACE fee.[9] Therefore, the Exchange believes that customers will benefit from a reduced number of orders sent via ITS marked with the customer's clearing information.

The Exchange also believes that the proposed credit to equity specialists for net inbound shares executed over ITS should encourage equity specialists to act as net "liquidity providers" (by executing more inbound ITS shares than they send away for execution), rather than acting as net "liquidity takers."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general,[10] and Sections 6(b)(4)[11] and 6(b)(5)[12] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities; and it promotes just and equitable principles of trade, and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee or charge imposed by the Phlx, it has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(2) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, 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

[4] The Exchange represents that equity specialists will not be charged a fee on customer orders received over the PACE system of 5,000 or greater shares that the equity specialist chooses not to execute on the Exchange, but to send and execute away an ITS commitment marked with the customer's clearing information. Additionally, equity specialists will not be charged a fee on non-PACE customer orders of any size that the equity specialist sends and executes away through ITS. Finally, the basis for the fee will be on the number of shares executed away over ITS, not on the size of the original customer order.

[5] See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR–Phlx–2001–49). The Monthly Member Credit allows Exchange members to receive a montly credit of up to $1,000 to be applied against fees, dues, charges and other such amounts.

[6] The Exchange represents that no credit will be applied if the number of the inbound ITS shares executed by the equity specialist is equal to or less than the number of outbound ITS shares sent by the equity specialist and executed away.

[7] February 1, 2002 telephone conversation between Edith Hallahan, Phlx, and Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission.

[8] The Exchange notes that equity specialists who send and execute away an ITS commitment marked with the equity specialist's clearing information, as opposed to the customer's clearing information, will not be charged the proposed fee.

[9] The Phlx represents that this reference to a PACE fee is an existing fee that is not impacted or altered by this proposed rule change. February 1, 2002 telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Katherine England, Assistant Director, Division, Commission.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–2001–121 and should be submitted by March 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3233 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45390; File No. SR–Phlx–2001–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase of the Minimum Size of PACE Orders That Must Be Automatically Guaranteed by Equity Specialists

February 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 196–4 thereunder,[2] notice is hereby given that on December 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. On January 31, 2002, the Phlx amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its rules to restore the minimum automatic execution size of PACE[4] orders for equity specialists from 299 shares to 599 shares. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and 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 Phlx included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to restore the equity specialists' minimum automatic execution size for PACE orders to 599 shares. In a recent proposed rule change, the Exchange amended Phlx Rule 229 to reduce the minimum automatic execution size of PACE orders from 599 shares to 299 shares.[5] The Exchange never implemented that reduction.[6]

According to the Exchange, the June 2001 rule change addressed a concern commonly raised by liquidity providers in a post-decimal trading environment that the transition to trading in decimal increments, rather than in fractions, has resulted in a wider range of quoted prices (more ticks), as well as an increase in small-sized bids and offers made at a particular price. The Exchange also represented in the June 2001 rule change that such bids and offers, which can be for as little as 100 shares qualify, regardless of their size, to become the National Best Bid or Offer ("NBBO"), also know for PACE purposes as the "PACE Quote."

At this time, the Exchange proposes to restore the rule language providing for a minimum automatic execution size of 599 shares in order to preserve the current levels of automatic execution on the Exchange's equity floor. It is the Exchange's belief that the present market environment and focus on speed of execution require that automatic execution levels remain at least at 599 shares.

The Exchange believes that returning to a 599 share minimum automatic execution level, should result in more orders eligible for automatic execution. Because the 599 shares level is a minimum, specialists may set their automatic execution levels higher than 599 shares. Where the specialist has set an automatic execution level that is higher, such as 1,099 shares, orders greater than that automatic execution level are handled manually by the specialist (although they can be delivered electronically to the specialist by PACE). Obviously, orders less than 1,099 shares, in this example, would be eligible for automatic execution. Similarly, where the specialist has set an automatic execution level of the minimum 599 shares, orders for 599 shares or less are eligible for automatic execution and orders for more than 599 shares are handled manually by the specialist. In short, the proposal re-establishes 500 shares as the minimum automatic execution level on PACE.

2. Statutory Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act in general,[7] and furthers the objectives of section 6(b)(5) in particular,[8] in that it should promote just and equitable principles of trade, by fostering competitive and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the Phlx has designated the foregoing proposed rule change as a rule effecting a change in an existing order-entry or trading system of the Exchange that (1) does not significantly affect the

[15] 17 CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Edith Hallahan, Deputy General Counsel, Phlx to Lisa N. Jones, Attorney, Division of Market Regulation, Commission dated January 31, 2002 ("Amendment No. 1"). Amendment No. 1 provides a corrected version of the Exchange's rule text.

[4] The Philadelphia Stock Exchange's Automatic Communication and Execution System (PACE) performs order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rule 229.

[5] See Securities Exchange Act Release No. 44395 (June 6, 2001), 66 FR 31728 (June 12, 2001) (SR–Phlx–2001–46) ("June 2001 rule change").

[6] The Exchange states that following effectiveness of the filing, the Exchange determined not to reduce the minimum auto execution size for various reasons, including changed market conditions and differing views on whether the reduction was appropriate.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of the system, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act,[9] and Rule 19b–4(f)(5) thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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 Phlx. All submissions should refer to File No. SR–Phlx–2001–108 and should be submitted by March 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3234 Filed 2–8–02; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–2(a)(12).

DEPARTMENT OF STATE

[Public Notice 3910]

Culturally Significant Objects Imported for Exhibition Determinations: "Edouard Vuillard"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Edouard Vuillard," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about January 19, 2003, to on or about April 20, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 5, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–3267 Filed 2–8–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Tanzania has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Tanzania qualify for the textile and apparel benefits provided under the AGOA.

EFFECTIVE DATE: February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as "beneficiary sub-Saharan African countries," provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Tanzania as a "beneficiary sub-Saharan African country." Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have meet the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Tanzania has taken, I have determined that Tanzania has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting "Tanzania" in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are

effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirement Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–3266 Filed 2–8–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 25, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–11380.

Date Filed: January 23, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-ME 0127 dated 25 January 2002, Mail Vote 194—Resolution 010w, TC2 Europe-Middle East Special Passenger Amending Resolution between Nicosia and Tel Avia r1-r10, Intended effective date: 1 February 2002.

Docket Number: OST–2002–11403.

Date Filed: January 25, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0543 dated 18 January 2002, Mail Vote 190—Resolution 010u, TC3 between Japan/Korea and South East Asia Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macau SAR) and Japan, Intended effective date: 26 April 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–3214 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 25, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 et. seq.). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1995–477.

Date Filed: January 24, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 14, 2002.

Description: Application of Laker Airways (Bahamas) Limited, pursuant to 49 U.S.C. Section 41302, requesting an amendment and re-issuance of its foreign air carrier permit to engage in scheduled air transportation of persons, property and mail on the following Bahamas-U.S. scheduled combination routes; co-terminal points Freeport and Nassau, Bahamas on the one hand, and the terminal points Pittsburgh, Pennsylvania; Dallas/Ft. Worth, Texas; and Milwaukee, Wisconsin on the other hand.

Docket Number: OST–1998–3758.

Date Filed: January 25, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 15, 2002.

Description: Application of Northwest Airlines, Inc. amending its pending certificate of public convenience to engage in the scheduled foreign air transportation of persons, property, and mail from points behind the United States via the United States and intermediate points to a point or points in France and beyond; from points behind the United States via the United States and intermediate points to French Departments of America and beyond; from points behind the United States via the United States to New Caledonia and/or Wallis and Futuna; from points behind the United states via the United States and intermediate points to FrenchPolynesia and beyond; from points behind the United States via the United States and intermediate points to Saint Pierre and Miquelon and beyond. Northwest also requests that it's pending certificate application be amended to seek authorization to engage in the scheduled foreign air transportation of property and mail between France and any point or points. Northwest further requests that the Department integrate the requested certificate authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy.

Docket Number: OST–2002–11418.

Date Filed: January 25, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 15, 2002.

Description: Application of Southern Winds, S.A. pursuant to 49 U.S.C. section 41302 part 211 and subpart B, requesting a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail between a point or points behind Argentina, points in Argentina, and intermediate points, on the one hand, and Miami, New York, Los Angeles, San Juan, Dallas, Orlando, Atlanta, and seven other Argentina-designated points in the United States, (five of which to be served on a code share only basis) and beyond to Montreal, Toronto, Korea and Spain, on the other, and between points in Argentina and intermedieate points, to San Juan and beyond to third countries.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–3215 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–09]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

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 a petition seeking relief from specified requirements of 14 CFR. 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 March 4, 2002.

ADDRESSES: Send comments on any petition 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–2002–11468 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, 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 Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029, 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 February 6, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2002–11468.

Petitioner: The Collings Foundation.

Section of 14 CFR Affected: 14 CFR 91.319(a), 119.5(g), and 119.21(a).

Description of Relief Sought: To permit The Collings Foundation to operate its former military McDonnell Douglas F–4D Phantom airplane, which has an experimental airworthiness certificate, for the purpose of carrying passengers on local flights in return for receiving donations.

[FR Doc. 02–3247 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting is scheduled for March 13, 2002, at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn on Capitol Hill, 415 New Jersey Ave., NW, Congressional Room, Washington, DC, 20001.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinson@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on March 13, 2002, at the Holiday Inn on Capitol Hill, 415 New Jersey Ave., NW, Congressional Room, Washington, DC 20001. The agenda will include:

- Fuel Tank Inerting Working Group report
- Status reports from Assistant Chairs
- Committee Schedule for Calendar Year 2002

The Executive Committee will deliberate on the Fuel Tank Inerting Working Group's report to ARAC. The report recommends the FAA, the National Air and Space Administration, and the aviation industry conduct further research with an objective of developing more viable solutions for reducing fuel tank flammability sooner than any of the inerting concepts evaluated can be implemented.

Attendance is open to the interested public but will be limited to the space available. The FAA will arrange teleconference capability for individuals wishing to join in by teleconference if we receive that notification by March 1, 2002. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long-distance charges.

The public must arrange-by March 1 to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 4, 2002.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–3244 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Object Oriented Technology in Aviation Workshop

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA issues this notice to advise the public of a workshop to discuss Object Oriented Technology (OOT) in Aviation. This notice announces the dates, times, location, and registration information for the workshop.

DATES: The workshop is April 9–11, 2002 from 8:30 a.m. to 5 p.m. daily.

ADDRESSES: The workshop will be held at the Sheraton Norfolk Waterside Hotel, 777 Waterside Drive, Norfolk, VA., 23510 USA, Telephone (757) 622–6664.

FOR FURTHER INFORMATION CONTACT: Kelly Hayhurst, NASA Langley Research Center; email k.j.hayhurst@larc.nasa.gov; telephone (757) 864–6215; web site *http://shemesh.larc.nasa.gov/foot/*.

SUPPLEMENTARY INFORMATION:

The agenda for the workshop includes:

- Opening session (welcome and workshop overview, workshop vision, OOT overview.)
- Briefings on OOT issues.
- Breakout sessions covering:

—Single inheritance and dynamic dispatch,

—Templates and inlining,
—Reuse and dead/deactivated code,
—Multiple inheritance,
—Tools,
—Other considerations.

• Discussion of breakout session results.

• Closing session (future activities, adjournment.)

This workshop is open to anyone in the aviation community interested in OOT issues related to developing or approving aviation software products that comply with RTCA/DO–178B. Attendees are not required to submit comments or position papers. Workshop Registration fee is $100 (USD) if paid by March 16, 2002 and $300 (USD) if paid thereafter. Make your reservation, and get full details, at the web site *http://shemesh.larc.nasa.gov/foot/*. The registration fee covers continental breakfast, morning and afternoon breaks each day, and an evening reception on April 9. Make hotel reservations with the Sheraton Norfolk Waterside Hotel, either through their direct phone number at (757) 622–6664 or central reservations at (800) 325–3535. A block of rooms at the rate of $109 (USD) plus taxes is reserved through March 16, 2002. To qualify for this special rate, please state that you are attending the "Object Oriented Technology Workshop."

Issued in Washington, DC on January 29, 2002.

David W. Hempe,

Acting Manager, Aircraft Engineering Division.

[FR Doc. 02–3241 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use a Passenger Facility Charge (PFC) at Hilton Head Airport, Hilton Head Island, SC

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 use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Lawson, Airport Director of the County Council of Beaufort County, Hilton Head Island Airport at the following address: P.O. Box 23739, 120 Beach City Road, Hilton Head Island, SC 29925.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County Council of Beaufort County, Hilton Head Island Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Aimee McCormick, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7153. 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 use the revenue from a PFC at Hilton Head Island Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 31, 2002 the FAA determined that the application to use the revenue from a PFC submitted by Hilton Head Island Airport was substantially complete within the requirements of section 158.25 part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 4, 2002.

The following is a brief overview of the application.

PFC Application No.: 02–03–U–00–HXD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 200.

Proposed charge expiration date: October 1, 2007.

Total estimated net PFC revenue: $2,076,657.

Brief description of proposed project(s): Land acquisition for aeronautical development and general aviation development.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Part 135 on-demand air taxi/commercial carriers that do not enplane at least 1% of the airport's annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hilton Head Island Airport.

Issued in Atlanta, Georgia on January 31, 2002.

Scott Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–3245 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Orange County, New York

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Orange County, New York.

FOR FURTHER INFORMATION CONTACT: Robert A. Dennison III, P.E., Regional Director; NYSDOT Region 8; Eleanor Roosevelt State Office Building; 4 Burnett Boulevard; Poughkeepsie, NY 12603; Telephone: (845) 431–5750.

or

Robert E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve NYS Route 17 in Orange County, New York. The proposed improvement will center on the reconstruction and reconfiguration of the NYS Route 17 Exit 122 Interchange, within the Town of Wallkill, and associated improvements on existing Town and County roadways for a distance ranging from approximately 1.6 to 3.3 km (1.0 to 2.1 miles) depending upon the

alternative implemented, including East Main Street (CR 67) and Crystal Run Road. This project is being progressed to address identified operational and safety problems, non-standard and non-conforming geometrics, and bridge structural needs.

Alternatives under consideration include a Null or No-Build Alternative (Alternative 1A) and two (2) build alternatives. The build alternatives have been identified as Exit 122 Reconfiguration with an East Main Street Extension (Alternative 2C) and Exit 122 Reconfiguration with Crystal Run Road Realigned but no Main Street Extension (Alternative 2E). Alternative Transportation Measures, including enhancing public transportation and implementing intelligent transportation systems and demand management strategies (Alternative 1B) will be considered as an integrated element of the feasible build alternatives. Also included with the feasible build alternatives, there will be further consideration and evaluation of the benefits and costs of adding an auxiliary lane on Route 17 westbound between Exit 121 and Exit 120 and/or improving the geometry of the I–84 westbound to Route 17 westbound ramp. Isolated improvements to nearby intersections may be included to improve operations on roadways within the project area. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public information meetings will be held in the Town of Wallkill between February 2002 and June 2003. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS, when prepared, will be available for public and agency review and comment. A formal NEPA scoping meeting will be held at the Town of Wallkill Court Room, Town Hall 600 Route 211 East, Wallkill, New York 10940 on Monday February 11, 2002. At 3:30 PM a meeting will be held for Federal, State, and Local officials and at 7:00 PM a meeting for the general public and all interested parties. Each meeting will be preceded by a 30-minute open house during which attendees can view concept plans and interact with project team members.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: January 15, 2002.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 02–3253 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Sacramento, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Maiser Khaled, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to analyze the effect of constructing the Interstate 5 (I–5)/ Cosumnes River Boulevard interchange and extension of Cosumnes River Boulevard to Franklin Boulevard. The project is located in the southwest portion of the City of Sacramento.

The project is to extend Cosumnes River Boulevard from its current westerly terminus at Franklin Boulevard to an interchange with I–5 and potentially further west to Freeport Boulevard (State Route 160). Alternative under consideration include (1) taking no action, (2) constructing Cosumnes River Boulevard from Franklin Boulevard west to I–5 with an interchange at I–5, and (3) constructing Cosumnes River Boulevard from Franklin Boulevard west across I–5 toward the Sacramento River to Freeport Boulevard with an interchange at I–5. Two alternative alignments are proposed for the Cosumnes River Boulevard connection between Franklin Boulevard and the proposed I–5 interchange.

Based on preliminary design information, the two build alternatives would have identical impacts on wetlands and special-status species. Mitigation would be required for both build alternatives. Mitigation opportunities are available within the study area and in the region.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organization and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held in Sacramento from 4 p.m. to 7 p.m. on Tuesday, February 26, 2002, to obtain comments on environmental issues of concern. The meeting will take place in Conference Room A of the Pannell Meadowview Center, which is located at 2450 Meadowview Road, Sacramento, California.

Representatives from Caltrans, the City of Sacramento, the Design Engineer, and the Environmental Consultant will be present to discuss the proposed action and environmental concerns. Additionally, a public hearing will be held when the draft EIS is released. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to the program.)

Issued on: February 5, 2002.

Maiser Khaled,

Chief, District Operations—North.

[FR Doc. 02–3173 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4370]

Transportation Equity Act for the 21st Century (TEA–21); Implementation for the Transportation and Community and System Preservation Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA will not be soliciting fiscal year (FY) 2003 applications for the Transportation and Community and System Preservation Pilot Program (TCSP) Program until the Congress completes action on the FY 2003 U.S. DOT Appropriations Act. In FY 2001 and FY 2002 TCSP awards have been made to congressionally designated projects in the conference reports accompanying the FY 2001and FY 2002 U.S. DOT Appropriations Acts.

FOR FURTHER INFORMATION CONTACT: Ms. Felicia B. Young, Office of Human Environment, Planning and Environment, (HEPH), (202) 366–0106; or Mr. S. Reid Alsop, Office of the Chief Counsel, HCC–30, (202) 366–1371; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. Information is also available on the FHWA TCSP Web page: *http://www.fhwa.dot.gov/tcsp/docs.html*.

Background

Section 1221 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107 (1998)) established the Transportation and Community and System Preservation Pilot Program (TCSP). The TCSP provides funding for planning grants, implementation grants, and research to investigate and address the relationship between transportation and community and system preservation. The TEA–21 authorized funding for the TCSP at the levels of $20 million in FY 1999 and $25 million per year for FY 2000 through 2003. These funds are subject to the obligation limitation.

In response to the **Federal Register** notices issued by the FHWA between FY 1999 and FY2002, a total of 1,332 applications totaling $906.4 million were submitted to the TCSP between FY 1999 and FY 2002 from all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. This number includes 524 letter of intent applications in FY 1999, of which 35 received funding. Of the total number of submitted applications, 80 projects from 45 States and the District of Columbia received TCSP funding. The remaining 1,025 projects totaling $722.4 million have not received TCSP funding. In FY 2001 and 2002, TCSP awards were made to projects designated by Congressional appropriation committees in the reports accompanying the U.S. DOT Appropriations Act for those fiscal years. See H. Rep. No. 106–940 at 108–109 (October 5, 2000) and H.R. Conf. Rep. No. 106–1033 at 452 (December 15, 2000). Notwithstanding the increase in TCSP funding for FY 2002, the FHWA maintains an abundant number of applications for TCSP funding.

Accordingly, in light of the number of unawarded applications and possible further Congressional designations in FY 2003, the FHWA does not intend to solicit applications for the TCSP Pilot Program until the Congress completes action on the FY 2003 U.S. DOT Appropriations Act.

(Authority: 23 U.S.C. 315; sec. 1221, Pub. L. 105–178, 112 Stat. 107, 221 (1998); 49 CFR 1.48).

Issued on: February 4, 2002.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 02–3218 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11475]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CAPE ROSE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11475. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver

application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement:

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* CAPE ROSE. *Owner:* Sail into Wellness, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "52' on deck, 15.9' beam, 24 net tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Experiential sail training for small groups on a traditional gaff-rig schooner, dockside attraction, occasional charters, overnight accommodations, on-board receptions." "Coastwise USA and territories, while cruising North in summer, South in winter."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1987. *Place of construction:* Cape Town, South Africa.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There is no perceivable threat of competition to existing operations due to the cruising nature of this vessel and its intended limited operations."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This vessel has contributed to the economic well-being of various U.S. boatyards and shipyards over the course of its present ownership. There is no perceivable adverse impact to other operations."

Dated: February 5, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–3262 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11474]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EAGLE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11474. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: EAGLE. *Owner:* Deborah and Philip Hutmacher.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length—58 feet, Beam—14 feet, Weight—32 ton"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "To allow the Eagle to be charter by business associates, friends and relatives for private parties a couple of times per month during the warmer months." "The Eagle is used on Lake Union (moored), Lake Washington, Puget Sound, San Juan Islands, and Canadian Gulf Islands."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1977. *Place of construction:* Chung Wah Boat Yard, Taipei, Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "There are other charters in the area. However, there will be little or no impact. The use would be once or twice a month and mostly with people already known and word of mouth. This is not our principle income or business"

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "...little effect on US Shipyards. Passengers will be loading from marinas or public docks. The additional charting will not affect maintenance."

Dated: February 5, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–3260 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–11476]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel MARQUISATE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11476. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket are available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: MARQUISATE. *Owner:* Alpha 59, Inc.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length: 59.0 Breadth: 16.0 Depth: 7.7; Capacity: Not more than twelve (12) passengers; Tonnage: Gross—48, Net—38."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel is carrying twelve (12) passengers for hire" "The navigable waters (i.e.: rivers, canals, etc.) and waterways of the Continental United States, including the ICW."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1979. *Place of construction:* Fumicino, Italy.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact on other commercial passenger vessel operations should be slight, if not totally non-existent, since my intended route involves being underway for extended periods of time, and few people have that luxury. The only operation that I could possibly conflict with, would be cruise ships, and with the limited size, capacity and duration of each trip, I sincerely believe that my business would pose no problem at all."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Boat builders in the Florida Keys usually construct vessels much smaller in length than mine. The passengers usually remain on deck so it is not necessary for individual cabins, etc. The boat builders can predict that the vessels they build will be used for commercial fishing, or charter vessels which go as far as 38 nautical miles, if that; at least in the Keys. Vessels are just not in demand for the type of usage that my vessel would be used in."

Dated: February 5, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–3261 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 603X)]

CSX Transportation, Inc.—Abandonment Exemption—in Webster County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 10.5 miles of railroad between milepost BUG–0.0 at Cowen and milepost BUG–10.5 at Bolair, in Webster County, WV. The line traverses United States Postal Service Zip Codes 26206 and 26288.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 13, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-*

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 21, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 4, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control/ Recordation Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 15, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by CSXT's filing of a notice of consummation by February 11, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: February 4, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–3105 Filed 2–8–02; 8:45 am]

BILLING CODE 4915–00–P

of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2202–11477]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PHENIX.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before March 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–11477. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* PHENIX. *Owner:* Kevin Smith.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "length 31.6 feet, breadth 16 feet, catamaran sailboat; *Capacity:* up to 10 passengers; *Tonnage:* 9 gross tons"

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* The vessel will be used for sailing lessons geared toward teaching how to sail a cruising catamaran. The vessel will also be available for hire to private companies for client entertainment purposes. The geographic region of operation is southern Lake Michigan only."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1995. Place of construction: Whitby, Ontario, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I believe that this waiver will have no impact on any current commercial passenger vessel operators, as my research has found that there are currently no operators in the area offering sailing lessons geared toward cruising catamarans. Also, there are no operators that I am aware of that cater specifically toward hiring a sailing catamaran or sailing vessel to private companies for client entertainment purposes. I do *not* intend to use the vessel for charters on a per person fee basis offered to individuals. The only customers will be private companies who hire the vessel for entertainment purposes."

(6) A statement on the impact this waiver will have on U.S. shipyards.

According to the applicant: "I can think of no impact this waiver will have on U.S., shipyards. All repair work and storage of the vessel is performed, and will continue to be performed in U.S. yards."

Dated: February 5, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–3259 Filed 2–8–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payroll Savings Report.

DATES: Written comments should be received on or before April 14, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Payroll Savings Report.

OMB Number: 1535–0001.

Form Number: SB–60 and SB–60A.

Abstract: The information is requested as a measure of the effectiveness of the payroll savings program.

Current Actions: None.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 14,000.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 9,600.

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 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: February 5, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–3168 Filed 2–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Definitive Securities.

DATES: Written comments should be received on or before April 14, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0059.

Form Number: PD F 1832.

Abstract: The information is requested to complete transaction involving the assignment of U.S. Registered Definitive Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

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 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: February 5, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–3169 Filed 2–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Stop Payment/ Replacement Check Request.

DATES: Written comments should be received on or before April 14, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@pbd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Stop Payment/Replacement Check Request.

OMB Number: 1535–0070.

Form Number: PD F 5192.

Abstract: The information is requested to place a stop payment on a Treasury Direct check and request a replacement check.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

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 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: February 5, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–3170 Filed 2–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent with Respect to United States Savings Bonds/Notes.

DATES: Written comments should be received on or before April 14, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0113.

Form Number: PD F 1849.

Abstract: The information is requested when the requested savings bonds/notes transaction would appear to affect the right, title or interest of some other person.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 700.

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 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: February 5, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–3171 Filed 2–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before April 14, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg,

WV 26106–1328, or e-mail to *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1535–0114.

Form Number: PD F 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 20.

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 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: February 5, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–3172 Filed 2–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0060."

SUPPLEMENTARY INFORMATION:

Titles:

a. Claim For Government Life Insurance Policy, VA Form Letter 29–764.

b. Claim For One Sum Payment (Government Life Insurance), VA Form 29–4125.

c. Claim For Monthly Payments (National Service Life Insurance), VA Form 29–4125a.

d. Claim For One Sum Payment (Govt. Life Insurance All Prefixes), VA Form 29–4125b.

e. Claim For Monthly Payments (US Govt. Life Insurance), VA Form 29–4125k.

OMB Control Number: 2900–0060.

Type of Review: Extension of a currently approved collection.

Abstract: VA forms and form letter are used by beneficiaries to apply for proceeds of Government Insurance policies. The collected information is used by VA to process beneficiaries claim for payment of insurance proceeds.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 19, 2001, at pages 37724–37725.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,938 hours.

a. FL 29–764—100 hours.
b. VA Form 29–4125—8,200 hours.
c. VA Form 29–4125a—463 hours.
d. VA Form 29–4125b—50 hours.
e. VA Form 4125k—125 hours.

Estimated Average Burden Per Respondent:

a. FL 29–764—6 minutes.
b. VA Form 29–4125—6 minutes.
c. VA Form 29–4125a—15 minutes.
d. VA Form 29–4125b—6 minutes.
e.VA Form 4125k—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 85,850.

a. FL 29–764—1,000.
b. VA Form 29–4125—82,000.
c. VA Form 29–4125a—1,850.
d. VA Form 29–4125b—500.
e. VA Form 4125k—500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0060" in any correspondence.

Dated: January 18, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3143 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0130]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0130."

SUPPLEMENTARY INFORMATION:

Title: Status of Loan Account—Foreclosure or Other Liquidation, Form Letter 26–567.

OMB Control Number: 2900–0130.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form Letter 26–567 is used to obtain information from holders regarding a loan to be foreclosed. The information is used to specify the amount, if any, to be bid at the foreclosure sale.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 23, 2001, at page 58783.

Affected Public:. Business or other for-profit.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0130" in any correspondence.

Dated: January 17, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3144 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0215]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0215."

SUPPLEMENTARY INFORMATION:

Title: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21–863.

OMB Control Number: 2900–0215.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–863 is used by VA adjudicators to determine the address of a child attaining the age of majority and to determine the child's status for benefits. Title 38, CFR 3.403 provides direct payment to a child, if competent, from the date the child reaches the age of majority. Title 38, CFR 3.667 provides that a child may be paid from a child's 18th birthday based upon school attendance. This form letter solicits information needed to determine eligibility to benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2001, at page 50001.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,767 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0215" in any correspondence.

Dated: January 17, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3145 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0469]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0469."

SUPPLEMENTARY INFORMATION:

Title: Certificate Showing Residence and Heirs of Deceased Veterans or Beneficiary, VA Form 29–541.

OMB Control Number: 2900–0469.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to establish entitlement to Government Life

Insurance proceeds in estate cases when formal administration of the estate is not required.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 6, 2001, at pages 46684–46685.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,039 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,078.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0469" in any correspondence.

Dated: January 17, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3146 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0043."

SUPPLEMENTARY INFORMATION:

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to obtain the necessary information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility to benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 1, 2001, at pages 50000—50001.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 226,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0043" in any correspondence.

Dated: January 17, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3147 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0129]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0129."

SUPPLEMENTARY INFORMATION:

Title: Supplemental Disability Report, VA Form Letter 29–30a.

OMB Control Number: 2900–0129.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–30a is used by the insured to supply information in conjunction with claim for disability benefits. VA uses the data collected on the form letter to evaluate the insured's claim for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 2, 2001, at pages 40315—40316.

Affected Public: Individuals or households.

Estimated Annual Burden: 548 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,570.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0129" in any correspondence.

Dated: January 17, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–3148 Filed 2–8–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
February 11, 2002

Part II

Environmental Protection Agency

Notice of National Environmental Information Exchange Network Grant Guidelines; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7138–4]

Notice of National Environmental Information Exchange Network Grant Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of solicitation of applications.

SUMMARY: The Environmental Protection Agency (EPA) announces that the National Environmental Information Exchange Network Grant Program is now soliciting applications for the Program. The goal of the National Environmental Information Exchange Grant Program is to advance the National Environmental Information Exchange Network by encouraging State and other partner's data integration efforts. Funding will be provided through grants to States, the District of Columbia, Trust Territories, and Federally Recognized Indian Tribes for capacity building capabilities for Network participation. Tribes will receive funds from a designated set-aside pool of resources.

DATES: Applications must be received or postmarked not later than April 1, 2002.

ADDRESSES: These guidelines are final, however, comments and questions may be directed to Grant Program e-mail: *neengprg@epamail.epa.gov*. Hard copies of all referenced documents may be obtained by contacting the appropriate regional contact (see Section VI).

FOR FURTHER INFORMATION CONTACT: Lyn Burger, U.S. E.P.A., Office of Environmental Information, Mail Code 2812, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; Phone (202) 564–0200; e-mail: *neengprg@epamail.epa.gov*. For additional information, please visit the Grant Program Web site at: *www.epa.gov/neengprg*.

Dated: February 1, 2002.

Kimberly T. Nelson,

Assistant Administrator, Office of Environmental Information.

FY2002 National Environmental Information Exchange Network Grant Program

Section I. Background

Information is fundamental to the work of environmental protection. Environmental decision makers at all levels need timely and high quality environmental information to make informed decisions. Yet, many of the current systems and approaches to information exchange are not designed to meet those needs. The U.S. Environmental Protection Agency (EPA), through work with the Environmental Council of the States, has developed a new vision for exchanging environmental data that, when fully established, will help meet those needs. The National Environmental Information Exchange Network (Network) is a major component of the solution envisioned by EPA.

The Network utilizes technologies and approaches that help create E-commerce and will provide an alternative to the current approach of exchanging data. These data exchanges will replace and complement the traditional approach to information exchange that currently relies upon data being processed directly to multiple EPA national data systems. Network participants will house information on their own nodes or portals where it will be available upon authorized request. The Network is described in detail in a Blueprint document developed by States and the EPA. The Blueprint document can be accessed at: *www.epa.gov/oei/imwg*.

The FY2002 appropriations to EPA include $25 million in grants that will be used to advance States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands (referred to as States from here on) and Federally recognized Indian Tribes (referred to as Tribes from here on) readiness to participate on the Network. EPA will set-aside $2.5 million for Tribes.

Section II. Network Grant Components

The appropriation funds the Network Grant Program for the 2002 fiscal year only. States and Tribes have expressed the concern that uncertainty regarding the continuation of the Network Grant Program makes it difficult to integrate the program into their planning process, or to take on longer term projects. In order to partially address those concerns, EPA is committed to running the Network grant program in substantially the same manner, if funds are appropriated, for the first two years (FY 2002—2003). Some modifications may be required to address changes in funding levels, or to enhance the administration of the program.

The Network Grant Program has four main parts which are:

1. Network One Stop
2. Network Readiness
3. Network Challenge
4. Network Administration

There are no matching requirements for any part of the Grant Program.

Section III. Guidance for Applicants

This section describes the application process for each part of the Grant Program.

Part 1—describes general requirements that apply to each part of the Grant Program.

Part 2—describes the eligibility, availability and use of funds and the particular requirements for submitting applications for Network One Stop Grants.

Part 3—describes the eligibility, availability and use of funds and the particular requirements for submitting applications for Network Readiness Grants.

Part 4—describes the eligibility, availability and use of funds, and the particular requirements for submitting applications for Network Challenge Grants.

Part 5—describes the eligibility, availability and use of funds, and the particular requirements for submitting applications for Network Administration Grants.

Part 1: General Requirements and Assistance

Eligible entities must designate a single lead agency that will have overall responsibility for developing the grant proposal, submitting the grant application, and managing grant funds. The lead agency may award sub-grants, contracts, and establish intra-governmental agreements as necessary with other agencies to implement their work plan. States and Tribes may change the lead agency from one grant cycle to the next. However, the lead agency designated for a particular grant cycle must continue to report on the projects funded in that cycle until they are completed. Along with their grant proposals applicants must also submit:

1. Federal Grant Forms—Federal Standard Forms 424 and 424A. SF 424: *Application for Federal Assistance*, the official form required for all federal grants, requests basic information about the grantee and the proposed project. SF 424A requests budget information on the proposed project. For an electronic copy of these forms go to *www.epa.gov/neengprg*.

2. Confidential Information—Applicants should clearly mark information in their grant proposals that they consider to be confidential. EPA will make final confidentiality decisions in accordance with 40 CFR 2, subpart B.

3. Pre-application Assistance—Applicants seeking assistance on developing any of the grants should contact the appropriate regional or headquarters contact. (See Section V for contacts).

4. Submission of Multiple Grant Applications—States and Tribes submitting Network One Stop, Network Readiness and/or Network Challenge applications may submit applications at the same time.

5. Lead Agency—The Lead Agency (*e.g.*, an agency with delegation for environment, natural resources, health, agriculture, *etc.*) designated by the eligible entity must submit a single application. States and Tribes may work together to submit a Challenge grant but a Lead State Agency or Lead Tribe must be identified within the application.

6. A clear definition of project goals and measures—Clearly describe the goal(s) of the project, describe in detail the measures to be used to evaluate the success of the project, and the plan for reporting results based on the measures. If a Quality Assurance Plan (QAP) exists for data flows being proposed with the application, a copy of this plan must be included with the application. If a QAP does not exist, grant recipients must work with the respective Regional or HQ Project Officer as well as the Regional or HQ Quality Assurance Manager to develop and implement a quality assurance project plan that is acceptable to all parties before federal funds will be released. Recipients may (though it is not required) use the template developed for technology grants. A copy of the template can be found at the Network Grants Web site *www.epa.gov/neengprg*.

7. Funding Vehicle Preference—The grant proposal should indicate whether the applicant prefers receiving grant funds as part of an existing Performance Partnership Grant (PPG), or as a separate grant. If a grant recipient chooses to add funds to a Performance Partnership Grant (PPG), the Network grant work plan commitments must also be included in the PPG work plan and the Performance Partnership Agreement work plan negotiated with EPA HQ and Regions.

8. Page Limitations—Proposals for Network One Stop Grants should be no more than 15–20 pages in length. Proposals for Network Readiness Grants should be no more than 5–10 pages in length. Proposals for Network Challenge Grant should be no more than 10–15 pages in length. Supporting materials may be submitted along with the proposal and will not be counted against the page limitations. However, applicants should ensure that they adequately describe the project they plan to undertake within the page limitation guidelines and do not depend upon supporting materials for this purpose. Proposals should be submitted using a 12 point font or larger and in a format that is compatible with WordPerfect 8.0 or in a PDF format.

9. Submission Requirements and Schedule—If applications and proposals are submitted in a paper format, eligible entities must submit two copies of the Grant Application to the appropriate regional contact, and two copies to the EPA headquarters contact. Electronic versions of application and proposals may be sent via e-mail to: *neengprg@epamail.gov*. *Applications for All Parts of the Grant Must Be Received or Postmarked Not Later Than April 1, 2002.*

Part 2: Network One Stop Grants—Eligibility and Availability of Funds, Use of Funds, Particular Requirements for Submitting Applications and Criteria

Eligibility and Availability of Funds

All States and Tribes that have not previously received a One Stop Grant (*i.e.*, VT, CT, KY, TN, AR, AL, KS, IA, ND, SD, WY, CO, ID, NV, AK, HI, District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, and all Tribes) may apply for a One Stop Grant. States are eligible to receive a maximum of $500,000. Tribes are eligible to receive a maximum of $100,000 from the Tribal set-aside funds.

Note: A State or Tribe that has not received a Network One Stop Grant may apply for a Network Readiness and/or Network One Stop Grant, but may only be awarded funding from one category. A State or Tribe that has not previously received a Network One Stop Grant and receives funding for a Network Readiness Grant in 2002 will be eligible to apply for a Network One Stop Grant in the second year of the program (pending receipt of appropriations for the program).

Use of Funds

These grants are intended for the purpose of continuing EPA's commitment to offer funding under the One Stop Reporting Partnership Program through 2003. These grant funds are intended to support the broader goals of the One Stop program which are to (1) reduce the reporting burden on industry, States, and local governments; (2) foster multimedia (air, water, waste) and geographic approaches to problem solving; and (3) provide the public with meaningful, real-time access to environmental data.

Particular Requirements

To receive a grant, each State/Tribe must submit a 15–20 page proposal. The proposal should address State/Tribal plans and activities that demonstrate the following:

1. Senior State/Tribal Leadership (Deputy Commissioner, Commissioner, Chief Information Officer, or Governor) willingness to establish clear accountability for environmental reporting reforms and to participate with EPA and other One Stop States in documenting and communicating the results of the grant.

2. A commitment to accomplishing burden reduction, data integration and public access, as indicated by the level of investment in and capacity for environmental data management.

3. Readiness for full-scale implementation of programs to work toward established objectives, as indicated by accomplishments and planned activities:

Integrating State/Tribal/EPA data management. EPA will give special attention to proposals that address the State capacity and readiness to implement the cornerstone of integrating environmental data, the facility identifier. This approach is compatible with EPA's Facility Identification data standard, which was finalized in November 2000. Integration of environmental data at the facility level is the primary thrust of the Facility Identification Template for States (FITS2) dated February 2000 and sponsored by ECOS and the EPA. (*www.sso.org/ecos/projects*)

Capitalizing on burden reduction opportunities. The measures that EPA is adopting to reduce reporting burden typically require State action to actually achieve the reductions. States/Tribes are not required to immediately and unconditionally implement these policies as a condition for receiving a grant; however, States/Tribes are expected to demonstrate a credible effort to adopt these or other measures for reducing reporting burden as part of their overall reforms.

Employing an inclusive stakeholder process to design and implement reporting and data management reforms. EPA will not specify the form of the stakeholder process or specify requirements for representation. However, it is expected that States/Tribes will devise ways to ensure that local government, industry, environmental and other public interest groups, and the general public have an opportunity to participate in environmental reporting reforms.

Enhancing electronic reporting, with the long term goal of achieving universal access to electronic reporting for the regulated community.

Enhancing public access to environmental performance data, including data from sources, data about regulator performance, and data on environmental status and trends.

Network Transition, including the intent of adopting and adapting longer term efforts to participate on the Network.

A State or Tribe grant proposal must also specify a commitment to produce the major deliverable of the grant which is a comprehensive three to five-year plan to reform environmental reporting and data management. In the past, the plan has been referred to as a 120-Day Plan, since each state awarded a grant was required to submit the plan 120 days following their baseline visit. The baseline visit was an on-site visit by EPA's information technology experts (staff and consultants) that gave the state's leadership a snapshot of their agency's information opportunities and challenges.

EPA will continue to offer this assistance to each State/Tribe awarded a One Stop grant and this plan must be submitted within 120 days of the beginning of the award. EPA agrees to participate with the State/Tribe in developing this plan by ensuring the availability of key Agency staff and managers, by providing expert technical support including contractor assistance if required, and by giving prompt attention to State/Tribal requests for policy clarifications and decisions. The State/Tribe may begin implementation of its work program and expend funds received through this grant during the period in which this plan is being developed.

The plan will include:

a. A statement of State/Tribe goals and objectives for environmental reporting and data management for a three-to-five year period;.

b. A description of major outputs over the term of the program plan, projected dates for each major output, and assignment of responsibility for each project output;

c. A list of key program participants and a description of their roles;

d. An approach for tracking program progress and measuring success period.

Criteria and Selecting Proposals

The Network One Stop grants are intended to stimulate a partnership with applicants who have decided to undertake a comprehensive re-engineering of their information management process in order to reduce the burden of environmental reporting on the regulated community, integrate agency data and data management processes across program and organizational lines, and improve public access to environmental information.

EPA will focus on (1) the applicant's commitment to accomplishing the above goals as indicated by their level of investment in and capacity for environmental data management; (2) the applicant's readiness for full-scale implementation of programs to accomplish the above goals over the long term, specifically including standards for identifying and locating regulated facilities across all programs; (3) applicants' commitment to produce a comprehensive three to five-year plan to reform environmental reporting and data management which clearly identifies the intent to adapt longer term efforts toward participation on the Network; and (4) Senior Leadership commitment.

EPA's Office of Environmental Information (OEI) will form a proposal review panel consisting of representatives from OEI, EPA's American Indian Environmental Office (AEIO), and EPA's Regional Offices. The panel members will separately review and then discuss each proposal. OEI will make final selections based on panel recommendations and feedback on project proposals from Regional Offices. Regional Program Offices will award and manage these grants.

Part 3: Network Readiness Grants—Eligibility and Availability of Funds, Use of Funds, Particular Requirements for Submitting Applications and Criteria

Eligibility and Availability of Funds

All States and Tribes may apply for a Network Readiness Grant. States are eligible to receive a maximum of $400,000 for a grant. Tribes are eligible to receive a maximum of $100,000 for a grant from the Tribal set-aside funds.

Use of Funds

These grants are intended to assist States and Tribes to build upon their readiness that would address their priority internal information technology investments while constructing initial linkages to the Network. These grants must be used for work that advances the quality and availability of environmental data, and that produces a material advancement in one or more of the Network's components (Trading Partner Agreements, Data Standards, Data Exchange Templates, technical infrastructure, etc.). Each applicant will provide a proposal that addresses their commitment to participate on the Network and the actual development of a node or portal on the Network.

Particular Requirements

An applicant must produce a comprehensive three-year transition plan that addresses critical steps and milestones that will demonstrate their commitment to participate on the Network. Ideally, the State/Tribe transition plan would align with EPA's Central Data Exchange (CDX) data flow priorities. While States/Tribes are not restricted to proposed CDX data flows, they are strongly encouraged to align their proposals with EPA's proposed schedule. For the most current information on CDX flow priorities and status, please refer to the CDX Web site: www.epa.gov/cdx/priority.

The transition plan must clearly identify which core capacity building functions, based on the list below, the applicant plans to undertake and complete:

1. Establish an official information source and steward. The establishment will enhance the capacity to identify and manage an official, high quality data source (e.g., at least one source of data in a mature stage of production that is used for agency business, reconciled data across multiple sources using supported keys/linkages, and/or at least one source of data that would likely be used within the Network).

2. Develop technical infrastructure for Internet node operation that will enhance the technical infrastructure and capabilities needed to support node operation (e.g., web server hardware in production, management of a relational database, IT personnel available to develop, establish, and support State node projects).

3. Connection of information resources to the node which will extend the range of data sharing, data access, data integration and decisions tools to partners on the Network and/or stakeholders in need of access to the information resources.

4. Node implementation which will establish the agency's single management point for providing its information to the Network.

5. Node/TPA Management which will enhance the overall management capacity to be a participant on the Network, to execute data exchanges, Trading Partner Agreements, manage and operate on the Network with adequate and appropriate security protocols and/or conduct strategic information and architecture planning.

Eligible activities, which support one or more of the above listed functions, could be, but are not necessarily limited to:

Technical Infrastructure Capacity—servers, processors, storage devices and storage media, telecommunications products and services, computer peripherals and other capital expenditure items necessary to assist in the building of or acquiring of the necessary technical architecture or infrastructure to be part of and a

participant on the Network. This includes Internet services that assist an organization to participate on the Network; security products and services necessary to safeguard data access on the Internet and Network; and additional products and services such as Global Positioning System units when used to promote improved values for environmental information that will assist in the management of environmental programs or Network activities.

Systems Development—consultant services, software design, development, operations or evaluation services for database management, services for application development and operations, product purchases or development services and activities that assist in providing the capability to format, store, transform, transmit, manipulate, reconcile and/or improve the quality of data that might be available to the Network. These services, products, and development activities can include functions that support: central data exchange services, database management systems, data registries, data integration systems and applications, data access activities and applications that support the Network.

Management Capabilities—consultation services, technical architecture planning and implementation support activities that promote Network participation. These services include: development and implementation of EPA adopted data standards, trading partner agreements, data format design templates and schemas, strategic planning, technical architecture planning and implementation support activities that promote Network participation.

Criteria and Selecting Proposals

EPA will evaluate the proposals on how they best address critical steps and milestones that will be taken over the next three years that demonstrate commitment for participation on the Network. Actions that demonstrate a commitment to participate on the Network include (1)Establish an official information source and steward; (2) Develop technical infrastructure for Internet node operation; (3) Connection of information resources to a node; (4)Node implementation for providing information to the Network; (5) Node/Trading Partner Agreement and management.

OEI will form a proposal review panel consisting of representatives from OEI, AEIO, and EPA's Regional Offices. The panel members will separately review and then discuss each proposal. OEI will make final selections based on panel recommendations and feedback on project proposals from Regional Offices. Regional Program Offices will award and manage these grants.

Part 4: Network Challenge Grants—Eligibility and Availability of Funds, Use of Funds, Particular Requirements for Submitting Applications, and Criteria

Eligibility and Availability of Funds

All States and Tribes may apply for Challenge Grants. States are eligible to receive a maximum of $1,000,000 for a grant. Tribes are eligible to receive a maximum of $300,000 grant from the Tribal set-aside funds.

Use of Funds

Challenge grants will support single State/Tribe or multi-State/Tribe collaborative efforts to advance the Network's development and implementation and create benefits for multiple States/Tribes. Examples of collaborative efforts in the past include the Network Node Pilot Project from the States of Nebraska, New Hampshire, Delaware, and Utah and the Facility Identification Template for States (FITS) developed and built upon the practical experience of the States of Washington, New Jersey, Pennsylvania, Mississippi, and Massachusetts. Additional examples might include an IntraState data integration effort among the Environmental Protection, Health, and Natural Resources Departments within a State/Tribe, an IntraState or Tribal collaboration on reporting environmental requirements to CDX, or an Industry to State/Tribe data transfer effort.

Particular Requirements

An applicant must produce a comprehensive proposal that addresses the following:

1. Critical steps and milestones for the project that will be undertaken and demonstrate commitment to actual development of the project. The project may be media-specific or multi-media in nature.

2. Explanation of why the proposed project would benefit the Network and data integration. Explain the potential for other States/Tribes to collaborate and learn from the success of the project and the broad applicability for participation in the Network.

3. Clear definition of project goals and measures. Clearly describe the goal(s) of the project, describe in detail the measures used to evaluate the success of the project, and the plan for reporting results based on the measures. The goal(s) should be stated in terms of the State/Tribe efforts, and the measures should emphasize results and outcomes to be achieved, not just activities or outputs produced.

4. Clear and detailed description of the strategy. Clearly describe the strategy and how it will address the project identified. The strategy should demonstrate innovative and creative solutions to Network exchanges and should specify the tools or actions to be used, the schedule for implementing the project, the agencies/entities involved in implementing the strategies and their respective roles, and other resources leveraged to address the problem.

Criteria and Selecting Proposals

EPA will evaluate proposals on their feasibility, and on their potential to make a contribution to nationwide Network capacity. The proposals should clearly address how the project would (1) advance the functionality of the Network through the immediate flow of higher quality environmental data; (2) create a model that would be easily implemented, have broad applicability, and would be readily transferable to a wide group of Network participants; (3) achieve a reduction in reporting and accessing burden; (4) provide increased public access to environmental data; and (5) involve collaboration throughout the project.

OEI will form a proposal review panel consisting of representatives from OEI, AEIO, EPA's Regional Offices and technology experts (federal staff and/or consultants). OEI will make final selections based on panel recommendations and feedback on project proposals. OEI will manage and award these grants.

Part 5: Network Administration Grants—Eligibility and Availability of Funds, Use of Funds, Particular Requirements for submitting applications and Criteria.

Eligibility and Availability of Funds

Network Administration funds will support technical and administrative functions of the Network for States and Tribes and will total $1,500,000.

Particular Requirements

EPA will announce requirements for submitting requests for Network Administration Grant Funds later this year.

Section IV. Awarding of Grants

States and Tribes that are selected to receive both a Network One Stop or Network Readiness Grant and a Network Challenge grant may receive the combined grant funds in a single award. However, if a State or Tribe elects to

receive the combined grant funds in a single award, it will have to wait until the Network Challenge grant selections are made to be awarded funds. EPA will award to those States and Tribes that only apply for the Network One Stop or Network Readiness Grants funds after final selections are made.

Funds that States or Tribes do not apply for, or ultimately qualify for, under the Network One Stop Grant or the Network Challenge Grant, will be made available through the Network Readiness Grants. EPA reserves the right to reject any application or proposal. For questions concerning grant award decisions please refer to the contact information in Section VI.

Section V. Post Award Requirements

Grant recipients must submit a copy of the semiannual program report to the regional grant manager and the headquarters contact. At a minimum, program reports will include:

—an update on the schedule and status of the implementation of the project, including any implementation problems encountered and suggestions to overcome them;

—an explanation of expenditures to date, and unless the grant is included in the PPG (40 CFR part 35.530(b) and 40 CFR part 35.130(b)), expenditures linked to project results;

—an assessment of progress in meeting project goals, including output and outcome measures when available.

Section VI. Authority & Applicable Regulations

—H.R. 2620, FY 2002 VA–HUD and Independent Agencies Appropriations Bill

—Catalog of Federal Domestic Assistance: 66.608

—Delegation of Authority: 1–47

—40 CFR part 31 and 40 CFR part 35, subpart A and subpart B apply to this grant program.

Section VII. Points of Contact

Headquarters Contact—Lyn Burger, Office of Environmental Information, 5315A Ariel Rios Building, Washington, DC 20460, Phone, 202–564–0200, FAX, 202–501–1718, e-mail: *neengprg@epamail.epa.gov.*

Regional Contacts

EPA Region I

Mike MacDougall, US EPA Region I, 1 Congress Street, Suite 1100 (RSP), Boston, MA 02114, (617) 918–1941, *macdougall.mike@epa.gov.*

EPA Region II

Robert Simpson, US EPA Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3335, *simpson.robert@epa.gov.*

EPA Region III

Joseph Kunz, US EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2116, (215) 814–5251 Fax, *kunz.joe@epa.gov.*

EPA Region IV

Rebecca Kemp, US EPA Region IV, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8027, *kemp.rebecca@epa.gov.*

EPA Region V

Noel Kohl, US EPA Region V, Resource Management Division, 77 W. Jackson Boulevard, Chicago, IL 60604, (312) 886–6224, *kohl.noel@epa.gov.*

EPA Region VI

Dorian Reines, US EPA Region VI, 1445 Ross Ave., Dallas, TX 75202, (214) 665–6542 *reines.dorian@epa.gov.*

EPA Region VII

Maryane Tremaine, US EPA Region VII, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7430, *tremaine.maryane@epa.gov.*

EPA Region VIII

Josie Lopez, USEPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–7079, *lopez.josie@epa.gov.*

EPA Region XI

Jean Circiello, US EPA Region IX, 75 Hawthorne Street-Mail Stop SPE–1, San Francisco, CA 94105, (415) 947–4268, *circiello.jean@epa.gov.*

EPA Region X

Jon Schweiss, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1690, *cheweiss.jon@epa.gov.*

Web site information—*www.epa.gov/neengprg.*

[FR Doc. 02–2978 Filed 2–8–02; 8:45 am]

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Federal Register

Monday,
February 11, 2002

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Shellfish Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI09

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2003 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Wildlife Resources," which expire on February 28, 2003. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 29, 2002. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 20, 2002—March 21, 2002. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council	Hoonah	March 12, 2002.
Region 2—Southcentral Regional Council	Anchorage	March 5, 2002.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 18, 2002.
Region 4—Bristol Bay Regional Council	Dillingham	Date TBA.
Region 5—Yukon-Kuskokwim Delta Regional Council	Tuntutuliak	March 6, 2002.
Region 6—Western Interior Regional Council	McGrath	March 19, 2002.
Region 7—Seward Peninsula Regional Council	Nome	February 26, 2002.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 21, 2002.
Region 9—Eastern Interior Regional Council	Circle Hot Springs	February 25, 2002.
Region 10—North Slope Regional Council	Barrow	February 20, 2002.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

We will compile and distribute for additional public review during early May 2002 the written proposals to change Subpart D fish and shellfish regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 14, 2002.

We will hold a second series of Regional Council meetings in September and October 2002, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, December 2002. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to wildlife regulations at this time. The Board called for proposed changes to those regulations in August 2001 and will take final action on those proposals in May 2002.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, Subpart C, § __.25, § __.27, Subpart D, and § __.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in December 2002.

Proposed Changes From 2002–2003 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2002–2003 Subparts C and D Final Rule, with only one modification (removing the non-Federally -qualified user restriction from Redoubt Lake), served as the foundation for this 2003–2004 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on March 1, 2003, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior. with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, amended January 8, 1999, 64 FR 1276, and June 12, 2001 66 FR 31533) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process.

The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned control number 1018–0075, which expires July 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date, if needed. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Harvester Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy fish and shellfish populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base.

Form	Estimated number of respondents	Completion time for each form	Estimated annual response	Estimated annual burden (hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	5,000	¼ hour	5,000	1,250	$20.00	$5.00 each or $25,000 total.
Designated Harvester Application.	1,000	¼ hour	1,000	250	20.00	$5.00 each or $5,000 total.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. We will submit for OMB approval any changes or additional information collection requirements not included in 1018–0075.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [**Note:** $3.00 per pound is much higher than the current commercial value for salmon.] and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and Executive Order 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

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

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife

Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, for the 2003 regulatory year as set forth below.

PART 100—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § ____.24(a)(2) is revised to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
Kotzebue Area	All fish	Residents of the Kotzebue Area.
Norton Sound—Port Clarence Area:		
Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound—Port Clarence Area, remainder.	All fish	Residents of the Norton Sound—Port Clarence Area.
Yukon-Northern Area:		
Yukon River drainage	Salmon, other than fall chum salmon	Residents of the Yukon River drainage, including the community of Stebbins.
Yukon River drainage	Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish (other than salmon)	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area	All fish	Residents of the Yukon–Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26–B.
Kuskokwim Area	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, andTatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
Bristol Bay Area:		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder of the Bristol Bay Area	All fish	Residents of the Bristol Bay Area.

Area	Species	Determination
Aleutian Islands Area	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
Alaska Peninsula Area	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area	Residents of the Alaska Peninsula Area.
Chignik Area	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.
Kodiak Area—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
	Salmon, Dolly Varden, trout, char, grayling, and burbot.	No Determination.
Prince William Sound Area:		
South-Western District and Green Island	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Salmon Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek.	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Chitina Subdistrict of the Upper Copper River District.	Salmon	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Cantwell, Chisana, Dot Lake, Healy Lake, Dot Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon	Residents of the Prince William Sound Area.
Yakutat Area:		
Freshwater upstream from the terminus of streams and rivers of Yakutat Area from Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.

Area	Species	Determination
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt and eulachon	Residents of Southeastern Alaska and Yakutat Areas.
Southeastern Alaska Area:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of theKasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3—B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 3— Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 5—North of a line from Point Barrier to Bounder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainagesemptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which emply into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.

Area	Species	Determination
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska area.	Dolly Varden, trout, smelt and eulachon	Residents of Southeastern Alaska and Yakutat Areas.

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3. In subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.27 is revised to read as follows:

§ ____.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [*Reserved*]

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) You may not accumulate harvest limits authorized in this section or § ____.28 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River

drainage. Only one gillnet 100 feet or less in length with a mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency action.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You must have a subsistence fishing permit for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iii) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(vii) In Subdistrict 4–A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take king salmon during the State commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(ix) You may not subsistence fish in the Delta River.

(x) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15–September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xi) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiii) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xiv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xv) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure.

(xvi) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xvii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xviii) Only one subsistence fishing permit will be issued to each household per year.

(xix) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xx) In the Yukon River drainage, chinook (king) salmon must be used primarily for human consumption and may not be targeted for dog food. Dried chinook salmon may not be used for dogfood anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5–D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for 6 hours after, each State open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each State open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and 6 hours after each State open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9 a.m. Monday until 9 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik, River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after a State open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53°52.64′N. lat., 166°32.30′ W. long. to a point on Amaknak Island at 53°52.82′ N. lat., 166°32.13′ W. long., and north of line from a point south of Agnes Beach at 53°52.28′ N. lat., 166°32.68′ W. long. to a point at 53°52.35′ N. lat., 166°32.95′ W. long. on Amaknak Island;

(C) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(D) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(E) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(F) Waters of McLees Lake and its tributaries and outlet stream;

(G) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(H) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each State open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow/steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first State commercial salmon fishing opening in the Chignik Area through September 30, (vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ N. lat.), west of 150°W. long., north of 55°30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20.22′ W. long.).

(i) You may take fish, other than salmon and rainbow/steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N. lat., 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N. lat., 152°32.00′ W. long.), to the southeastern shore of Womens Bay at 57°41.95′ N. lat., 152°31.50′ W. long.;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N. lat, 152°28.38′ W. long., to a point offshore at 57°45.35′ N. lat, 152°28.15′ W. long., to a marker located onshore south of the river mouth at approximately 57°45.15′ N. lat., 152°28.65′ W. long.;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51′ 06″ N. lat.) and a line extending south from Cape Fairfield (148° 50″ 15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take grayling or burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take salmon, Dolly Varden, trout, and char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56).

(v) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(vi) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow/steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Glennallen and Chitina Subdistricts only from May 15 through September 30.

(iii) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(iv) You may take salmon for subsistence purposes with no harvest or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the State commercial opening of the Southwestern District, 7 days per week; during the State commercial salmon fishing season, only during State open commercial salmon fishing periods; and from 2 days following the closure of the State commercial salmon season until September 30, 7 days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no harvest or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length with a maximum mesh size of 6¼ inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the State commercial opening of the Eastern District, 7 days per week; during the State commercial salmon fishing season, only during State open commercial salmon fishing periods; and from 2 days following the closure of the State commercial salmon season until October 31, 7 days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(vi) If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, except when taken by dip net in the Upper Copper River District, where they must be immediately released, unharmed to the water. Rainbow/steelhead trout caught incidental to other species by fish wheel may be retained. Rainbow/steelhead trout retained for subsistence purposes will have the anal (ventral) fin removed immediately.

(vii) In the upper Copper River drainage, you may only take salmon in the waters of the Glennallen and Chitina Subdistricts, or in the vicinity of the Native Village of Batzulnetas.

(viii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(ix) In the Glennallen and Chitina Subdistricts, you may take salmon only by fish wheels, rod and reel, or dip nets.

(x) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G or the National Park Service. Your registration number and name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. If you are a permittee other than the owner, a wood or metal plate at least 12 inches high by 12 inches wide, bearing your

name and address in letters and numerals at least 1 inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) Except as provided in this section, you may take fish other than salmon for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon only under authority of a subsistence fishing permit.

(xiv) Only one Federal subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year.

(xv) The following apply to Upper Copper River District Federal subsistence salmon fishing permits:

(A) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(B) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(C) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(D) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(E) A permit holder must record on the appropriate form all salmon taken immediately after landing the salmon.

(xvi) The total annual harvest limit for salmon in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xvii) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G or the Federal Subsistence Board of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xvii):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or the Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xviii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the anal (ventral) fin has been immediately removed from the salmon.

(xix) In locations open to State commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of 1 person;

(B) 30 salmon for a household of 2 persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before a State opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly State commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead,) and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) With a subsistence fishing permit, you may harvest at any time up to 10 Dolly Varden with no minimum size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow/steelhead trout, in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon. You must possess a Federal subsistence fishing permit to take coho salmon, trout, or char. You must possess a Federal subsistence fishing permit to take steelhead in Hamilton Bay and Kadake Bay Rivers. You must possess a Federal subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing Sections 1–C or 1–D.

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of a Federal subsistence fishing permit. The annual harvest limit is two fish, 36 inches or larger. You may use only a dip net or rod and reel with artificial lure or fly. You may not use bait.

(v) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vi) In the Southeastern Alaska Area, except for sections 3A, 3B, and 3C, you may take coho salmon in Southeast Alaska waters under Federal jurisdiction under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household, and the annual limit is 40 coho salmon per household. Only dipnets, spears, gaffs, and rod and reel may be used. Bait may only be used from September 15 through November 15. You may not retain incidentally caught trout and sockeye salmon unless taken by gaff or spear.

(vii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(viii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(ix) You shall immediately remove the pelvic fins of all salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xii) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiv) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xv) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake Bay, Gut Bay, or Pillar Bay. In the Falls Lake Bay and Gut Bay drainages, the possession limit is 10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is 15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xvi) In the Redoubt Lake watershed, you may fish for sockeye salmon only under the terms of a Federal subsistence permit. Open season is from June 1 to August 15. For the Redoubt Lake watershed, the possession limit per individual is 10 sockeye, and the possession limit per household is 10 sockeye salmon per household. Only spears, gaffs, dip net and rod and reel may be used. Steelhead incidentally speared or gaffed may be retained.

(xvii) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a Federal subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) You may harvest at any time up to 10 Dolly Varden of any size;

(B) You may harvest at any time six cutthroat or rainbow trout in combination. You may only retain fish between 11 "and 22". You may only use a rod and reel without bait.

(xviii) In all waters, other than those identified in paragraph (i)(13)(xvii) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest Dolly Varden and cutthroat and rainbow trout in accordance with the seasons and harvest limits delineated in the Alaska Administrative Code, 5 AAC 47. You may only use a rod and reel without bait unless the use of bait is specifically permitted in 5 AAC 47.

4. In subpart D of 36 CFR part 242 and 50 CFR part 100, §____.28 is revised to read as follows:

§____.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) [*Reserved*]

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;
(ii) Diving gear;
(iii) A grappling hook;
(iv) A handline;
(v) A hydraulic clam digger;
(vi) A mechanical clam digger;
(vii) A pot;
(viii) A ring net;
(ix) A scallop dredge;
(x) A sea urchin rake;
(xi) A shovel; and
(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in §____.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab

has been processed or prepared for consumption.

(e) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j) (1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* You may not take shellfish for subsistence purposes.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width 5½ inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crabs.

Dated: December 31, 2001.

Kenneth E. Thompson,

Acting Regional Forester, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 02–1920 Filed 2–8–02; 8:45 am]

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Federal Register

Monday,
February 11, 2002

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Allocation of Essential-Use Allowances for Calendar Year 2002; and Extension of the *De Minimis* Exemption for Essential Laboratory and Analytical Uses Through Calendar Year 2005; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7140–5]

RIN 2060–AJ81

Protection of Stratospheric Ozone: Allocation of Essential-use Allowances for Calendar Year 2002; and Extension of the *De Minimis* Exemption for Essential Laboratory and Analytical Uses through Calendar Year 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential-use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2002. Essential-use allowances permit a person to obtain controlled class I ODSs as an exemption to the January 1, 1996 regulatory phase-out of production and import of these chemicals. EPA allocates essential-use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. Today EPA is finalizing the proposed regulations published in the **Federal Register** on November 1, 2001. With this action, EPA is allocating essential-use allowances for production and import of class I ODSs for use in medical devices and the Space Shuttle and Titan Rockets, and extending the general exemption for class I ODSs for use in essential laboratory and analytical applications through the year 2005 as consistent with the Montreal Protocol. EPA is also finalizing regulatory changes to ensure consistency with Decisions XI/15 and XII/2 of the Montreal Protocol. Decision XI/15 states that use of class I ODS for the testing of "oil and grease," and "total petroleum hydrocarbons" in water; testing of tar in road-paving materials; and forensic finger printing are not considered essential under the exemption for laboratory and analytical uses beginning January 1, 2002. Decision XII/2 states that any CFC MDIs approved after December 31, 2000, are not essential unless the product meets the criteria for essentiality set out in paragraph 1(a) of Decision IV/25. Decision XII/2 also authorizes Parties to the Montreal Protocol to allow transfers of CFCs produced with essential-use allowances among MDI companies. Finally, EPA is adding a regulatory language to clarify that clarifies that it is a violation of the CAA if unused class I ODS produced under the authority of essential-use allowances or the exemption for laboratory and analytical uses are used in applications other than the stated essential purposes.

DATES: This final rulemaking is effective February 11, 2002.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket is located in Waterside Mall Room M–1500, 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Erin Birgfeld, U.S. Environmental Protection Agency, Global Programs Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Avenue, Washington, DC 20460; 202–564–9079; or *birgfeld.erin@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption is accomplished through adherence to phase-out schedules for production and consumption of specific class I ODSs including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of most class I ODSs [2] were phased out in developed countries including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential-use as set forth in paragraph 1 of Decision IV/25 are the following:

"(a) that a use of a controlled substance should qualify as "essential" only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for essential-uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

II. Allocation of Essential-Use Allowances for Medical Devices and the Space Shuttle and Titan Rockets

With today's action, EPA is implementing the statutory exemption for continued import and production of CFCs beyond the phase-out for use in medical devices. Section 604(d)(2) of the CAA states that "notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol,

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol (*see* section 601(6) of the Clean Air Act) essential-use Stockpiles of class I ODSs produced or imported prior to the 1996 phaseout can continue to be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are defined at 40 CFR part 82 subpart A, appendix A.

authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary for use in medical devices [3]". In implementing this exemption, FDA sent EPA a letter on August 9, 2001, indicating the amount of CFCs each company should receive as essential-use exemptions and their determination that a total of 3,388 metric tons of CFC were "necessary" for use in medical devices for the year 2002 [4]. The allocations for CFCs in the proposal reflected FDA's determination, and were based on the assumption that the Parties would approve the U.S. essential-use supplemental request for the year 2002. The Parties did approve the U.S. supplemental request by taking Decision XIII/8 at their meeting in October 2001. After publication of the proposal, one company determined that their need for CFCs for 2002 was less than originally anticipated, and voluntarily requested that EPA reduce their essential-use allowances by 356 metric tons. Thus, the total amount of CFCs allocated in this final rule is reduced from 3,388 metric tons to 3,032 metric tons. There are no changes to any other company's essential-use allowances from the proposed rule. EPA received one comment on the allocation, which is discussed in the following section.

EPA is also allocating methyl chloroform (MCF) for use in solid rocket motor assemblies. Today's allocation is authorized under Decision X/6 of the Parties to the Protocol, and section 604(d)(1) of the CAA. Essential-use allowance holders should be aware that the exemption for MCF under the CAA expires on December 31, 2004. After that date, EPA will not have statutory authority to allocate essential-use allowances for MCF. EPA did not receive comments on our proposed allocation for essential-use allowances for methyl chloroform.

EPA is allocating essential-use allowances for calendar year 2002 to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential-use.

TABLE I.—ESSENTIAL-USE ALLOCATION FOR CALENDAR YEAR 2002

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	343
Aventis	CFC–11 or CFC–12 or CFC–114	150
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	743
Glaxo SmithKline	CFC–11 or CFC–12 or CFC–114	660
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	949
Sidmak Laboratories Inc.	CFC–11 or CFC–12 or CFC–114	67
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	120
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket.	Methyl Chloroform	47
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

III. Implementation of Decision XII/2 of the Parties to the Montreal Protocol

A. Eligible Products

Decision XII/2, titled "Measures to facilitate the transition to chlorofluorocarbon-free metered dose inhalers," taken at the Meeting of the Parties in December 2000, has two provisions that are being implemented with today's action. Paragraph 2 of Decision XII/2 states "that any chlorofluorocarbon metered-dose inhaler product approved after 31 December 2000 for treatment of asthma and/or chronic obstructive pulmonary disease in a non-Article 5(1) Party is not an essential-use unless the product meets the criteria set out in paragraph 1(a) of Decision IV/25."

In the past, EPA has allocated essential-use allowances for all CFC MDIs containing active moieties used for the treatment of asthma and COPD, without distinguishing among individual products. However, Decision XII/2 raises the bar for MDI products approved after December 31, 2000. In order for an MDI product in the research and development phase [5] to be considered essential, the individual MDI product must meet the criteria in Decision IV/25 paragraph 1(a). Decision IV/25 1(a) states that "use of a controlled substance should qualify as essential only if it is necessary for the health, safety or critical for the functioning of society (encompassing cultural and intellectual aspects); and there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health." Based on Decision XII/2, EPA after consultation with FDA, has determined that CFC MDI products are no longer essential if they are still in research and development and contain active moieties already commercially available in other MDI products. This is because the new MDI products would not provide additional therapy to patients, and are not themselves necessary for the health, safety or functioning of society as specified by paragraph 1(a) of Decision IV/25. Therefore, EPA is allocating essential-use allowances to companies only for production of CFC MDIs for the treatment of asthma and COPD that were approved by FDA prior to December 31, 2000. EPA is also amending the language at 40 CFR 82.4(t)(1)(i) to state that EPA is only allocating essential-use allowances for MDI products approved by FDA before January 1, 2000. It is possible that EPA, after consultation with FDA, could allocate essential-use allowances for research and development of novel drug therapies that meet the criteria of paragraph 1(a) of Decision IV/25.

[3] The term "medical device" is defined in section 601(8) of the Clean Air Act. For a full discussion of the definition of "medical device", and how it has been interpreted and applied in today's rulemaking please refer to the interim final rule for the year 2000 allocation of essential-use allowances (65 FR 716).

[4] For a detailed discussion of how FDA and EPA determined the amount of CFCs necessary for 2002 please refer to the proposed rule (66 FR 55145).

[5] EPA is unaware of any CFC MDI product that has been approved by the FDA since December 31, 2000.

EPA recieved two comments regarding our decision to not allocate essential-use allowances for CFC MDI products that are still in the research and development phase. The first commenter supported EPA's implementation of Decision XII/2 noting that under section 614 of the Clean Air Act, EPA must fully implement provisions of the Montreal Protocol, and that under section 604(d)(2), EPA may allocate essential-use allowances only "to the extent such action is consistent with the Montreal Protocol." This commenter also states that implementation of Decision XII/2 is a good policy decision, because manufacture of MDI products approved after December 31, 2000 would send the wrong message to patients, physicians and manufacturers, encourage companies to begin development of new CFC MDI products, and impede companies' efforts to transition patients to CFC-free alternatives. Finally, the commenter states that any backsliding on the U.S. international commitments to the CFC phase-out could jeopardize future essential-use allowances for U.S. manufacturers.

The second commenter states that EPA's proposal to not allocate CFC allowances for MDI products approved by the FDA after December 31, 2000 prevents the development of less costly generic versions of presently available CFC MDIs. The commenter also states that approval of the proposal would not result in a decrease in CFC production and use in the U.S. since the reported use of CFCs for exempted MDIs has remained relatively constant each year even after the introduction of generic versions of albuterol MDIs.[6] Finally, the commenter states that the CFC phase-out in MDIs should be done over a known time period with adequate notice given to all interested parties, and that EPA's proposal to no longer consider MDI products in the research and development phase, or those approved after December 31, 2000 amounts to promulgating a regulation with retroactive effect.

As noted by the first commenter, EPA is obligated by section 614 of the CAA to fully implement decisions of the Montreal Protocol, except where the CAA contains more stringent, conflicting provisions. In addition, under section 604(d)(2), EPA is to authorize production of CFCs for use in medical devices only "to the extent such action is consistent with the Montreal Protocol." If EPA were to continue to allocate essential-use allowances for MDIs that are no longer considered essential, the U.S. would be in violation of the Montreal Protocol. The effect of this would be to jeopardize not only the U.S. ability to obtain sufficient essential-use allowances of CFCs for life-saving MDIs from the Parties, but could also could weaken the Protocol as a whole. EPA and the Parties to the Protocol have made clear over the years that essential-use allowances for CFCs for MDIs are not meant to be permanent, and that when adequate alternatives are available for patients that need them, EPA will no longer allocate essential-use allowances for the MDIs. Decision XII/2, was taken by the international community and supported by a broad range of patient and physician groups[7] who were concerned that the U.S. engage in a transition that provides predictability and assurance to patients and their healthcare providers. EPA believes that introduction of new products that do not meet the criteria of paragraph 1(a) of Decision IV/25 would complicate the overall transition by giving a false impression to patients and physicians that there is no need to transition to CFC-free formulations.

Finally, EPA notes that although the cut-off date for approval of CFC MDIs is in the past, it does not mean that this regulation is retroactive. EPA is not attaching any new legal consequence to any past action of the commenter. Nor is EPA depriving the commenter of something to which it had previously been entitled. Production and import of CFCs have been prohibited since January 1, 1996, and exemptions are granted according to the criteria agreed to by the Parties to the Protocol and consistent with the provisions of the CAA.

B. Transfers of Essential-use Allowances and "Essential-use CFCs"

With today's final rule, EPA is implementing paragraph 8 of Decision XII/2 which states that "* * * as a means of avoiding unnecessary production of new chlorofluorocarbons, and provided that the conditions set out in paragraphs (a)–(d) of Decision IX/20 are met, a Party may allow a MDI company to transfer: (a) All or part of its essential-use authorization to another existing MDI company; or (b) CFCs to another MDI company provided that the transfer complies with national/regional license or other authorization requirements."

Paragraphs (a)–(d) of Decision IX/20 provide the following conditions for transfers between Parties: the transfer applies only up to the maximum level that has previously been authorized for the calendar year in which the next Meeting of the Parties is to be held; both Parties agree to the transfer; the aggregate annual level of authorizations for all Parties for essential-uses of MDIs does not increase as a result of the transfer; the transfer or receipt is reported by each Party involved on the essential-use quantity-accounting format approved by the Eighth Meeting of the Parties by paragraph 9 of Decision VIII/9.

EPA is implementing Decision XII/2 by finalizing a mechanism to allow metered dose inhaler companies to transfer essential-use allowances internationally and to allow transfer of essential-use allowances to companies that do not currently hold essential-use allowances from the U.S. To accomplish this, EPA is amending the regulations in the following manner:

1. Amending the language at 82.12(a)(1) to allow essential-use allowances for CFCs to be transferred to another MDI company, and not just to another essential-use allowance holder. This will allow an MDI company that currently does not have essential-use allowances to receive them through a trade provided that the allowances are used to produce essential MDIs.

2. Adding paragraphs 82.9(c)(1)(viii) and 82.12(a)(1)(i)(I) so that the transferee engaged in a transfer of essential-use allowances must identify the specific CFC MDI products to be manufactured using the essential-use allowances. This will enable EPA to confirm that these products are in fact "essential".

3. Adding essential-use allowances to the list of allowances that may be traded internationally under paragraph 82.9(c). The international transfer of essential-use allowances would occur in the same manner as international transfers of Article 5 allowances and production allowances that are currently traded, which would ensure compliance with section 616 of the CAA governing international trades. After receiving a transfer request, the Administrator can, at her discretion, consider the following factors in deciding whether to approve a transfer:

[6] Albuterol MDIs are the only CFC MDI product where generic versions have been developed.

[7] The following patient and physician groups sent a letter dated July 7, 2000 to the Department of State, The Environmental Protection Agency, and the Food and Drug Administration supporting the "Draft Decision by the European Community on MDIs" which was subsequently titled Decision XII/2 after adoption by the Parties in December 2000: The American Lung Association; American Academy of Allergy, Asthma and Immunology; American Academy of Pediatrics; American Association for Respiratory Care; American College of Allergy; Asthma and Immunology; American Thoracic Society; Asthma and Allergy Foundation of America; and the Joint Council on Allergy, Asthma and Immunology.

- Possible creation of economic hardship;
- Possible effects on trade;
- Potential environmental implications;
- The total amount of unexpended allowances held by United States entities;
- Whether the essential-use allowances will be used in metered dose inhalers considered essential by the Parties.

One commenter stated that two of these discretionary criteria; possible creation of economic hardship, and possible effects on trade, are not relevant to essential-use allowance transfers where volumes are likely to be minimal relative to economic activity and international trade. EPA does not agree with this comment. The Agency believes that it is important to ensure that the U.S. continues to be supplied with sufficient amounts of MDIs for patients with asthma and chronic obstructive pulmonary disease. If for example, a U.S. company requested a trade of essential-use allowances to another company who would not be supplying the U.S. with MDIs, this could cause a shortage of a specific MDI in the U.S., and potential economic hardship for MDI consumers. EPA believes that it is important to retain the right to deny a transfer of essential-use allowances if the transfer would result in a shortage of MDIs for the U.S. patients.

This commenter also states that although they generally support the specific parameters proposed by EPA for implementing transfers, they are concerned that Decision XII/2's transfer provisions not override other standards set under Protocol decisions relating to the essential-use process. The commenter suggests that companies receiving essential-use allowances through a transfer should be required to submit a complete essential-use application (based on the 2001 TEAP Handbook on Essential-use Nominations) in order to demonstrate that the requirements set forth in Decisions VII/10 and Decision IV/25 paragraph 1(b) are met.

EPA believes that requiring companies to submit a complete essential-use application as part of their transfer request would place an unnecessary burden on regulated entities. EPA notes that Decision VIII/10 states that "Parties not operating under Article 5 will request companies applying for MDI essential-use exemptions to demonstrate ongoing research and development of alternatives to CFC MDIs with all due diligence and/or collaborate with other companies in such efforts * * *". While EPA does solicit this information from companies in their essential-use application packages, the use of the word "request" in Decision VIII/10 does not provide EPA with authority to deny an essential-use allowance request based on whether a company is involved in research and development of CFC-free alternatives or education alone. In fact, the information on research and development and education that EPA gathers as a part of the essential-use application process is used primarily to gauge progress of the U.S. transition, and has never been used to deny essential-use allowances for any company. Thus, EPA believes it would be inappropriate to require an essential-use application from companies to ensure that they are engaged in research and development and/or education since EPA cannot use this information as a basis for denying a transfer request. EPA could however, deny a transfer request based on whether the transferred allowances are to be used for essential MDIs. Therefore, with this final action EPA is amending the proposal by adding paragraphs 82.9(c)(1)(viii) and 82.12(a)(1)(i)(I) which require MDI companies engaged in a transfer of essential-use allowances to identify the specific CFC MDIs to be produced so that EPA can confirm that these products are "essential". This provision only applies if the transferee is a U.S. entity.

EPA believes that the scarcity and potentially high cost of transferred essential-use allowances provides adequate financial incentives for manufacturers to minimize fugitive emissions to ensure that "all economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance" as required by paragraph 1(b)(i) of Decision IV/25. Therefore, EPA does not believe that it is necessary to require companies to submit an essential-use application stating how emissions are reduced in their particular manufacturing plant. Finally, EPA believes that paragraph 1(b)(ii) is not relevant to transfers of essential-use allowances.

Today, EPA is also instituting a mechanism to allow MDI companies to transfer CFCs already produced under the authority of essential-use allowances to other MDI companies, as specified by paragraph 8 of Decision XII/2, by finalizing the following changes to the regulations:

1. Amending section 82.3 to define the term "essential-use CFC." EPA proposed to define this term to mean "the CFCs . . . produced under the authority of essential-use allowances and not the allowances themselves. Essential-use CFCs include CFCs imported or produced by U.S. entities under the authority of essential-use allowances for use in metered dose inhalers, as well as CFCs imported or produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority of another country for use in metered dose inhalers." EPA received one comment stating that this definition might be clarified if the word "essential" were inserted in front of the phrase "metered dose inhalers". EPA agrees and has made the appropriate changes to the regulatory text.

2. Modifying the parenthetical in paragraph 82.4(d) so that import of "essential-use CFCs" will no longer count against the U.S. MDI company's essential-use allowances for that year. This allows an MDI company to procure "essential-use CFCs" beyond the amount of essential-use allowances allocated to them in a particular control period if the transfer is approved by EPA.

3. Defining the term "essential MDIs" in § 82.3. EPA received one comment stating that the proposed definition would be clearer if the second sentence in the definition began with "in addition". EPA agrees and has incorporated this into the final definition which reads as follows, "MDIs for the treatment of asthma and chronic obstructive pulmonary disease, approved by the FDA or by another Party's analogous health authority before December 31, 2000, and considered to be essential by the Party where the MDI product will eventually be sold. In addition, if the MDI product is to be sold in the U.S., the active moiety contained in the MDI must be listed as essential at 21 CFR 2.125(e)."

4. Adding paragraph (d) to the regulations at § 82.12 to create the mechanism that EPA will use to approve transfers of essential-use CFCs between MDI companies in the U.S., and adding paragraph (g) to § 82.9 to govern transfer of essential-use CFCs between U.S. companies and companies in other Parties.

5. Revising definition of "essential-use allowances" under § 82.3 by omitting the specific end date to the essential-use program. For a full discussion of the transfer mechanism for essential-use CFCs please refer to the proposed rule (66 FR 55145).

IV. General Laboratory Exemption for Class I ODSs.

Under Decision X/19, the Parties approved a global (i.e., general)

exemption for laboratory and analytical uses until December 31, 2005, under the conditions set out in Annex II of the report of the Sixth Meeting of the Parties. Decision X/19 also states that at the annual Meetings of the Parties, on the basis of information reported by the Technology and Economic Assessment Panel (TEAP), the Parties may "decide on any uses of controlled substances which should no longer be eligible under the exemption for laboratory and analytical uses and the date from which any such restriction should apply." Subsequently, the Parties at the Eleventh Meeting of the Parties to the Protocol took Decision XI/15 which eliminated the following uses from the global exemption for laboratory and analytical uses for controlled substances from the year 2002 onward:

(a) Testing of oil and grease, and total petroleum hydrocarbons in water;

(b) Testing of tar in road-paving materials; and

(c) Forensic finger-printing.

Today's final rule extends EPA's regulatory *de minimis* exemption for essential laboratory and analytical uses through calendar year 2005, and amends part 82, subpart A, appendix G to define the above laboratory methods as non-essential pursuant to Decision XI/15. With this change to appendix G, production or import of class I ODSs for use in the laboratory methods listed above will be prohibited beginning January 1, 2002. Class I ODSs imported or manufactured prior to January 1, 2002, may continue to be used in the laboratory methods listed above. This final rule is unchanged from the proposal regarding laboratory essential-use allowances.

Please note that EPA requires testing for oil and grease, and total petroleum hydrocarbons as a part of its wastewater and hazardous waste programs. The analytical methods for measuring "oil and grease" include EPA methods 413.1, 413.2 and 418.1, which use CFC–113, and method 1664A, which uses n-hexane[8]. EPA received two comments from environmental testing laboratories stating that CFC–113 should continue to be allowed for EPA test methods 413.1, 413.2, and 418.1 as long as the CFC–113 was imported or manufactured before January 1, 2002. These commenters are correct. Laboratories may continue to use stockpiled CFC–113 that was imported or produced before January 1, 2002 or recycled CFC–113 as long as EPA's Office of Water and Office of Solid Waste continue to accept results from test methods using CFC–113.

Another commenter stated that EPA's Office of Solid Waste or Office of Water should not ever be allowed to discontinue the use of CFC–113 in testing of oil and grease in water, stating that changing to the hexane method is costly, flammable, and a known health hazard that is putting undue burden on laboratories. EPA's Office of Water addressed health, safety, and cost concerns in responses to comments at promulgation of EPA Method 1664A on May 14, 1999 (see 64 FR 26320). EPA believes that the n-hexane method is a viable and effective method for testing oil and grease in water, and suggests that laboratories consider transitioning to this method in the near term since beginning January 1, 2002, there will be a finite amount of CFC–113 available for testing of oil and grease and total petroleum hydrocarbons. If laboratories are not prepared to utilize the n-hexane method and CFC–113 becomes scarce, regulated entities may face being out of compliance with waste water permits. There is also a possibility that in the future the Office of Water and/or the Office of Solid Waste may remove test methods that use CFC–113 for testing of oil and grease and total petroleum hydrocarbon from their list of approved methods. Any action on this issue would be done through notice and comment rulemaking.

For more information on the laboratory exemption and testing of oil and grease and total petroleum hydrocarbons please visit our website at *www.epa.gov/ozone/mdi*.

V. Clarification Regarding Use of Material Produced Under Essential-Use Allowances for Non-Essential Uses

EPA is adding paragraph (t)(4) to § 82.4 in order to clarify that unused class I ODSs produced under the authority of essential-use allowances may not be used in applications that are not essential (i.e. those uses not listed in paragraph 82.4 (t)(1)). The regulations at § 82.4 establish limited exceptions to the production and import bans for class I ODS. The use or sale of unused class I ODS produced under these exceptions for other purposes would circumvent the production and import bans and the intent of these exceptions. We are concerned that laboratories might obtain class I ODSs in excess of their own need under the laboratory exemption with the intent of "recycling" the class I ODS and re-selling it into other non-laboratory markets at a profit. Therefore, we explicitly prohibit such actions in § 82.4(t)(4) by stating that "It is a violation of this subpart to obtain unused class I ODSs under the exemption for laboratory and analytical uses in excess of actual need, and to recycle that material for sale into other markets."

The intent of this provision is not to disallow laboratories from purchasing sufficient class I ODSs for their own use, nor is it meant to discourage laboratories from re-using or recycling class I ODSs that are legitimately used for essential laboratory methods. It is meant to discourage those that might exploit a potential loophole and purchase quantities of ODSs far in excess of what would normally be necessary for laboratory uses, nominally "use" the class I ODS, and then "recycle" the material and sell it for use in non-laboratory applications. The prohibition at § 82.4(t)(4) does not apply to companies that extract and recycle CFCs from MDIs that are not marketable since the CFCs have been introduced into a product and thus, are no longer considered unused ozone depleting material.

EPA received one comment which strongly supports EPA's amendments to § 82.4, stating that these amendments will ensure consistency with the transfer provisions and help to prevent circumvention of the essential-use exemption.

VI. Effective Date for This Final Rule

This final rule is effective on February 11, 2002. Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action grants an exemption to the phase-out of production and consumption of CFCs, EPA is making this action effective immediately to ensure continued availability of CFCs for medical devices and class I ODSs for essential laboratory and analytical methods.

[8] On May 14, 1999, EPA published alternative analytical methods for these tests that do not require using class I ODSs: Method 1664 Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated—Hexane Extractable Material (SGR–HEM; Nonpolar Material) by Extraction and Gravimetry. EPA promulgated method 9071B to replace method 9070 and incorporates Method 1664 for use in EPA's Resource Conservation and Recovery Act programs. For more information on method 1664, please reference EPA's Office of Water website at *www.epa.gov/ost/methods/oil.html*. For technical information regarding Resource Conservation and Recovery Act test methods and regulations please call the Office of Solid Waste Methods information and communication exchange at (703) 821–4690. For technical information regarding testing methods required under the Clean Water Act, call the office of Water Resource Center at (202) 260–7786.

VII. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule imposes no enforceable duty on any State, local or tribal government. For the private sector, it clarifies existing requirements and adds recordkeeping and reporting requirements for those who wish to participate in a voluntary program. Thus, it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined by OMB and EPA that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

C. Paperwork Reduction Act (PRA)

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2051.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information required in today's final rule, and will be outlined in the ICR is mandatory under section 603(b) of the CAA which states that all production, import, and export of class I and class II ODSs must be reported to EPA. EPA is requesting information from transferors and transferees of essential-use CFCs to ensure the conditions of Decision XII/2 and section 604(d) of the Act are met, so that only essential MDI products will be produced using essential-use CFCs. The information collected will be considered confidential, and will only be released in the aggregate to protect individual company information.

The estimated burden will be set forth in the ICR. We do not expect this cost and burden to be substantial since similar reporting requirements for transferring production, consumption, and essential-use allowances are already in place under subpart A. Further, there are only a small number of MDI companies that are able to produce CFC-MDIs in the U.S. Thus, the number of companies engaged in transferring essential-use CFC will be small as well. If EPA receives adverse comment on the ICR, we would change the information collection requirement in the year 2003 allocation rule to be published later in 2002.

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

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

D. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with

Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule does not affect the communities of Indian tribal governments since the only entities directly affected by this rule are the companies that requested essential-use allowances or make use of the general exemption for laboratory uses. Thus, Executive Order 13175 does not apply to this rule.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; and environmental testing services (NAICS code 541380) that have annual receipts of less than $5 million dollars (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on comments received from the one pharmaceutical company that is not receiving essential-use allowances for use in CFC MDIs, EPA has determined that this company will experience an economic impact. The direct impact of this rule is that this company will be unable to import or produce CFCs for research and development of CFC MDIs that contain active moieties already available to the public. However, the economic impact is not quantifiable since this company does not have MDI products that are approved by the FDA and can be sold in the U.S. This company has participated in the essential-use allowance process since the original phaseout of class I ODS in 1996, and is aware that the U.S. as a Party to the Montreal Protocol is bound to complete the transition to CFC-free MDIs.

Environmental testing labs are affected by this rule since beginning January 1, 2002, newly imported or produced CFC–113 cannot be used in the testing of oil and grease, and total petroleum hydrocarbons in water. EPA believes that because there is an alternative non-CFC method available, and that stockpiled and recycled CFC–113 can continue to be used for this testing if necessary, that there is no economic impact on small environmental testing laboratories. EPA did not receive any comments indicating that there would be significant economic impacts on any environmental testing laboratories as a result of this action.

Although this final rule will not have significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact on small entities. In the case of environmental testing laboratories, EPA is minimizing the reporting requirements associated with this rule by simply amending the yearly certification already required of them under existing regulations. In this case of the one pharmaceutical company that is not receiving essential-use allowances for CFCs, we believe that there is no way to reduce the impact on this small business while still complying with Decision XII/2 of the Montreal Protocol.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

G. National Technology Transfer and Advancement Act

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

H. Executive Order 13132 (Federalism)

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. With today's action EPA is establishing that the use of CFC–113 for testing of oil and grease is no longer considered "essential" as consistent with Decision XI/15 of the Parties to the Montreal Protocol. Thus, import and production of CFCs for this use will be prohibited beginning January 1, 2002. EPA believes that this will not substantially affect local and state government implementation of the Clean Water Act since stockpiles of CFC–113 produced or imported prior to the year 2002, and recycled material can continue to be used for these methods. Further, alternative methods that do not use ODSs are available. Thus, Executive Order 13132 does not apply to this rule.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

VIII. Judicial Review

Under section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under section 307(b)(2), the requirements of this rule may not be challenged later in the judicial proceedings brought to enforce those requirements.

IX. Submittal to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Therefore, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 11, 2002.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: February 1, 2002.

Christine Todd Whitman,

Administrator.

40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for "Essential-use chlorofluorocarbons (Essential CFCs)", and "Essential metered dose inhaler (Essential MDI)", and revising the definition of "Essential-use allowances" to read as follows:

§ 82.3 Definitions.

* * * * *

Essential Metered Dose Inhaler (Essential MDI) means metered dose inhalers for the treatment of asthma and chronic obstructive pulmonary disease, approved by the Food and Drug Administration or by another Party's analogous health authority before December 31, 2000, and considered to be essential by the Party where the MDI product will eventually be sold. In addition, if the MDI product is to be sold in the U.S., the active moiety contained in the MDI must be listed as essential at 21 CFR 2.125(e).

Essential-Use Allowances means the privileges granted by § 82.4(t) to produce class I substances, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

Essential-Use Chlorofluorocarbons (Essential-use CFCs) are the CFCs (CFC–11, CFC–12, or CFC–114) produced under the authority of essential-use allowances and not the allowances themselves. Essential-use CFCs include CFCs imported or produced by U.S. entities under the authority of essential-use allowances for use in essential metered dose inhalers, as well as CFCs imported or produced by non-U.S. entities under the authority of privileges granted by the Parties and the national authority of another country for use in essential metered dose inhalers.

* * * * *

3. Section 82.4 is amended:

a. By revising paragraph (d).

b. By revising paragraph (k).

c. By revising paragraphs (t) introductory text, (t)(1)(i), and (t)(3).

d. By adding the table to the end of paragraph (t)(2).

e. By adding paragraphs (t)(1)(iii) and (t)(4).

The revisions and additions read as follows:

§ 82.4 Prohibitions.

* * * * *

(d) Effective January 1, 1996, for any class I , Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substances, no person may import (except for transhipments or heels), at any time in any control period (except for controlled substances that are transformed or destroyed, or transfers of essential-use CFCs) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section, or the amount of unexpended destruction and transformation credits obtained under § 82.9 held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation (other than transhipments or heels) constitutes a separate violation of this subpart. It is a violation of this subpart to obtain unused class I ODSs under the general laboratory exemption in excess of actual need and to recycle that material for sale into other markets.

* * * * *

(k) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005 for class I, Group VI controlled substances, only

consumption allowances are required to import, with the exception of transhipments, heels and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels, used controlled substances, and essential-use CFCs.

* * * * *

(t) Effective January 1, 1996, essential-use allowances are apportioned to a person under paragraphs (t)(2) and (t)(3) of this section for the exempted production or importation of specified class I controlled substances solely for the purposes listed in paragraphs (t)(1)(i) through (iii) of this section.

(1) * * *

(i) Metered dose inhalers (MDIs) for the treatment of asthma and chronic obstructive pulmonary disease that were approved by the Food and Drug Administration before December 31, 2000.

(ii) * * *

(iii) Essential Laboratory and Analytical Uses (Defined at appendix G of this subpart).

(2) * * *

TABLE I.—ESSENTIAL-USE ALLOCATION FOR CALENDAR YEAR 2002

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or, CFC–12 or, CFC–114	343
Aventis	CFC–11 or, CFC–12 or, CFC–114	150
Boehringer Ingelheim Pharmaceuticals	CFC–11 or, CFC–12 or, CFC–114	743
Glaxo SmithKline	CFC–11 or, CFC–12 or, CFC–114	660
Schering-Plough Corporation	CFC–11 or, CFC–12 or, CFC–114	949
Sidmak Laboratories Inc.	CFC–11 or, CFC–12 or, CFC–114	67
3M Pharmaceuticals	CFC–11 or, CFC–12 or, CFC–114	120
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket.	Methyl Chloroform	47
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

(3) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2005 subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at § 82.13(u) through (z). There is no amount specified for this exemption.

(4) Any person acquiring unused class I ODSs produced under the authority of essential-use allowances or the essential-use exemption in paragraph (t)(3) of this section for use in anything other than an essential-use (i.e. for uses other than those specifically listed in paragraph (t)(1) of this section) is in violation of this subpart. Each kilogram of unused class I ODS produced or imported under the authority of essential-use allowances or the essential-use exemption and used for a non-essential-use is a separate violation of this subpart. Any person selling unused class I material produced or imported under the authority of essential-use allowances or the essential-use exemption for uses other than an essential-use is in violation of this subpart. Each kilogram of unused class I ODS produced under the authority of essential-use allowances or the essential-use exemption and sold for a use other than an essential-use is a separate violation of this subpart. It is a violation of this subpart to obtain unused class I ODSs under the exemption for laboratory and analytical uses in excess of actual need and to recycle that material for sale into other markets.

* * * * *

4. Section 82.9 is amended:

a. By revising the section heading.

b. By revising paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(iv), (c)(2)(iv), (c)(3)(iv) and (c)(4).

c. By adding paragraphs (c)(1)(vii), (c)(3)(v) and (g).

The revisions and additions read as follows:

§ 82.9 Availability of allowances in addition to baseline production allowances for class I ozone depleting substances—International transfers of production allowances, Article 5 allowances, essential-use allowances, and essential-use CFCs.

* * * * *

(c) A company may increase or decrease its production allowances, its Article 5 allowances by trading with another Party to the Protocol according to the provision under this paragraph (c). A company may increase or decrease its essential-use allowances for CFCs for use in essential MDIs according to the provisions under this paragraph (c). A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production or import that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production or import that the person is permitted under this subpart. If the controlled substance is produced under the authority of production allowances and is to be returned to the Party from whom production allowances are received, the request for production allowances shall also be considered a request for consumption allowances under § 82.10(c). If the controlled substance is produced under the authority of production allowances and is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under § 82.6 and § 82.7 in order to produce with the additional production allowances.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits or essential-use allowance limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum

production or essential-use allowances that are allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

* * * * *

(iv) The chemical type, type of allowance being transferred, and the level of allowances being transferred;

* * * * *

(vii) In the case of transferring essential-use allowances, the transferor must include a signed document from the transferee identifying the CFC MDI products that will be produced using the essential-use allowances.

(2) * * *

(iv) The chemical type, type of allowance being transferred, and the level of allowances being transferred; and

(3) * * *

(iv) The total amount of unexpended production or essential-use allowances held by a U.S. entity.

(v) In the case of transfer of essential-use allowances the Administrator may consider whether the CFCs will be used for production of essential MDIs.

* * * * *

(4) The Administrator will issue the person a notice either granting or deducting production allowances, Article 5 allowances, or essential-use allowances, and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this sections for trades from Parties and paragraph (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production, Article 5, or essential-use allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances, essential-use allowances, or Article 5 allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

* * * * *

(g) *International transfer of essential-use CFCs.* (1) For trades of essential-use CFCs where the transferee or the transferor is a person in another nation (Party), the persons involved in the transfer must submit the information requested in § 82.12(d)(2) and (d)(3), along with a signed document from the principal diplomatic representative in the Party's embassy in the United States stating that the appropriate authority within that nation has approved the transfer of the essential-use CFCs.

(2) If the transfer claim is complete, and EPA does not object to the transfer, then EPA will issue letters to the transferor and the transferee indicating that the transfer may proceed. EPA reserves the right to disallow a transfer if the transfer request is incomplete, or if it has reason to believe that the transferee plans to produce MDIs that are not essential MDIs. If EPA objects to the transfer, EPA will issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If EPA ultimately finds that the transferee did not use the essential-use CFCs for production of essential MDIs then the transferee is in violation of this subpart.

* * * * *

5. Section 82.12 is amended by

a. Revising the section heading.

b. Revising paragraph (a)(1) introductory text.

c. Adding paragraphs (a)(1)(i)(I) and (d).

The revisions and additions read as follows:

§ 82.12 Domestic transfers for class I controlled substances.

(a) * * *

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2005, for Group VI, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's Article 5 allowances. After January 1, 2002 any essential-use allowance holder (including those persons that hold essential-use allowances issued by a Party other than the United States) ("transferor") may transfer essential-use allowances for CFCs to a metered dose inhaler company solely for the manufacture of essential MDIs.

(i) * * *

(I) The transferor must include a signed document from the transferee identifying the CFC MDI products that will be produced using the essential-use allowances.

* * * * *

(d) *Transfers of essential-use CFCs.* (1) Effective January 1, 2002, any metered dose inhaler company (transferor) may transfer essential-use CFCs to another metered dose inhaler company (transferee) provided that the Administrator approves the transfer.

(2) The transferee must submit a transfer claim to the Administrator for approval before the transfer can take place. The transfer claim must set forth the following:

(i) The identities and addresses of the transferor and the transferee; and

(ii) The name and telephone numbers of contact persons for the transferor and the transferee; and

(iii) The amount of each controlled substance (CFC–11, CFC–12, or CFC–114) being transferred; and

(iv) The specific metered dose inhaler products (i.e. the MDI drug product or active moiety) that the transferee plans to produce with the transferred CFCs; and

(v) The country(ies) where the CFC metered dose inhalers produced with the transferred essential-use CFCs will be sold if other than in the United States; and

(vi) Certification that the essential-use CFCs will be used in the production of essential MDIs. If the MDIs are to be sold in the United States, the certification must state that MDIs produced with the transferred essential-use CFCs are listed as essential at 21 CFR 2.125, and were approved by the Food and Drug Administration before December 31, 2000. If the MDIs produced with the essential-use CFCs are to be sold outside the United States, the transferee must certify that the metered dose inhalers produced with the essential-use CFCs are considered essential by the importing country.

(3) The transferor must submit a letter stating that it concurs with the terms of

the transfer as requested by the transferee.

(4) Once the transfer claim is complete, and if EPA does not object to the transfer, then EPA will issue letters to the transferor and the transferee within 10 business days indicating that the transfer may proceed. EPA reserves the right to disallow a transfer if the transfer request is incomplete, or if it has reason to believe that the transferee plans use the essential-use CFCs in anything other than essential MDIs. If EPA objects to the transfer, within EPA will issue letters to the transferor and transferee stating the basis for disallowing the transfer. The burden of proof is placed on the transferee to retain sufficient records to prove that the transferred essential-use CFCs are used only for production of essential MDIs. If EPA ultimately finds that the transferee did not use the essential-use CFCs for production of essential MDIs then the transferee is in violation of this subpart.

* * * * *

6. Section 82.13 is amended:

a. By revising paragraphs (f)(2)(xv) and (f)(3)(xii).

b. By revising paragraphs (g)(1)(xvi) and (g)(4)(xiii).

c. By revising paragraph (u).

d. By revising paragraph (v).

e. By revising paragraph (y) introductory text.

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xv) Written certifications that quantities of controlled substances, meeting the purity criteria in appendix G of this subpart, were purchased by distributors of laboratory supplies or by laboratory customers to be used only in essential laboratory and analytical uses as defined by appendix G, and not to be resold or used in manufacturing.

* * * * *

(3) * * *

(xii) In the case of laboratory essential-uses, certifications from distributors of laboratory supplies that controlled substances were purchased for sale to laboratory customers who certify that the substances will only be used for essential laboratory and analytical uses as defined by appendix G of this subpart, and will not be resold or used in manufacturing; or, if sales are made directly to laboratories, certification from laboratories that the controlled substances will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and will not be resold or used in manufacturing.

* * * * *

(g) * * *

(1) * * *

(xvi) Copies of certifications that imported controlled substances are being purchased for essential laboratory and analytical uses (defined at appendix G of this subpart) or being purchased for eventual sale to laboratories that certify that controlled substances are for essential laboratory and analytical uses (defined at appendix G of this subpart).

* * * * *

(4) * * *

(xiii) The certifications from essential-use allowance holders stating that the controlled substances were purchased solely for specified essential-uses and will not be resold or used in manufacturing; and the certifications from distributors of laboratory supplies that the controlled substances were purchased solely for eventual sale to laboratories that certify the controlled substances are for essential laboratory and analytical uses (defined at appendix G of this subpart), or if sales are made directly to laboratories, certifications from laboratories that the controlled substances will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and will not be resold or used in manufacturing.

* * * * *

(u) Any person allocated essential-use allowances who submits an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer.

(v) Any distributor of laboratory supplies receiving controlled substances under the global laboratory essential-use exemption for sale to laboratory customers must report quarterly the quantity received of each controlled substance from each producer or importer.

* * * * *

(y) A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and not be resold or used in manufacturing. The certification must also include:

* * * * *

7. The heading and paragraph 1 of appendix G to subpart A is revised to read as follows:

Appendix G to Subpart A of Part 82—UNEP Recommendations for Conditions Applied to Exemption for Essential Laboratory and Analytical Uses

1. Essential laboratory and analytical uses are identified at this time to include equipment calibration; use as extraction solvents, diluents, or carriers for chemical analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. Pursuant to Decision XI/15 of the Parties to the Montreal Protocol, effective January 1, 2002 the following uses of class I controlled substances are not considered essential under the global laboratory exemption:

a. Testing of oil and grease and total petroleum hydrocarbons in water;

b. Testing of tar in road-paving materials; and

c. Forensic finger printing.

Production for essential laboratory and analytical purposes is authorized provided that these laboratory and analytical chemicals shall contain only controlled substances manufactured to the following purities:

CTC (reagent grade)—99.5
1,1,1,-trichloroethane—99.5
CFC–11—99.5
CFC–13—99.5
CFC–12—99.5
CFC–113—99.5
CFC–114—99.5
Other w/ Boiling P>20 degrees C—99.5
Other w/ Boiling P<20 degrees C—99.0

* * * * *

[FR Doc. 02–3101 Filed 2–8–02; 8:45 am]
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Federal Register

Monday,
February 11, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 13
Civil Penalty Inflation Adjustment Revisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2002–11483; Amendment No. 13–31]

RIN 2120–AH21

Civil Penalty Inflation Adjustment Revisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule adjusts certain civil monetary penalties for inflation. This action is required by the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, to preserve the deterrent effect of civil monetary penalties.

DATES: Effective March 13, 2002.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20590; Telephone (202) 267–3141, Facsimile (202) 267–5106, Electronic Mail; joyce.redos@faa.gov.

SUPPLEMENTARY INFORMATION:

Final Rule Procedure

We find good cause exists under 5 U.S.C. 553(b)(3)(B) and (d)(3) for immediate implementation of this final rule without prior notice and comment. This rule is a nondiscretionary ministerial action to conform the amount of civil penalties we assess for violations of the statutes, regulations, and orders we enforce. The calculation of these adjustments follows the mathematical formula set forth in section 5 of the Adjustment Act.

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register'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 final rule.

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 SBREFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9–AWA–SBREFA@faa.gov.

Background

The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 ("Adjustment Act") 28 U.S.C. 2461 note, Public Law 101–410, as amended by the Debt Collection Improvement Act of 1996 ("Collection Act") Public Law 104–134, requires us and other Federal agencies to regularly adjust civil monetary penalties for inflation to preserve the deterrent impact. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil monetary penalties, and must make further adjustments of these penalty amounts at least once every four years.

In Amendment No. 13–28 (61 FR 67445, December 20, 1996), we made our initial adjustment of civil monetary penalties under these legislative authorities. We established subpart H, Civil Monetary Penalty Inflation Adjustment, to 14 CFR part 13, which applies to violations that occur on and after January 21, 1997. The maximum permissible increased for this initial adjustment was 10 percent. For example, the maximum penalty of $1,000 for violations covered under 49 U.S.C. 46301(a), was increased by 10 percent and adjusted to $1,100.

In accordance with the mandate to make further adjustments of civil monetary penalties at least once every four years, this rulemaking adjusts the civil penalties for violations of the statutes, regulations and orders we enforce.

Method of Calculation

Under the Adjustment Act, as amended by the Collection Act, we calculate the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment (COLA), and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as: "the percentage (if any) for each civil monetary penalty by which—

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law."

To calculate the COLA for this adjustment, we divided the consumer price index (CPI) for June 2000 (the month of June of the calendar year preceding the adjustment), which is 172.3, by the CPI for June 1996 (the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted), which is 156.7. The resulting inflation factor is 1.099553 (rounded to the sixth decimal point). We multiplied this inflation factor by the previous maximum civil penalty and applied the rounding factor.

The rounding formula is set forth in Section 5(a) of the Adjustment Act. Under the formula:

"Any increase shall be rounded to the nearest

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000;

(6) multiple of $25,000 in the case of penalties greater than $200,000."

Penalties That We Are Increasing

Upon review, we concluded that only the penalty for violations of hazardous materials transportation law, regulations, or orders under 49 U.S.C. 5123(a) should be increased at this time. Other penalty amounts remain unchanged because the raw figures are

not high enough to trigger rounding to the next higher amount. For example, the current maximum civil penalty for a violation of the FAA's statute or regulations by a person under 49 U.S.C. 46301(a)(1) is $1,100. When $1,100 is multiplied by the cost of living factor of 1.099553, the result is $1,210. The rounding formula, however, requires the increase to be rounded to the nearest $1,000. Because the nearest $1,000 is less than the current penalty, the current penalty amount is not adjusted.

The computation for the civil penalty for violations of the hazardous materials transportation law or regulations under 49 U.S.C. 5123(a) is $27,500 multiplied by the cost of living factor of 1.099553, which equals $30,238, which the rounding formula requires to be rounded off to the nearest $5,000. Therefore, the adjusted civil penalty for violations of the statute or regulations under 49 U.S.C. 5123(a) rounds off to $30,000.

A second civil penalty provision, 49 U.S.C. 46301(a)(5), was amended by Congress on November 20, 1997 (Pub. L. 105–102) to authorize the amount of a civil penalty assessed under section 46301(a)(5) for a violation of 49 U.S.C. 47107(b), any assurance made under that section, or a violation of 49 U.S.C. 47133 to be increased "above the otherwise applicable maximum amount" under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section. The statutory provision for the "otherwise applicable maximum amount" of a civil penalty assessed for a violation of 47107(b) appears in 49 U.S.C. 47107(n)(4), enacted on October 9, 1996 (Pub. L. 104–264). Section 47107(n)(4) imposes liability for a civil penalty in an "amount equal to the illegal diversion in question plus interest."

The maximum civil penalty under these provisions is tied to the amount of aviation revenues diverted rather than to a set maximum civil penalty. These sections do not set forth a specific amount upon which we can base an adjustment or apply the rounding formula. Although it might be possible to apply the provisions of the Adjustment Act, as amended by the Collection Act, and our regulations in CFR part 13, subpart H, on a case by case basis to violations of 49 U.S.C. 47101(b) and 47133, we do not believe that such an approach would be consistent with Congress's intent as expressed in either the Adjustment Act or the Collection Act, or with the language in 49 U.S.C. 46301(a)(5) and 49 U.S.C. 47107(n)(4). Therefore, we will not attempt to provide an adjustment to the "otherwise applicable maximum" civil penalty for cases arising under these provisions absent specific direction from Congress to the contrary. Neither shall we include a reference to this provision in the Table of Minimum and Maximum Civil Penalties in 14 CFR 13.305(d).

Other Changes to the Table of Minimum and Maximum Civil Penalties

In addition to adjusting the amounts of civil penalties to the existing Civil Penalties, we are making three other, minor changes to the Table of Minimum and Maximum Civil Penalties.

First, we are updating the table to include new statutory provisions involving civil penalties. These provisions include:

1. 49 U.S.C. 46301(a)(3)(C) relating to limiting the construction or establishment of landfills;

2. 49 U.S.C. 46301(a)(3)(D) relating to the safe disposal of life-limited aircraft parts;

3. 49 U.S.C. 46318, relating to interference with cabin or flight crew.

These additions will keep the Table current, with respect to the statutory provisions we are responsible for enforcing, even though most of these provisions have been recently enacted, and are not yet subject to adjustment for inflation.

Second, in the column labeled "Civil Monetary Penalty Description" we are modifying the descriptions for clarity, especially to indicate that they include orders or other actions that are issued under statutory provisions, as appropriate.

Third, in the columns labeled "Minimum penalty amount as of 10/23/96," "Maximum penalty amount as of 10/23/96" and "New adjustment maximum penalty amount," we are deleting references to "per flight or per day," as redundant to the provision for continuing violations in 49 U.S.C. 46301(a)(4).

Paperwork Reduction Act

This rule does not contain any collection of information requirements, as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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 requires agencies to consider international standards and, where appropriate, that they be 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, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that 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 proposed regulation. Since this final rule only identifies the increase in penalties as required by the Debt Collection Improvement Act of 1996, the impact of this rulemaking is minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have a significant impact, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply identifies the CPI adjustment for civil monetary penalties as required by the Debt Collection Improvement act of 1996. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small rotorcraft manufacturers.

International Trade

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 statue also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statue and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action would 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, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, 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) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects

14 CFR part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 13 of Title 14 of the Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

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

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Amend § 13.305 by revising paragraph (d) to read as follows:

§ 13.305 Cost of Living Adjustments of Civil Monetary Penalties

* * * * *

(d) Inflation adjustment. Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are adjusted for inflation as follows: Minimum and Maximum Civil Penalties—Adjusted for Inflation, Effective March 13, 2002.

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or Adjusted Maximum penalty amount
49 U.S.C. 5123(a)	Violations of hazardous materials transportation law, regulations, or orders..	$250 per violation adjusted 1/27/1997.	$250 per violation.	$27,500 per violation adjusted 1/21/1997.	$30,000 per violation, adjusted effective 3/30/02.
49 U.S.C. 46301(a)(1)	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions..	N/A	N/A	$1,100 per violation, adjusted 1/21/1997.	$1,100 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(2)	Violations of statutory provisions listed in 49 USC 46301(a)(2), regulations prescribed, or orders issued under those provisions by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(A)	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions relating to the transportation of hazardous materials by air..	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(B)	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions relating to the registration or recordation under chapter 441 of Title 49, United States Code, or an aircraft not used to provide air transportation..	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(C)	Violations of 49 U.S.C. 44718(d), or regulations prescribed or orders issued under it, relating to limiting construction or establishment of landfills.	N/A	N/A	$10,000, set 10/9/1996.	$10,000, set 10/9/1996.
49 U.S.C. 46301(a)(3)(D)	Violations of 49 U.S.C. 44725, or regulations prescribed or orders issued under it, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	$10,000, adopted 4/5/2000.	$10,000, adopted 4/5/2000.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device.	N/A	N/A	$2,200 per violation, adjusted 1/21/1997.	$2,200 per violation, adjusted 1/21/1997.
49 U.S.C. 46302	Knowingly providing false information about alleged violations involving the special aircraft jurisdiction of the United States..	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	$11,000 per violation adjusted 1/21/1997.
49 U.S.C. 46303	Carrying a concealed dangerous weapon ..	N/A	N/A	$11,000 per violation, adjusted 1/21/1997.	$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	$25,000 per violation, adopted 4/5/2000.	$25,000 per violation, adopted 4/5/2000.

Issued in Washington, DC, on December 27, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 02–3240 Filed 2–8–02; 8:45 am]

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H.R. 400/P.L. 107–137

To authorize the Secretary of the Interior to establish the Ronald Reagan Boyhood Home National Historic Site, and for other purposes. (Feb. 6, 2002; 116 Stat. 3)

H.R. 1913/P.L. 107–138

To require the valuation of nontribal interest ownership of subsurface rights within the boundaries of the Acoma Indian Reservation, and for other purposes. (Feb. 6, 2002; 116 Stat. 6)

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[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

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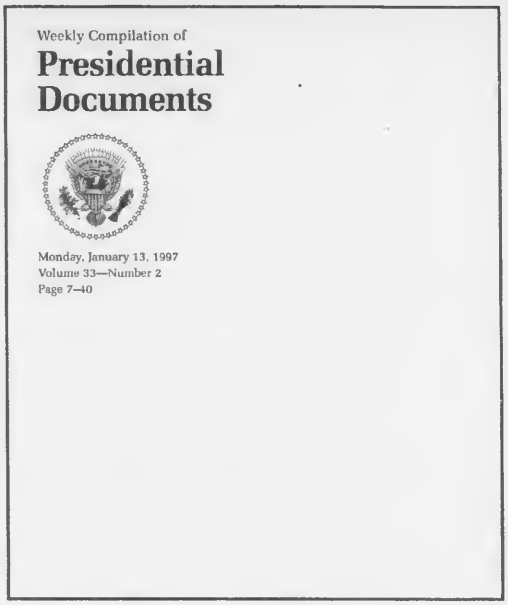

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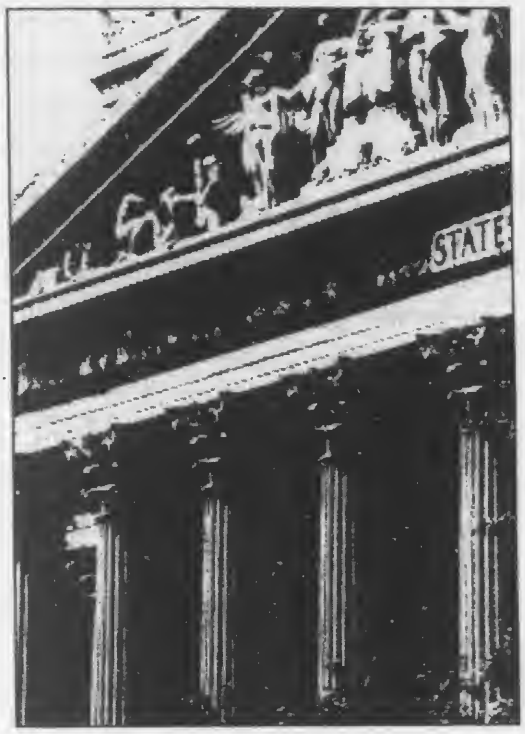

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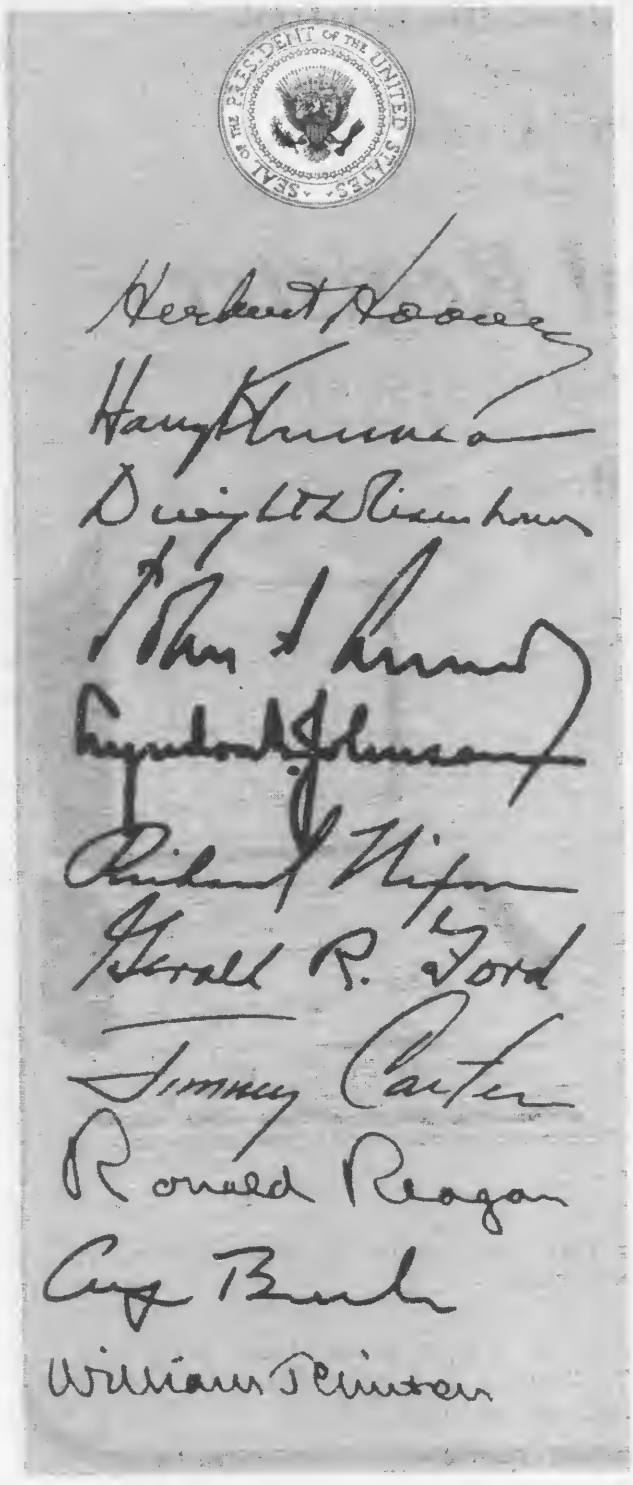

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