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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AJ06

Excepted Service—Schedule A Authority for Nontemporary Part-Time or Intermittent Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revoking the Schedule A excepted service authority for nontemporary part-time or intermittent positions for which total annual compensation does not exceed 40 percent of GS–3, step 1. We are revoking it because the conditions justifying the original exception no longer exist. By revoking this authority, the positions filled under this Schedule A authority are brought into the competitive service. Revoking the authority also permits noncompetitive conversion of those currently serving in those positions to competitive service appointments.

DATES: This final rule is effective September 4, 2002. Agencies must no longer appoint persons under this authority as of September 4, 2002.

Conformity date: Agencies must move any incumbents from the (g) authority by December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Christina Vay, (202) 606–0960.

SUPPLEMENTARY INFORMATION: Almost 100 years ago, the Schedule A authority 213.3102(g) was established to help agencies meet a need to fill low-graded part-time, intermittent, and seasonal positions. Agencies in the Federal Government fill jobs much differently than 100 years ago—and even 10 years ago. Agencies can now fill part-time and intermittent positions with a variety of staffing options, and they do so without exceptions from the competitive service.

Proposed regulations were published on September 10, 2001 (66 FR 46968). We received one comment from an agency supporting the revocation. Because we did not receive comments to support continuing the authority, we are continuing with our proposal to revoke it.

Agencies will have 90 days from the date of publication to move the employees to the competitive service. The authority to retain persons in the competitive service based on revocation of an excepted service appointing authority is 5 CFR 316.702.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 U.S.C. 4301 *et seq.*; and Pub. L. 106–117 (113 Stat. 1545).

§ 213.3102 [Amended]

2. Paragraph (g) of § 213.3102 is removed and reserved.

[FR Doc. 02–22346 Filed 9–3–02; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–04]

Amendment Class D Airspace; White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Westchester County Airport, White Plains, NY. This action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On April 29, 2002 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by extending Class D airspace outward from the 4.1-mile radius from the surface to, but not including 3000 feet MSL at Westchester County Airport, White Plains, NY, was published in the **Federal Register** (67 FR 20920). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. A comment to the proposal was received and considered, resulting in the reduction of the proposed extension from 4 nautical miles to 2 nautical miles. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 6005 of FAA Order 7400.9J, dated August 3, 2001 and effective September 16, 2001. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class D airspace extending upward from the surface of the earth to but not including 3000 feet MSL for aircraft conducting IFR operations along the northwest localizer course at Westchester County Airport, White Plains, NY.

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 DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 3, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D White Plains, NY [REVISED]

Westchester County Airport, White Plains, NY
(lat. 41° 04′01″N., long. 73° 42′27″W.)
Westchester County ILS Localizer
(lat. 41° 03′27″N., long. 73° 41′58″W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1 mile radius of Westchester County Airport and within 1.5 miles each side of the Westchester County ILS northwest localizer course extending from the 4.1 mile radius to 6.1 miles northwest of the airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on August 6, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–22495 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–11]

Amendment of Class E Airspace: Gordonsville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Gordonsville, VA. The Standard Instrument Approach Procedure (SIAP) for Gordonsville Municipal Airport has been cancelled. Class E airspace for Gordonsville, VA is no longer needed.

DATES: *Effective date:* November 28, 2002.

Comment Date: Comments must be received on or before October 10, 2002.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–11, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

The official docket may be examined in the Office of Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–3255.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of the Class E airspace at Gordonsville, VA, by removing that airspace designated for Gordonsville Municipal Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the description of the Class E airspace at Gordonsville, VA, by removing that airspace designated for Gordonsville Municipal Airport. The SIAP serving the airport could no longer be supported by navigational aids and/or the airport runway and has been canceled. As a result the Gordonsville, VA Class E airspace is no longer required for the safety of instrument operations to the airport. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 3, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that the more restrictive Class E airspace at Gordonsville, VA is no longer supported and the flight rules pertinent to Class G airspace should apply. Accordingly, since this action merely reverts the Gordonsville, VA, Class E airspace to Class G and has no significant impact on aircraft operations at the Gordonsville Municipal Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, to incorporate this change into the next sectional chart and avoid confusion on the part of pilots and to relieve restrictions that are no longer needed, I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this

amendment effective as soon as possible.

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 DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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 3, 2001 and effective September 16, 2001, is amended as follows:

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

* * * * *

AEA VA E5 Gordonsville, VA [Removed]

* * * * *

Issued in Jamaica, New York on August 20, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–22496 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–07]

Amend Class E Airspace: Seneca Falls, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Seneca Falls, NY. This action is made necessary by the amendment of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Finger Lakes Regional Airport (K0G7), Seneca Falls, NY. Sufficient controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On July 17, 2002, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Finger Lakes Regional Airport, Seneca Falls, NY, was published in the **Federal Register** (67 FR 46940). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations at Finger Lakes Regional Airport, Seneca Falls, NY.

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 DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of 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 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

AEA NY E5 Seneca Falls, NY (Revised)

Finger Lakes Regional Airport
(lat. 42° 52′50″N., long. 76° 46′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Finger Lakes Regional Airport.

* * * * *

Issued in Jamaica, New York on August 20, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–22497 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–10]

Amendment of Class E Airspace, Durhamville, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Durhamville, NY. Kamp Airport has been closed and the Standard Instrument Approach Procedure (SIAP) for this airport has been cancelled. Class E airspace for Kamp Airport is no longer needed.

DATES: *Effective date:* November 28, 2002.

Comment Date: Comments must be received on or before October 1, 2002.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–10, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718– 553–3255.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of the Class E airspace at Durhamville, NY, by removing that airspace designated for Kamp Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to attend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the description of the Class E airspace at Durhamville, NY, by removing that airspace designated for Kamp Airport. The airport has been closed and abandoned for aeronautical use. As a result the Durhamville, NY Class E airspace is no longer required for airspace safety. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 3, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. THe Class E airspace designation listed in this document will be published subsequently in the Order.

Under the circumstances presented, the FAA concludes that the more restrictive Class E airspace at Durhamville, NY is no longer supported and the flight rules pertinent to Class G airspace should apply. Accordingly, since this action merely reverts the Durhamville, NY, Class E airspace to Class G and has no significant impact on aircraft operations at Kamp airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Furthermore, to incorporate this change into the next section chart and avoid confusion on the part of pilots and to relieve restrictions that are no longer needed, I find that good cause exist, pursuant to 5 U.S.C. 553(d), for making this amendment effective as soon as possible.

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 DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[Amended]

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 3, 2001 and effective September 16, 2001, is amended as follows:

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

* * * * *

AEA NY E5 Durhamville, NY [Removed]

* * * * *

Issued in Jamaica, New York on August 20, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–22498 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–09]

Amend Class E Airspace: Mount Pocono, PA

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Mount Pocono, PA. This action is made necessary by the development of a Standard Instrument

Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Pocono Mountains Municipal Airport (KMPO), Mount Pocono, PA. Sufficient controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC November 28, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On July 17, 2002, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Pocono Mountains Municipal Airport, Mount Pocono, PA, was published in the **Federal Register** (67 FR 46939). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. This rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001 and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations at Pocono Mountains Municipal Airport, Mount Pocono, PA.

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 DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of 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 6005 Class E airspace areas extending upward from 700 ft above the surface of the earth.

* * * * *

AEA PA E5 Mount Pocono, PA (Revised)

Pocono Mountains Municipal Airport (lat. 41°08′15″N., long. 75°22′44″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Pocono Mountains Municipal Airport and within 4 miles each side of the 295° bearing from the airport extending from the 6.4-mile radius to 8.6 miles northwest of the airport.

* * * * *

Issued in Jamaica, New York on August 20, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–22499 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–3–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF—481; Ref. Notice No. 934]

RIN 1512—AC50

Addition of Tannat as a Grape Variety Name for American Wines (2001R–207P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, and Firearms (ATF) is adding the name "Tannat" to the list of prime grape variety names approved for use in designating American wines.

EFFECTIVE DATE: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY, 14202–2301; telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Alcohol Administration Act (FAA Act) (27 U.S.C. 201 *et seq.*), wine labels must provide the consumer "with adequate information as to the identity and quality" of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer.

To help carry out these statutory requirements, ATF has issued regulations, including those that designate grape varieties. Under 27 CFR 4.23(b) and (c), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties, and if the percentage of the wine derived from each grape variety is shown on the label.

In Treasury Decision ATF–370 (61 FR 522), issued on January 8, 1996, ATF adopted a list of grape variety names determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while alternative grape names temporarily authorized for use are listed at § 4.92. We believe the

listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

How May New Varieties Be Added to the List of Prime Grape Names?

Under 27 CFR 4.93, any interested person may petition ATF to include additional grape varieties in the list of prime grape names. The petitioner should provide evidence of the following:

- Acceptance of the grape variety;
- The validity of the name for identifying the grape variety;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

Documentation submitted with the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific, or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety, such as the acreage planted or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. We will not approve a name:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term "Riesling."

The Director will not approve the name of a new grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words that are misleading under § 4.39.

Tannat Petition

Tablas Creek Vineyard in Paso Robles, California, petitioned ATF to add the name "Tannat" to the list of prime grape variety names approved for the designation of American wines. Tannat is a red varietal with origins in southwestern France and the Pyrenees Mountains.

The petitioner submitted the following published references to Tannat to establish its acceptance as a grape and the validity of its name:

- "Cépages et Vignobles de France, Volume II," by Pierre Galet, 1990, p. 313.
- "Catalogue of Selected Wine Grape Varieties and Clones Cultivated in France," published by the French Ministry of Agriculture, Fisheries and Food, 1997, p.151.
- "Traité General de Viticulture Ampelographie, Volume II," by P. Viala and V. Vermoral, 1991, pp. 80–82.
- "Guide to Wine Grapes," Oxford University Press, 1996, by Jancis Robinson, p. 182.

The first three references are scientific articles that discuss the grape's origin, cultivation, and ampelography (the study and classification of grapevines). The "Guide to Wine Grapes," intended for the general reader, contains a general description of the grape and its uses. According to these references, the Tannat grape produces a deeply colored and tannic wine, which is thought to account for its name. They also note its use as a major component of the French wine Madiran.

Tablas Creek Vineyard imported the Tannat plant into the USDA station in Geneva, New York, in 1992. The plant was declared virus free and shipped bare-root to Tablas Creek Vineyard in Paso Robles, California, in February 1993. In 1996, the winery multiplied, grafted, and started planting Tannat vines.

The petitioner stated that the Tannat grape is currently grown and used in the United States in winemaking. Tablas Creek Vineyard reports that in 2000 and 2001, it shipped several orders for Tannat plants to vineyards in California, Arizona, and Virginia. Tannat has also long been grown in the vine collections of the University of California. At the request of the petitioner, Richard Hoenisch, Vineyard Manager, Viticulture and Enology Department, University of California at Davis, contacted ATF with information about the history of the Tannat vines in the university's collection.

According to Mr. Hoenisch, Tannat was part of the vine collection begun in the 1890s at the University of California at Berkeley by Professor Eugene Hilgard. Founder of the Department of Fruit Science, Hilgard established several experimental vineyards in California, with sites in Berkeley, Cupertino, Paso Robles, and Jackson. Mr. Hoenisch stated that the vines in the Jackson collection, including Tannat, were rediscovered in 1965 by Dr. Austin Goheen and Carl Luhn and repropagated at UC Davis. The university currently blends its Tannat wine into Cabernet Sauvignon to increase tannins, acidity, and color.

Tablas Creek states that Tannat is easy to graft and relatively vigorous, and has great commercial potential in California. It is well adapted to most California regions, ripening fairly late in the growing season, after Grenache but before Mourvédre and Cabernet Sauvignon. The petitioner reports that it has had two highly successful crops off its 0.5 acre planting. Its 1999 harvest had a brix of 28 and a pH of 3.18, while the 2000 harvest had a brix of 25 with a pH of 3.45. The petitioner states that the wine is rich, with good color, and excellent aromatics and spice. Tablas Creek further reports that the wine has done well in tastings, resulting in additional orders for Tannat plants from other vineyards and nurseries.

Notice No. 934

Based on the evidence submitted by the petitioners, ATF published Notice 934 on January 23, 2002, (67 FR 3135) proposing to add the name "Tannat" to the list of approved grape names in § 4.91. ATF received five comments in response to the notice. Four of the comments were from wineries, with the fifth from the State Enologist for Virginia, Dr. Bruce Zoecklein of Virginia Tech University. All of the commenters supported the proposed addition of the Tannat grape to the list of approved names.

After reviewing the evidence and comments, ATF determined that the petitioner provided sufficient evidence to satisfy the requirements of § 4.93. We are therefore amending the list of prime grape names in 27 CFR 4.91 to include the name "Tannat."

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule. This rule does not require winemakers to collect or report any additional information.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

We certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of a new grape varietal name. We do not expect any negative impact on small entities. We are not imposing new requirements. Accordingly, the Act does not require a regulatory flexibility analysis.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the name "Tannat", in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Tannat

* * * * *

Signed: July 12, 2002.

Bradley A. Buckles,

Director.

Approved: August 9, 2002.

Timothy E. Skud,

Deputy Assistant Secretary, (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–22382 Filed 9–3–02; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512–AC92

[T.D. ATF–482; Re: Notice No. 891]

Expansion of Lodi Viticultural Area (2000R–436P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision expands the existing Lodi viticultural area located in Sacramento and San Joaquin counties in California. This decision changes the southern and western boundaries of the Lodi viticultural area, expanding it 17 percent in size. The Bureau of Alcohol, Tobacco and Firearms believes the use of viticultural area names as appellations of origin in wine labeling and advertising helps consumers identify the wines they may purchase. It also allows wineries to better designate the specific grape-growing area in which their wine grapes were grown.

EFFECTIVE DATE: Effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105; telephone (415) 947–5192.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What is ATF's Authority to Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

What is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features such as soil, climate, elevation, topography, etc., which distinguish it from surrounding areas.

What is Required to Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Lodi Expansion Petition

ATF received a petition in 1998 from Christopher Lee, an attorney representing nine San Joaquin County grape growers, proposing to expand the Lodi viticultural area, 27 CFR 9.107. ATF published a Notice of Proposed Rulemaking on February 7, 2000, describing the petition and requesting comments (Notice No. 891; 65 FR 5828). Evaluation of the comments, consideration of alternate boundaries, and the need for additional documentation delayed our publication of this final rule.

The Lodi viticultural area is located approximately 70 miles inland from the Pacific coast between Sacramento and Stockton in northern California. The originally approved Lodi viticultural area encompasses approximately 458,000 acres. The expansion areas are to the south and west of the original viticultural area. The expansion areas include 93,500 acres with approximately 10,840 acres of planted wine grapes. The southern addition totals 66,000 acres, with 5,600 vineyard acres. The Calaveras River, the San Joaquin-Stanislaus County line, State Route 4, and Interstate 5 form the southern expansion's boundaries. The western addition includes 27,500 acres, with 5,240 acres planted to vines. Eightmile Road west of Interstate 5, Bishop Cut, a line drawn through a series of landmarks through the sloughs and islands, and the meandering Mokelumne River to its intersection with the original western boundary at the Sacramento County line form the western expansion area's boundaries.

The Clarksburg viticultural area borders the expanded Lodi viticultural area on the northwest, while the large Sierra Foothills viticultural area lies to east of the Lodi viticultural area. The Lodi expansion neither creates overlaps with other viticultural areas nor encompasses any smaller viticultural area.

Notice of Proposed Rulemaking

Comments

The Notice of Proposed Rulemaking, Notice No. 891, requested comments from all interested persons concerning the expansion of the Lodi viticultural area by April 7, 2000. ATF received twenty-three comments from individuals and groups, including industry members, the Lodi Appellation Winery Association, the Lodi-Woodbridge Winegrape Commission, and the West Lodi Growers group.

ATF received five favorable comments from four industry members and one Lodi resident. These comments indicated the expansion area is recognized by the Lodi name, and that its climate and soil are similar to the original area. An industry member with 40 years viticulture experience, who has farmed grapes in the original and expanded western Lodi viticultural area, noted that he uses similar farming and irrigation practices for all his vineyards and sells the grapes on the same contracts for the same prices.

The Lodi-Woodbridge Winegrape Commission, which has concurrent boundaries with California's Crush District 11, took a neutral position on the area's expansion. The Commission's boundaries encompass the original and expanded Lodi viticultural area.

The Lodi Appellation Winery Association comment letter, containing eight signatures, opposed the viticultural area's expansion. In 1982, the Association actively worked to define the original Lodi viticultural area. The Association continues to believe the viticultural area's original boundaries are correct, based on their collective experience and knowledge. Three individual industry members sent comments similar to the Association's opposing comments.

The Lodi Appellation Winery Association contends the expansion is an attempt at economic gain that could create consumer confusion and hurt the Lodi viticultural area name. The letter noted that the expansion petitioner's information on climate, soil, and other elements was based on evidence from paid soil scientists and meteorologists, not from experienced winegrowers of the area. The Association's letter also states that, while the original 1982 Lodi petitioners didn't consider the Linden area (a part of the southern expansion), they did include all existing, significant wine grape plantings to the west.

ATF Response

The Lodi Appellation Winery Association letter did not provide evidence substantiating their claims of consumer confusion and faulty climate and soil data. As noted above, ATF did receive a favorable comment from an industry member with extensive viticultural experience on both sides of the original western boundary and the expansion petition group is composed of area vineyard owners who are familiar with local conditions.

West Lodi Growers Group Comments

ATF received six comments from the West Lodi Growers group requesting inclusion of their lands, which are located adjacent to the petitioned western expansion area. The West Lodi Growers group did not object to the expansions, but wished to be included in the expanded Lodi viticultural area. The petitioned western expansion line used mean sea level, or the zero-foot elevation, to realign the boundary from one to two miles west of the original line. The expansion petition stated that the land below mean sea level further to the west had different soils and drainage than the petitioned expansion area.

The West Lodi Growers group asked that the proposed western expansion boundary be moved about two miles further west, encompassing an additional 13,000 acres of agricultural land, much of which is below mean sea level. The West Lodi Growers group provided substantive documentation of this land's soil and drainage conditions in support of their request for inclusion in the expanded Lodi viticultural area.

Terry Prichard, an Extension Soil and Water Specialist for the University of California at Davis, collected and analyzed independent soil samples from the western Lodi area below mean sea level. The West Lodi Growers group included Mr. Prichard's findings in their comments. His study indicates that these soils have neutral pH, mineral soil classifications, and viticulture production capabilities identical to the western expansion area adjacent to the original boundary line. Mr. Prichard states the only distinguishing factor between the two western expansion areas is the difference in elevation, above or below mean sea level.

The drainage management system for the western Lodi area below mean sea level includes a system of levees, allowing for successful viticulture. The latest soil survey, completed in 1977, does not account for changes in the last 25 years. Since 1977, the soil has been altered from an organic to a mineral soils classification through drainage management, the physical mixing of soils, and natural oxidation. To the west of the expanded boundary line, the soils gradually revert to an organic classification. The soil pH level in the western expansion area is now typically above 7, or neutral. The organic matter content of the surface soils (0–24 inch depth) has fallen to an average of 1.2%, with the deeper soils (24–28 inch depth) averaging 0.2%. Thus, the soil in the area below sea level now resembles that of the original Lodi viticultural area.

Soil scientist, horticulturist, and vineyard consultant Stanley Grant also evaluated the West Lodi Growers' lands below mean sea level by taking and evaluating field soil samples and by using federal Soil Conservation Service information. The tested soils correlated well with the USDA Soil Survey of San Joaquin County, California, for mineral soils, and clay and silt clay loams, but had little correlation to the County's organic mucks and mucky silt loams. Laboratory testing of field samples indicated the surface organic matter ranged between 4.1% and 8.4%, within the range for mineral soils and below the range for organic soils. The surface pH ranged between 6.7 and 7.9, being neutral to slightly alkaline, also indicative of mineral soils.

Mr. Grant notes that the continuous cultivation of the West Lodi Growers' lands has changed their soil character from organic to mineral and extended the mineral soils further west, below sea level, than indicated on the 1975–1977 soil survey maps. The differences between the soils to the immediate east and west of the original Lodi west boundary at Interstate 5 are negligible, reflecting strong soil similarities between Lodi's original and expanded western area. In contrast, the area outside and to the west of the expanded Lodi viticultural area boundary line maintains its organic soil character.

Irrigation advisor Todd Otto stated the water table in the West Lodi Growers area, above or below mean sea level, plays no major role in wine grape production. He stated that the water table in west Lodi can be successfully regulated through irrigation drainage management. With their drainage infrastructure, he added, the west Lodi area growers have an advantage over the central Lodi growers in removing excess water.

ATF Determination

After evaluating all comments, ATF asked for additional information and documentation from the expansion petitioner. The expansion petitioner provided further evidence, including updates in 2001, on the soil, climate, and name recognition for their proposed southern and western expansion areas showing their similarity to the original Lodi viticultural area.

ATF also sought further documentation and evidence from the West Lodi Growers group, which sought to further enlarge the proposed western Lodi expansion. In response, the group provided further evidence in support of the additional western expansion. The group's documentation of soil, drainage, and climate conditions in the enlarged expansion area provided substantive and convincing evidence of the similarities between the western Lodi area and the original viticultural area.

Subsequent to reviewing the additional evidence from both sources, ATF asked the expansion petitioner to comment on the West Lodi Growers' request for a larger western expansion. On behalf of the petitioners, attorney Christopher Lee stated that his group supported the larger western expansion requested by the West Lodi Growers group.

In light of the evidence provided, ATF has determined to expand the Lodi viticultural area to encompass the southern expansion area and the entire western expansion area, including the area requested for inclusion by the West Lodi Growers group. This decision is based on: (1) The expansion of wine grape growing to areas adjacent to the original Lodi viticultural area since the original 1982 petition, (2) the significant, substantive, and convincing evidence provided regarding the similarities between the original Lodi area and the expansion areas, and (3) the support of the expansion petitioners for the addition of the West Lodi Grape Growers group's lands to the Lodi viticultural area. ATF also notes that the expanded Lodi area is still within the boundaries of the Lodi-Woodbridge Winegrape Commission and California Crush District 11.

This final rule modifies paragraphs (b) and (c) of section 9.107 of 27 CFR part 9, American Viticultural Areas. The list of maps required to define the Lodi viticultural area is revised, as is the language describing the area's southern and western boundaries. While the northern and eastern boundaries are not changed, ATF has modified the language used in their description to meet plain language requirements. This final rule also corrects a minor error found in the current section 9.107(c)(10). This paragraph's last line, which reads "ending in the "Folsom SE" map);" should read "ending in the Sloughhouse, Calif. map);".

The Expanded Lodi Viticultural Area

Evidence That the Name of the Area is Locally or Nationally Known

The Lodi viticultural area expansion petition used the borders of the Lodi-Woodbridge Wine Commission, which is concurrent with California Crush District 11, and a Lodi Chamber of Commerce map, as evidence that the "Lodi" name is recognized for the original and expanded Lodi viticultural areas. In addition, the expansion petition noted that the city of Lodi's Pacific Bell telephone directory service area includes the western expansion area, while Electoral District Four, commonly referred to as the Lodi/North County/East County District, encompasses the southern expansion area.

Historical or Current Evidence That the Boundaries of the Viticultural Area are as Specified in the Petition

The expanded Lodi viticultural area is within the boundaries of the Lodi-Woodbridge Wine Commission, a group established in 1991 within California Crush District 11 for regional viticultural promotion, research, and education. The "Soil Survey of the Lodi Area," California, 1937, "California Wine Country," 1968; and "The Grape Districts of California," undated, include generally all boundary descriptions that encompass the Lodi viticultural area's expanded boundaries.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

The original Lodi viticultural area final ruling of February 13, 1986, (T.D.–223, 51 FR 5324) provides details on the area's geography, soils, and climate. Included within the viticultural area's original boundaries were alluvial fans, flood plains, and lower and higher terraced areas. The climatically moderating effect of the wind gap from San Francisco Bay, as well as the area's soils, provided distinctive grape growing conditions for the Lodi area.

Soil

The original petition soil information, taken from 1952 and 1954 publications, listed Hanford, Delhi, or Dinuba soils on the alluvial fans and San Joaquin, Madera, Ramona, and Redding soils in the terrace areas. The region west of the original boundary line was described as flood-prone, poorly drained Delta land, with Ryde soils and peat.

The expansion petition, however, provides evidence that the soils within the original and expansion areas are, in fact, alike. The twenty-two soils in the original viticultural area are also in the expansion areas. These soils are generally coarse to moderately fine in texture, moderately well to well drained, and have great depth.

The Lodi viticultural area is a low, relatively flat area located along the western slope of the Sierra Nevada Mountains. This mountain range influences the soils of the viticultural area through the weathering, erosion, and soil deposits along its western slope. Historic climatic fluctuations, including glacial and warm periods, have created the major estuaries that deposit soils within the Lodi area. The western-most expansion portion had organic soils until technology, cultivation, and natural oxidation transformed them into mineral soils.

The soils of the south expansion area are similar to those to its north within the original Lodi viticultural area's boundary lines. The original area and the southern expansion area have predominantly older terrace soils and low Sierra foothill residue soils. The soil associations include Archerdale-Cogna-Finrod, Tokay-Acampo, Madera-San Joaquin-Burella, Cometa San Joaquin-Rocklin, Pentz-Pardee-Keyes-Hadsleville-Mokelumne, Redding-Redbluff-Yellowlark, and Auburn-Whiterock-Argonaut.

The western expansion area soils are a continuation of those found immediately within the original western boundary line. The soil associations include Peliter-Egbert-Sailboat, Merritt-Grangeville-Columbia-Vina-Coyotecreek, Jacktone-Hollenbeck-Stockton, Devries-Rioblancho-Guard, Archerdale-Cogna-Finrod, and Tokay-Acampo. The western-most part of this expansion area, located at or slightly below mean sea level, has a system of man-made levees constructed along sloughs and channels. Between these levees are "islands" equipped with drainage pipes, pumps, and ditches that reduce the water content of the land and facilitate agriculture. Since the soil survey of 1975 to 1977, the soil's natural oxidation, a factor of the drainage system and the atmosphere, in conjunction with cultivation of the land, has changed the character of the soil from organic to mineral. This area now has the same mineral soil classifications as the rest of the western expansion and as the area inside the original west boundary. These soils now bear little correlation to the area's 1975 to 1977 soil survey.

Geography

The original Lodi viticultural area is described as an inland area of alluvial fans, flood plains, and lower and higher terrace lands. The southern expansion of 66,000 acres has similar topography to the area directly north within the original viticultural area's boundaries. The western expansion of 27,500 acres, with elevations varying between ten feet above to ten feet below sea level, is lower than the average elevation of ten feet above sea level at the original west boundary line. However, the flat, low terrain of the original west boundary area and the western expansion area are similar.

Climate

The climatically moderating effect of the San Francisco Bay wind gap, originating at the Pacific Ocean and the Golden Gate, along with the Sacramento Delta winds, make the Lodi viticultural area a distinctive grape-growing region. The San Francisco Bay winds travel east, cross the lower elevations, and cool the inland Lodi area. Immediately outside the viticultural area, the climate is naturally warmer to the north and south. However, with the prevailing wind gap effect, it is cooler to the west; it is also cooler to the east due to the cold air drainage from the Sierra Nevada.

The temperatures and rainfall of the expansion areas are similar to the original Lodi viticultural area. A three-year comparison of degree-day readings and rainfall was made between Linden in the southern expansion and Lockeford, close to the center of the original viticultural area. A similar three-year comparison was made between Canal Ranch in the western expansion area and the city of Lodi in the original viticultural area. The temperature variation was minor, less than 0.5 degree per day over the course of a 210-day growing season for the expansion areas. The rainfall totals, with the exception of an atypically large 1998–1999 Linden total, are similar in amount and variation from year-to-year.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to this Final Rule?

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because we impose no requirement to collect information.

How Does the Regulatory Flexibility Act Apply to this Final Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or otherwise cause a significant increase in reporting, record keeping, or other compliance burdens on a substantial number of small entities. No new requirements are imposed. ATF approval of a viticultural area is not an endorsement of the wine produced in the area. The approval of this viticultural area petition merely allows the wineries in the area to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use and reputation of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. Accordingly, a regulatory flexibility analysis is not required.

Is this a Significant Regulatory Action as Defined by Executive Order 12866?

We have determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. A regulatory assessment is not required.

Drafting Information

The principal author of this document is Nancy Sutton, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons set forth in the preamble, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Section 9.107 is amended by revising paragraphs (b) and (c) to read as follows:

§ 9.107 Lodi.

(a) * * *

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 18 U.S.G.S. 7.5 minute series maps and are titled as follows:

(1) Valley Springs SW, Calif. 1962;

(2) Farmington, Calif. 1968 (Photorevised 1987);

(3) Peters, CA 1952, (Photorevised 1968);

(4) Stockton East, Calif. 1968, (Photorevised 1987);

(5) Waterloo, Calif. 1968, (Photoinspected 1978);

(6) Lodi South, Calif. 1968, (Photorevised 1976);

(7) Terminous, Calif. 1978; (Minor Revision 1993);

(8) Thornton, Calif. 1978;

(9) Bruceville, Calif. 1968, (Photorevised 1980);

(10) Florin, Calif. 1968 (Photorevised 1980);

(11) Elk Grove, Calif. 1968 (Photorevised 1979);

(12) Sloughhouse, Calif. 1968 (Photorevised 1980, Minor Revision 1993);

(13) Buffalo Creek, Calif. 1967 (Photorevised 1980);

(14) Folsom SE, Calif. 1954 (Photorevised 1980);

(15) Carbondale, Calif. 1968 (Photorevised 1980, Minor Revision 1993);

(16) Goose Creek, Calif. 1968 (Photorevised 1980, Minor Revision 1993);

(17) Clements, Calif. 1968 (Minor Revision 1993); and

(18) Wallace, Calif. 1962.

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located at the intersection of the Calaveras River and the San Joaquin-Stanislaus County line (Valley Springs SW, Calif. map).

(1) From the beginning point, proceed south along the San Joaquin-Stanislaus County line to its intersection with State Route 4, also known as Funck Road, T1N, R9E (Farmington, Calif. map);

(2) Then proceed west on State Route 4 (west on Funck Road, then south on Waverly Road, then west through the village of Farmington on Farmington Road) to State Route 4's intersection with Jack Tone Road, T1N, R7E (beginning on the Farmington, Calif. map, passing through the Peters, CA map, and ending on the Stockton East, Calif. map);

(3) Then proceed north along Jack Tone Road to its intersection with Eightmile Road, T3N, R7E (ending on the Waterloo, Calif. map);

(4) Then proceed west along Eightmile Road to its intersection with Bishop Cut, T3N, R5E (beginning on the Waterloo, Calif. map, passing through the Lodi South, Calif. map, and ending on the Terminous, Calif. map);

(5) Then proceed north along Bishop Cut to White Slough, T3N, R5E (Terminous, Calif. map);

(6) Then proceed west along White Slough to an unnamed drainage canal on Terminous Tract, across the slough from a marked pumping station on King Island, T3N, R5E (Terminous, Calif. map);

(7) Then proceed straight northwest on the Terminous Tract to the south end of Peatland Road and follow it north to its intersection with State Route 12, T3N, R5E (Terminous, Calif. map);

(8) Then proceed west 0.2 mile on State Route 12 to its intersection with an unnamed unimproved road at BM–8, and continue straight northwest on the Terminous Tract to the marked siphon on the south side of Sycamore Slough, T3N, R5E (ending on the Thornton, Calif. map);

(9) Then proceed in a straight line north-to-northeast across Brack Tract, Hog Slough and Canal Ranch to the line's intersection with Beaver Slough near the 90-degree east turn of an unnamed light duty road, west of a small cluster of buildings, T4N, R5E (Thornton, Calif. map);

(10) Then proceed west along Beaver Slough to its intersection with the South Mokelumne River, following the river north and east to its intersection with Interstate 5 (marked as under construction), T5N, R5E (ending on the Bruceville, Calif. map);

(11) Then proceed northwest along Interstate 5 to its intersection with an unnamed road, locally known as Hood-Franklin Road.

(12) From Interstate 5, proceed east on Hood-Franklin Road to its intersection with Franklin Boulevard, Section 17, T6N, R5E (ending on the Florin, Calif. map);

(13) Proceed generally north along Franklin Boulevard to its intersection with Sims Road and a section line running due east marking the northern boundary of Section 28, T7N, R5E (Florin, Calif. map).

(14) Follow this section line due east to its junction with Sheldon Road and then proceed east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning on the Florin, Calif. map and ending on the Elk Grove, Calif. map);

(15) Proceed southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road (Elk Grove, Calif. map);

(16) Then northeast along Grant Line Road to its intersection with State Highway 16 (beginning on the Elk Grove, Calif. map, passing through the Sloughhouse, Calif. map, and ending on the Buffalo Creek, Calif. map);

(17) Proceed southeast along State Highway 16 to its intersection with Deer Creek (ending on the Sloughhouse, Calif. map);

(18) Then proceed generally northeast along Deer Creek to its intersection with the eastern boundary of Sacramento County (beginning on the Sloughhouse, Calif. map, passing through the Buffalo Creek, Calif. map, and ending on the Folsom SE, Calif. map); and

(19) Proceed generally south along the eastern boundary of Sacramento County to the meeting point of Sacramento, Amador, and San Joaquin Counties (beginning on the Folsom SE, Calif. map, passing through the Carbondale, Calif. map, and ending on the Goose Creek, Calif. map); and

(20) Then proceed generally south-southeast along the eastern boundary of San Joaquin County to the point of beginning (beginning on the Goose Creek, Calif. map, passing through the Clements, Calif. and Wallace, Calif. maps, and ending on the Valley Springs SW, Calif. map).

Signed: July 17, 2002.

Bradley A. Buckles,

Director.

Approved: August 3, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–22383 Filed 9–3–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–045]

RIN 2115–AA97

Safety and Security Zones; Portsmouth Harbor, Portsmouth, NH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety and security zones 1 mile ahead, ½ mile astern, and 1000-yards on either side of any vessel capable of carrying Liquefied Petroleum Gas (LPG) while within, or transiting, the Portland, Maine, Captain of the Port zone. This rule also establishes safety and security zones of 500 yards around any LPG vessel while it is moored at the LPG receiving facility located on the Piscataqua River in Newington, New Hampshire. Entry into or movement within these zones, without the express permission of the Captain of the Port, Portland, Maine or his authorized patrol representative, is strictly prohibited.

DATES: This rule is effective October 4, 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 CGD01–02–045 and are available for inspection or copying at Marine Safety Office Portland, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R.F. Pigeon, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 23, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire" in the **Federal Register** (67 FR 36122). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

This final rule will make permanent a temporary final rule (TFR) entitled "Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone" published on November 20, 2001 in the **Federal Register** (66 FR 58064). That TFR had an effective period from November 9, 2001 through June 21, 2002. On May 8, 2002, we published an extension to that TFR entitled "Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire" in the **Federal Register** (67 FR 30809). This extension extended the effective period until August 15, 2002.

Background and Purpose

The September 11, 2001 terrorist attacks on New York and Washington, DC inflicted catastrophic human casualties and property damage. National security and intelligence officials continue to warn that future terrorist attacks are possible. Due to these heightened security concerns, safety and security zones are prudent for Liquefied Petroleum Gas (LPG) tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if an LPG vessel was subjected to a terrorist attack.

This final rule will revise a current safety zone for transits of tank vessels

carrying Liquefied Petroleum Gas in Portsmouth Harbor, Portsmouth, New Hampshire. The current rule will be replaced in whole by this final rule. Title 33 CFR 165.103, entitled "Safety Zone: Portsmouth Harbor, Portsmouth, New Hampshire", currently provides for a safety zone during the transit of loaded LPG vessels as follows: the waters bounded by the limits of the Piscataqua River Channel and extending 1000-yards ahead and 500-yards astern of tank vessels carrying LPG while the vessel transits Bigelow Bight, Portsmouth Harbor, and the Piscataqua River to the LPG receiving facility at Newington, New Hampshire until the vessel is safely moored and while the vessel transits outbound from the receiving facility through the Piscataqua River, Portsmouth Harbor and Bigelow Bight until the vessel passes the Gunboat Shoal Lighted Bell Buoy "1" (LLNR 185). Currently, Title 33 CFR 165.103 recognizes the safety concerns with transits of large tank vessels, but is inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts.

In comparison to 33 CFR 165.103, this final rule will provide increased protection for LPG vessels as follows: it establishes 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire. It also provides continuous protection for LPG vessels by establishing safety and security zones 1 mile ahead, ½ mile astern, and 1000-yards on each side of LPG vessels anytime a vessel is within the waters of the Portland, Maine, Captain of the Port zone, as defined in 33 CFR 3.05–15, rather than limiting the protection to vessels carrying LPG that are transiting to and from the facility. It also extends the zones to 1000 yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel.

The increased protection provided in this final rule also recognizes the safety concerns associated with an unloaded LPG vessel. Currently, 33 CFR 165.103 only establishes a safety zone around a loaded LPG tank vessel or while the vessel is transferring its cargo. This final rule establishes safety and security zones around any LPG vessel, loaded or unloaded, any time a LPG vessel is located in the Portland, Maine, Captain of the Port zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. To the extent that it is applicable, under the Ports and Waterways Safety Act (33 U.S.C.S 1221 *et seq.*, and 46 U.S.C.S. 301a) navigable waters of the United States include all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential Proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States determined in accordance with international law. These zones provide necessary protection to unloaded vessels, which continue to pose a safety/security hazard due to ignition of the vapor material. This final rule also recognizes the continued need for safety zones around LPG vessels, which are necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

No person or vessel may enter or remain in these safety and security zones at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a safety and security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. To the extent that each is applicable, these regulations are issued under authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Any violation of any safety or security zone described herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Discussion of Comments and Changes

The Coast Guard received no comments for this rulemaking. Three changes have been made to the proposed rule in this final rulemaking: (1) by revising paragraph (a) to include the reference to the definition of the Portland, Maine, Captain of the Port Zone (2) by adding paragraph (b) defining navigable waters for this section and (3) by adding paragraph (d) regarding notifications.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. 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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: These zones should have minimal impact on the users of the Portland, Maine, Captain of the Port zone, Bigelow Bight, Portsmouth Harbor and the Piscataqua River, as LPG vessel transits are infrequent. Vessels have ample water to transit around the zones while LPG vessels are transiting in Bigelow Bight, Portsmouth Harbor and the Piscataqua River. The zones established while the vessel is transiting are moving safety and security zones, allowing vessels to transit ahead, behind, or after passage of an LPG vessel. Public notifications will be made prior to an LPG transit via telephone and/or marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we have considered whether this proposal 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.

For the reasons addressed under Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will 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 process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in section 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(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Revise 33 CFR 165.103 to read as follows:

§ 165.103 Safety and Security Zones; LPG Vessel Transits in Portland, Maine, Captain of the Port Zone, Portsmouth Harbor, Portsmouth, New Hampshire.

(a) *Location.* The following areas are safety and security zones: (1) Except as provided in paragraph (a) (2) of this section, all navigable waters of the Portland, Maine, Captain of the Port zone, as defined in 33 CFR 3.05–15, one mile ahead, one half mile astern, and 1000-yards on either side of any Liquefied Petroleum Gas vessel.

(2) All waters of the Piscataqua River within a 500-yard radius of any Liquefied Petroleum Gas (LPG) vessel while it is moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire.

(b) *Definitions.* For purposes of this section, navigable waters of the United States includes all waters of the territorial sea as described in Presidential Proclamation No. 5928 of December 27, 1988. Presidential Proclamation No. 5928 of December 27, 1988 declared that the territorial sea of the United States extends to 12 nautical miles from the baseline of the United States.

(c) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Captain of the Port (COTP), Portland, Maine.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port.

(3) No person may swim upon or below the surface of the water within the boundaries of the safety and security zones unless previously authorized by the Captain of the Port, Portland, Maine or his authorized patrol representative.

(d) The Captain of the Port will notify the maritime community and local agencies of periods during which these safety and security zones will be in effect by providing notice of arrivals and departures of LPG vessels via the telephone and/or Marine Safety Information Radio Broadcasts.

Dated: August 26, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–22493 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–090]

RIN 2115–AE84

Safety Zone; East River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in a portion of the waters of the East River, Western Channel, between Manhattan and Roosevelt Island, NY. This action is necessary to provide for the safety of construction crews and motorists during rehabilitation of a portion of the Franklin Delano Roosevelt (FDR) Drive between East 56th Street and East 63rd Street in Manhattan, NY. This action is intended to prevent vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone.

DATES: This rule is effective at 7 a.m. on September 16, 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 (CGD01–02–090) and are available for inspection or copying at room 205, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luis E. Martinez, Waterways Oversight Branch, Coast Guard Activities New York, at (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 26, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Safety Zone; East River, Manhattan, NY", in the **Federal Register** (67 FR 48832). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the date the final construction and vessel restriction plans were completed and reviewed by the Port of NY/NJ Harbor Operations Committee and Harbor Pilots, there was insufficient time to draft and publish both an NPRM and final rule more than 30 days before the effective date. Rather than shorten the NPRM comment period, our NPRM advised the public that the rule would take effect on or about September 1, 2002—less than 30 days following its anticipated publication. Further, the safety zone is intended to protect vessels from the hazards associated with construction, operation and disassembly of a temporary Outboard Detour Roadway and its protective fendering system, and to minimize the risk of allision with those structures, once constructed, by restricting marine traffic within the zone. Any delay encountered in this rule's effective date would be unnecessary and contrary to public interest since immediate action is needed to close the waterway and protect construction crews and motorists during rehabilitation of a portion of the FDR Drive between East 56th Street and East 63rd Street in Manhattan, NY.

Background and Purpose

The New York State Department of Transportation (NYSDOT) is undertaking the rehabilitation of the FDR Drive in Manhattan, NY. The project is scheduled to begin on September 16, 2002 and to continue until approximately June 2007. It will include the building of a temporary Outboard Detour Roadway (causeway) adjacent to the northbound lanes of a portion of the FDR Drive that will provide three lanes of motor vehicle traffic over the Western Channel of the East River between East 56th Street and East 63rd Street in Manhattan.

The temporary Outboard Detour Roadway will be protected from marine traffic interference by a fendering system positioned adjacent to and just outside the western edge of the navigable channel in the East River's Western Channel. The fendering system will run the length of the Outboard Detour Roadway. It is designed to withstand an allision by a vessel displacing 38,000 long tons (38,610 metric tons) striking at a speed of 6.8 knots and a 7.5 degree angle of approach.

The rule will exclude all vessels from the immediate vicinity of the Outboard Detour Roadway during the construction, operation and disassembly of the structure and its protective fendering system. By excluding marine traffic, the zone will protect maritime users from the hazards associated with the construction, operation and disassembly of those structures and protect Outboard Detour Roadway users from the risk of vessel allision or interference with that structure. The safety zone will commence on September 16, 2002.

In order to provide further protection for roadway users, we contemplate the subsequent establishment of a Regulated Navigation Area (RNA) in the Western Channel of the East River between 23rd Street, Manhattan (Poorhouse Flats Range) and East 96th Street, Manhattan (Hells Gate). No vessel with a displacement of greater than 38,000 long tons would be permitted to enter the RNA without tugboat assistance. That RNA will be the subject of separate rulemaking process as we draw closer to the projected opening of the Outboard Detour Roadway in 2004.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

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 this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant as it will not prevent maritime traffic from navigating the East River, Western Channel. The safety zone merely prevents vessels from entering a relatively small area of water west of the navigable channel to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to enter a small portion of the East River, Western Channel, during the times the safety zone is in effect.

This rule will not have a significant economic impact on a substantial number of small entities because it will not prevent maritime traffic from navigating the East River. The safety zone merely prevents vessels from entering a relatively small area of water west of the navigable channel in order to prevent interference with the construction, operation and disassembly of an Outboard Detour Roadway and its protective fendering system.

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. We received no further requests for assistance from small entities.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.167 to read as follows:

§ 165.167 Safety Zone: East River Western Channel, Manhattan, NY.

(a) *Location.* The waters of the East River enclosed by the following boundaries are established as a safety zone: beginning on the Manhattan riverbank at a point 40°45′35.7″ N, 073°57′25.2″ W (Point A), thence southeasterly to a point 40°45′34.8″ N, 073°57′23.2″ W (Point B), thence southwesterly along the western boundary of the federal navigable channel to a point 40°45′09.5″ N, 073°57′46.3″ W (Point C), then northwesterly to the Manhattan riverbank at a point 40°45′10.5″ N, 073°57′48.9″ W (Point D), thence northeasterly along the riverbank to the place of beginning (Point A). All coordinates are North American Datum 1983.

(b) *Regulations.* The general regulations contained in § 165.23 of this part apply.

Dated: August 27, 2002.

N.E. Merkle,

Captain, U.S. Coast Guard, Captain of the Port, New York, Acting.

[FR Doc. 02–22494 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0227; FRL–7197–7]

Cypermethrin and an Isomer Zeta-cypermethrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers in or on flax (seed and meal) and mustard seed in connection with crisis exemptions declared by the state of North Dakota under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on flax and mustard. This regulation establishes a maximum permissible levels for residues of zeta-cypermethrin and its inactive R-isomers in these food commodities. The tolerances will expire and are revoked on June 30, 2005.

DATES: This regulation is effective September 4, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0227, must be received on or before November 4, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0227 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0227. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide zeta-cypermethrin (S-cyano(3-phenoxyphenyl) methyl (±))(cis-trans 3-(2,2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate and its inactive R-isomers, in or on flax (seed and meal) and mustard seed at 0.2 parts per million (ppm). These tolerances will expire and are revoked on June 30, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Recently, EPA has received objections to a tolerance it established for zeta-cypermethrin and its inactive R-isomers on a different food commodity. The objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although these objections concern separate rulemaking proceedings under the FFDCA, EPA has considered whether it is appropriate to extend the emergency exemption tolerances for zeta-cypermethrin and its inactive R-isomers while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised frivolous issues, and the extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support extending these tolerances at this time. First, the objections proceeding is not near to conclusion. NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA has just initiated a 60 day public comment period on them (June 19 2002, 67 FR 41628) (FRL–7167–7). Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that have been the subject of considerable study by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing the tolerances for zeta-cypermethrin and its inactive R-isomers.

III. Emergency Exemption for Zeta-Cypermethrin on Flax and Mustard and FFDCA Tolerances

On May 31 and July 30, 2002, the North Dakota Department of Agriculture availed itself of the authority to declare the existence of crisis situations within the state, thereby authorizing use under FIFRA section 18 of Z-cypermethrin on mustard grown for seed to produce the condiment for control of crucifer flea beetle (*Phyllotreta cruciferae* (Goeze) and on flax to control grasshoppers, respectively.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of zeta-cypermethrin and its inactive R-isomers, in or on flax (seed and meal) and mustard seed. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2005, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on flax (seed and meal) and mustard seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether zeta-cypermethrin meets EPA's registration requirements for use on flax and mustard or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of zeta-cypermethrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Dakota to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for zeta-cypermethrin, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of zeta-cypermethrin and its inactive R-isomers and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of zeta-cypermethrin and its inactive R-isomers in or on flax (seed and meal) and mustard seed at 1.0 ppm. The most recent estimated aggregate risks resulting from the use of zeta-cypermethrin and its inactive R-isomers are discussed in the **Federal Register** for February 12, 2002 (67 FR 6422) (FRL–6818–8). Final Rule establishing tolerances for residues of zeta-cypermethrin and its inactive R-isomers in or, on edible podded legume vegetables (crop subgroup 6A) at 0.5 ppm; succulent, shelled peas and beans (crop subgroup 6B) at 0.1 ppm; dried, shelled peas and beans, except soybean (crop subgroup 6C) at 0.05 ppm; soybean, seed at 0.05 ppm; fruiting vegetables, except cucurbits (crop group 8) at 0.2 ppm; sorghum, grain at 0.5 ppm; sorghum, forage at 0.1 ppm; sorghum, stover at 5.0 ppm; wheat, grain at 0.2 ppm; wheat, forage at 3.0 ppm; wheat, hay at 6.0 ppm; wheat, straw at 7.0 ppm; aspirated grain fractions at 10.0 ppm; meat of cattle, goats, hogs, horses, sheep at 0.2 ppm, because in that prior action, risks were estimated assuming tolerance level residues in all commodities for

established tolerances, as well as those for which action was being proposed, such as in this flax and mustard exemption use. Refer to the February 12, 2002, **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for zeta-cypermethrin for use in human risk assessment is discussed in Unit III.A of the **Federal Register** of February 12, 2002 (67 FR 6422).

EPA assessed risk scenarios for zeta-cypermethrin and its inactive R-isomers under acute, chronic, and short-term and intermediate-term exposures.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the acute exposure assessments: Tolerance level residues were assumed and it was also assumed that 100% of the crops and other commodities with proposed or established cypermethrin or zeta-cypermethrin tolerances contained those residues. Deem default processing factors were used for all commodities in this assessment. All exposures are tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure.

Using these exposure assessments, EPA concluded that zeta-cypermethrin and its inactive R-isomers exposure from food consumption will utilize 22% of the acute population adjusted dose (aPAD) for the U.S. population, 21% of the aPAD for females 13–years and older, and 24% of the aPAD for infants (> 1–year old), and 33% of the aPAD for children (1–6 years old), the subpopulation at greatest exposure. In addition, despite the potential for acute dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concentrations (EECs) of zeta-cypermethrin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 1:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	aPAD milligrams/kilogram (mg/kg)	%aPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.10	22	8.9	0.006	2,700
Females (13–50 years)	0.10	21	8.9	0.006	2,400
Children (1–6 years)	0.10	33	8.9	0.006	670

The following assumptions were made for the chronic exposure assessments: Tolerance level residues were assumed and it was also assumed that 100% of the crops and other commodities with proposed or established cypermethrin or zeta-cypermethrin tolerances contained those residues. Deem default processing factors were used for all commodities in this assessment. All exposures are Tier 1 estimates that are extremely conservative and likely overestimate actual dietary exposure.

Using these exposure assumptions the EPA concluded that exposure to zeta-cypermethrin and its inactive R-isomers from food will utilize 12% of the cPAD for the U.S. population, 11% of the cPAD for females 13–50 years old and 23% of the cPAD for children 1–6 years old, the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues of zeta-cypermethrin and its inactive R-isomers is not expected. In addition, there is potential for chronic dietary exposure to zeta-cypermethrin and its inactive R-isomers in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population Subgroup	cPAD mg/kg/day	%cPAD (food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.18	12	33	.06	5,600
Females (13–50 years)	0.18	11	33	.06	4,800
Children (1–6 years)	0.18	18	33	.06	1,500
Seniors 55+	0.18	12	33	.06	5,600

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin is not currently registered for use that could result in short-term residential exposure; however, cypermethrin does have indoor and outdoor residential uses and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for zeta-cypermethrin and its inactive R-isomers. EPA has concluded that food and residential exposures aggregated result in aggregate margin of exposure (MOEs) of 1,300 for adult males and 600 for children. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term drinking water levels of concern (DWLOCs) were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population subgroup	Aggregate MOE (food + residential)	Aggregate level of concern	Surface water EEC (ppb)	Ground water EEC (ppb)	Short-term DWLOC (ppb)
Adult male	1,300	100	0.46	0.006	3,300
Child	600	100	0.46	0.006	830

Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Zeta-cypermethrin is not registered for use(s) that could result in intermediate-term residential exposure; however, cypermethrin does have indoor and outdoor residential uses, and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for zeta-cypermethrin and its inactive R-isomers. EPA has concluded that food and residential exposures aggregated result in an aggregate MOE of 640 for adult males and 300 for children. Thess aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of zeta-cypermethrin and its inactive R-isomers in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO ZETA-CYPERMETHRIN AND ITS INACTIVE R-ISOMERS

Population subgroup	Aggregate MOE (food + residential)	Aggregate level of concern	Surface water EEC (ppb)	Ground water EEC (ppb)	Intermediate-Term DWLOC (ppb)
Adult Male	640	100	0.46	0.006	1,500
Child	300	100	0.46	0.006	330

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of cypermethrin residues in plants and animal products in PAM II (Method I). This method involves initial acetone-hexane extraction, followed by partitioning with water. The organic layer is evaporated, then redissolved in cyclohexane-methylene chloride and passed through a gel permeation column. The eluate is evaporated, redissolved in hexane and passed through a Florisil column. Cypermethrin residues are analyzed by gas chromatography (GC) with an electron capture detector (ECD). Since zeta-cypermethrin is an isomer enriched form of cypermethrin, and the PAM II method is not stereospecific, this method is considered adequate for enforcement of the proposed tolerances of zeta-cypermethrin and its inactive R-isomers.

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels have been established for residues of zeta-cypermethriu and its inactive R-isomers in or on these commodities. Therefore, no tolerance discrepancies exist between countries for this chemical.

VI. Conclusion

Therefore, tolerances are established for combined residues of zeta-cypermethrin, methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate a and the Z isomer of zeta-cypermethin, methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrlate in or on flax (seed and meal) and mustard seed at 1.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to

reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0227 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2002.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket ID number OPP–2002–0227, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: August 28, 2002.

Deebra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.418 is amended by adding paragraph (b) to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of zeta-cypermethin, methyl(E)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate a and the Z isomer of zeta-cypermethin, methyl (Z)-2-(2-(6-(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrlate in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA in or on the food commodities in the following table. The tolerances expire and will be revoked by EPA on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
Flax, meal	0.2	6/30/2005
Flax, seed	0.2	6/30/2005
Mustard, seed	1.0	6/30/2005

* * * * *

[FR Doc. 02–22606 Filed 8–30–02; 2:45 pm]
BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–42

[FMR Amendment B–1]

RIN 3090–AH53

Change in Consumer Price Index Minimal Value

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: Public Law 95–105 (5 U.S.C. 7342) requires that at 3-year intervals following January 1, 1981, minimal value be redefined by the Administrator of General Services, after consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period. The required consultation has been completed and the minimal value has been increased to mean $285 or less as of January 1, 2002. This final rule also changes the meaning of sale price of foreign gifts and decorations to an employee by removing the requirement of including the cost of the appraisal in the sale price. The sale price is derived from only the commercially appraised value.

DATES: *Effective Date:* This final rule is effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, 202–501–3846. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312. Please cite FMR Amendment B–1.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action

for the purposes of Executive Order 12866 of September 30, 1993.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

D. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–42

Excess government property, Government property management.

For the reasons set forth in the preamble, 41 CFR part 102–42 is amended as follows:

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 102–42 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

§ 102–42.10 [Amended]

2. Section 102–42.10 is amended in the introductory text of the definition Minimal value by removing "$260" and adding "$285" in its place.

3. Section 102–42.140 is revised to read as follows:

§ 102–42.140 How is a sale of a foreign gift or decoration to an employee conducted?

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the commercially appraised value of the gift. Sales must be conducted and documented in accordance with part 101–45 of this title.

Dated: August 23, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–22444 Filed 9–3–02; 8:45 am]

BILLING CODE 6820–23–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 63

[IB Docket No. 00–231, FCC 02–154]

2000 Biennial Regulatory Review: International Telecommunications Service

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: This document announces the effective date of the rule published on July 9, 2002. Those rules amended the Commission's rules regarding the provision of international telecommunications service. The Commission also clarified the intent of certain rules and eliminated certain rules that were no longer necessary. The Commission's action was part of the agency's 2000 biennial regulatory review.

DATES: Sections 43.61, 63.10(d), 63.18(e)(3), 63.19(a) and (b), 63.20(a), and 63.24(e) and (f) are effective September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On June 10, 2002, the Commission released a report and order adopting a number of amendments to Parts 43 and 63 of the Commission's rules, as well as changes to Commission policy (FCC 02–154), a summary of which was published in the **Federal Register**. See 67 FR 45387 (July 9, 2002). We stated that the rules were effective on August 8, 2002, except for those sections containing new information collection requirements, which required approval by the Office of Management and Budget (OMB). The information collection requirements were approved by OMB on July 30, 2002. See OMB No. 3060–1019. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 43 and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22510 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1511

[Docket No. TSA–2002–11334]

RIN 2110–AA02

Aviation Security Infrastructure Fees

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Temporary Waiver of Audit Submission Requirements.

SUMMARY: TSA is issuing this document to inform all air carriers and foreign air carriers that it will not seek enforcement of the independent audit submission deadline set forth in the Aviation Security Infrastructure Fees regulation, under certain conditions.

FOR FURTHER INFORMATION CONTACT: For guidance on technical matters: Randall Fiertz, Acting Director of Revenue, (202) 385–1209. For guidance on legal or other matters: Steven Cohen, Office of Chief Counsel, (202) 493–1216.

SUPPLEMENTARY INFORMATION: In order to offset the costs of providing civil aviation security services, TSA published in the **Federal Register** an interim final rule (67 FR 7926; February 20, 2002), codified at 49 CFR part 1511, that imposed the Aviation Security Infrastructure Fee on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation.

Sections 1511.5 and 1511.7 require these carriers to provide TSA with certain information on their costs related to screening passengers and property incurred in 2000. This information was due to be received by TSA by May 18, 2002. Section 1511.9 requires each such carrier to also provide for and submit to TSA an independent audit of these costs, which were due to be received by TSA by July 1, 2002.

As reflected in the public docket on the Aviation Security Infrastructure Fee regulation, TSA–2002–11334, TSA denied several requests that it alter the audit requirement and extend the July 1, 2002 audit deadline.

However, on two occasions TSA announced that it would not seek enforcement against carriers that meet certain criteria by certain dates. The first announcement appeared in TSA's "Guidance for the Aviation Security Infrastructure Fee," as published in the **Federal Register** on May 1, 2002 (docket item no. 20). The second announcement was in TSA's July 24, 2002, letter to the

Air Transport Association (docket item no. 35). The criteria are that the carriers must make timely and proper fee payments, must submit any necessary revisions to their Appendix A submission(s), and must remit all adjusted fee payments retroactive to February 18, 2002.

By this document, TSA extends the period of time for which it will not seek to enforce the July 1, 2002, deadline for all carriers whose independent audits and adjusted fee payments are received by October 31, 2002. The previously stated conditions still apply. TSA is not waiving enforcement of any other requirements set forth in 49 U.S.C. 44940 or 49 CFR part 1511.

Issued in Washington, DC, on August 29, 2002.

J. M. Loy,

Acting Under Secretary of Transportation for Security.

[FR Doc. 02–22629 Filed 8–30–02; 3:51 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 011231309–2090–03; I.D. 082702E]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Closure of Minor Nearshore Rockfish South of 40°10′ N. lat.

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the closure of the nearshore rockfish south of 40°10′ N. lat. at 0001 local time (l.t.) September 1, 2002, for both the open access and limited entry fixed gear groundfish fisheries. This closure is necessary because the commercial harvest guideline is projected to be reached. This action is intended to prevent overfishing of minor nearshore rockfish in 2002.

DATES: Effective from 0001 l.t. September 1, 2002, until the effective date of the 2003 specification and management measures for the Pacific Coast groundfish fishery which will be published in the Federal Register, unless modified, superseded or rescinded. Comments will be accepted through September 19, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod Mcinnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is a routine management measure under the FMP, and would normally be implemented after recommendation by the Pacific Fishery Management Council (Council) at a Council meeting. However, in this case, the next Council meeting will be too late to implement this action in time to prevent harvest of the September-October trip limits, and too late to obtain the conservation benefits of this action. Therefore, NMFS is taking this action before the Council meeting, relying upon information provided by the Council's Groundfish Management Team. NMFS will consult with the Council at its meeting in Portland, OR, September 9–13, 2002, and could further adjust the limits inseason, if necessary.

On March 7, 2002, the levels of allowable biological catch (ABC), and the optimum yield (OY) for the minor rockfish species south of 40°10′ N. lat. were announced in the**Federal Register** (67 FR 10490). Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. "Remaining rockfish" generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The minor rockfish south ABC (3,506 mt) is the sum of the individual "remaining rockfish" ABCs (854 mt) plus the "other rockfish" ABCs (2,652 mt). Due to limited stock assessment information, the ABC was reduced to obtain a more precautionary total catch OY of 2,015 mt. The remaining rockfish ABC was reduced by 25 percent, with the exception of black rockfish and other rockfish, which were reduced by 50 percent.

Changes to the rockfish management structure in 2000 resulted in the minor rockfish being divided into 3 species groups (nearshore, shelf, slope) (January 4, 2000; 65 FR 221). For the area south of 40°10′ N. lat., the 2002 minor rockfish OY was divided with 662 mt going to nearshore rockfish, 714 mt going to shelf rockfish and 639 mt going to slope rockfish. The resulting commercial harvest guideline for nearshore rockfish, the total catch OY minus the estimated recreational catch of 532 mt, is 130 mt. The commercial landed catch OY, minus 5 percent for discard mortality, is 124 mt.

July inseason changes to the limited fixed gear and open access trip limits south of 40°10′ N. lat., closed many fisheries outside of the 20 fathom depth-contour (67 FR 44778, July 5, 2002). Effective July 1, 2002, minor nearshore rockfish was one of the species groups adjusted to remain closed outside of 20 fathoms through October. For the November-December cumulative limit period, minor nearshore rockfish was scheduled to close in all waters. The best available information on August 23, 2002, indicates that open access and limited entry commercial fisheries together have landed 139 mt through August 17, 2002, and that the 24 mt commercial landed catch harvest guideline is likely to be exceeded by August 31, 2002. Therefore, to reduce the likelihood of the fishery (commercial plus recreational) exceeding the minor nearshore rockfish OY and possibly the ABC for the area south of 40°10′ N. lat., it is necessary to close the fishery for the remainder of 2002, beginning in September. This **Federal Register** notice announces that minor nearshore rockfish fishery south of 40°10′ N. lat. will be closed for the limited entry fixed gear and open access fisheries as of September 1, 2002. The limited entry trawl fishery for minor nearshore rockfish fishery south of 40°10′ N. lat. has been closed since July 1, 2002.

NMFS Action

For the reasons stated above, NMFS herein announces:1. in section IV., under B. Trip Limits in the Limited Entry Fixed Gear Fishery, Table 4 is revised to read as follows:

BILLING CODE 3510–22–S

Table 4. Trip Limits[1/] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	**NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED SEAWARD OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT FOR SABLEFISH, THORNYHEADS, AND SLOPE ROCKFISH.						
1	**Minor slope rockfish**						
2	North	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 month
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	**Pacific ocean perch - North[5/]**	2,000 lb/ month	4,000 lb/ month		4,000 lb/ 2 months		2,000 lb/ month
10	**Sablefish**						
11	North of 36° N. lat.[8/]	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	**Longspine thornyhead**	9,000 lb/ 2 months					
14	**Shortspine thornyhead**	2,000 lb/ 2 months					
15	**Dover sole**	5,000 lb/ month (all flatfish)			North of 40°10': 5,000 lb/ month (all flatfish). South of 40°10': Shoreward of 20 ftm depth, 5,000 lb/month, otherwise CLOSED[4/]		
16	**Arrowtooth flounder**						
17	**Petrale sole**						
18	**Rex sole**						
19	**All other flatfish[2/]**						
20	**Whiting[3/]**	20,000 lb/ trip					
21	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[5/]**						
22	North	200 lb/ month					
23	South						
24	40°10' - 34°27' N. lat	200 lb/ month	CLOSED[4/]	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[4/]	CLOSED[4/]		
25	South of 34°27' N. lat.	CLOSED[4/]	1,000 lb/ month				
26	**Canary rockfish**	CLOSED[4/]					
27	**Yelloweye rockfish**	CLOSED[4/]					
28	**Cowcod**	CLOSED[4/]					
29	**Bocaccio - South[5/]**						
30	40°10' - 34°27' N. lat	200 lb/ month	CLOSED[4/]		CLOSED[4/]		
31	South of 34°27' N. lat	CLOSED[4/]	200 lb/ month				
32	**Chilipepper - South[5/]**						
33	40°10' - 34°27' N. lat	500 lb/ month	CLOSED[4/]		CLOSED[4/]		
34	South of 34°27' N. lat.	CLOSED[4/]	2,500 lb/ month				
35	**Minor nearshore rockfish**						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6/]			
37	South						
38	40°10' - 34°27' N. lat	1,600 lb/ 2 months	CLOSED[4/]	Shoreward of 20 ftm depth, 1,600 lb/ 2 months, otherwise CLOSED[4/]			
39	South of 34°27' N. lat	CLOSED[4/]	2,000 lb/ 2 months		Shoreward of 20 ftm depth, 2,000 lb/ 2 months, otherwise CLOSED[4/]	CLOSED[4/]	
40	**Lingcod[7/]**						
41	North	CLOSED[4/]		400 lb/ month			CLOSED[4/]
42	South						
43	40°10' - 34°27' N. lat	CLOSED[4/]		Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4/]	Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4/]		CLOSED[4/]
44	South of 34°27' N. lat.			400 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.

4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The minimum size requirement for sablefish is 22 inches (56 cm) total length between 40°10' N. lat. and 36° N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

2. in section IV., under C. Trip Limits in the Open Access Fishery, Table 5 is revised to read as follows:

Table 5. Trip Limits[1/] for Open Access Gears
Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	**NOTE FOR FISHING SOUTH OF 40°10': ALL GROUNDFISH FISHING IS CLOSED SEAWARD OF THE 20 FATHOM DEPTH CONTOUR, EXCEPT SABLEFISH AND SLOPE ROCKFISH.						
	** NOTE: EFFECTIVE JULY 1, 2002, THERE IS NO RETENTION OF GROUNDFISH WITH EXEMPTED TRAWL GEAR.						
1	**Minor slope rockfish**						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North**[6/]	100 lb/ month					
8	**Sablefish**						
9	North of 36° N. lat.[7/]	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	**Thornyheads**						
12	North of 34° 27' N. lat.	CLOSED[3/]					
13	South of 34° 27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
14	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs			North of 40°10': 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sandabs. South of 40°10': Shoreward of 20 fm, 3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sandabs, otherwise CLOSED[3/]		
15	**Arrowtooth flounder**						
16	**Petrale sole**						
17	**Rex sole**						
18	**All other flatfish**[2/]						
19	**Whiting**	300 lb/ month					
20	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish**[4/]						
21	North	200 lb/ month					
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]	Shoreward of 20 fm depth, 200 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]		
24	South of 34°27' N. lat.	CLOSED[3/]	500 lb/ month				
25	**Canary rockfish**	CLOSED[3/]					
26	**Yelloweye rockfish**	CLOSED[3/]					
27	**Cowcod**	CLOSED[3/]					
28	**Bocaccio - South**[4/]						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]		CLOSED[3/]		
30	South of 34°27' N. lat.	CLOSED[3/]	200 lb/ month				
31	**Chilipepper - South**[4/]						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3/]		CLOSED[3/]		
33	South of 34°27' N. lat.	CLOSED[3/]	2,500 lb/ month				
34	**Minor nearshore rockfish**						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3/]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	Shoreward of 20 fm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	CLOSED[3/]	
38	South of 34°27' N. lat.	CLOSED[3/]	1,200 lb/ 2 months				
39	**Lingcod**[6/]						
40	North	CLOSED[3/]		300 lb/ month			CLOSED[3/]
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3/]		Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[3/]	Shoreward of 20 fm depth, 300 lb/ month, otherwise CLOSED[3/]		CLOSED[3/]
43	South of 34°27' N. lat.			300 lb/ month			

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40°10' N. lat. To the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV A.(7).

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ The minimum size requirement for sablefish is 22 inches (56 cm) total length between 40°10' N. lat. and 36° N. lat.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

Classification

This action is authorized by the Pacific Coast Groundfish FMP and its implementing regulations, and is based on the most recent data available. The aggregate data upon which this action is based is available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior

notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the next 2–month cumulative trip limit period for the Pacific Coast groundfish fishery begins September 1, 2002, and affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to remain within the OY. The closure for minor nearshore rockfish in this document is a reduction from the status quo and must be implemented immediately to prevent the harvest of minor nearshore rockfish from exceeding its OY for 2002. Delaying implementation of this closure past September 1, 2002, would allow fishers to harvest the higher trip limits that were previously scheduled for the September-October 2–month cumulative period and may cause the catch of minor nearshore rockfish to exceed its OY. For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). This action is taken under the authority of 50 CFR 660.323(b)(1) and is exempt from review under Executive Order 12866.

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

Dated: August 29, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22523 Filed 8–29–02; 4:09 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020412086–2194–02; I.D. 010202C]

RIN 0648–AJ08

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Pacific Remote Island Areas; Permit and Reporting Requirements for the Pelagic Troll and Handline Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that establishes Federal permit and reporting requirements for any U.S. fishing vessel that uses troll or handline fishing gear to harvest pelagic management unit species in waters of the U.S. exclusive economic zone (U.S. EEZ) around Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, Palmyra Atoll, Wake Island and Midway Atoll. These islands are referred to as the Pacific remote island areas (PRIA). The intent of this rule is to monitor participation in the fishery, collect fish catch and fishing effort data (including bycatch data), and obtain information on interactions between fishing gear and protected species. This would enable management decisions for this fishery to be based on the best scientific information available.

DATES: This final rule is effective October 4, 2002.

ADDRESSES: Copies of a Final Environmental Impact Statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) and the Record of Decision (ROD) for this FEIS are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. See also *http://swr.nmfs.noaa.gov* to view the FEIS and ROD.

Copies of the regulatory impact review prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, Honolulu, HI 96813.

Send comments on the reporting burden estimate or other aspect of the collection-of-information requirements in this final rule to NMFS, PIAO and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: The collection and analysis of reliable data are needed to assess the status and health of fishery stocks, evaluate the effectiveness of management measures, determine the need for changes in the management regime, prevent overfishing, determine and minimize bycatch, document protected species interactions with fishing gear, and assess the potential impact of fishery interactions. Other than for vessels registered for use with Federal Hawaii longline limited access permits or with Federal Western Pacific longline general permits, there are no specific regulations under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) applicable to vessels targeting pelagic species in the U.S. EEZ waters around the PRIA. The PRIA or "U.S. island possessions in the Pacific" are the distant and mostly uninhabited U.S. islands in the central and western Pacific Ocean consisting of Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll, Palmyra Atoll, and Midway Atoll. Midway Atoll, although located in the Northwestern Hawaiian Islands, is not part of the State of Hawaii and is treated as one of the PRIA.

In recent years, several troll and handline fishing vessels from Hawaii have targeted pelagic fish stocks off Palmyra Atoll and Kingman Reef. This expansion of troll and handline fishing activity beyond the Hawaiian Archipelago to the U.S. EEZ around certain PRIA created the need to put reporting procedures in place in order to collect catch and bycatch data for these fisheries. The establishment of a permit requirement for the PRIA pelagic troll/handline fishery serves to identify actual or potential participants in the fishery. This is an "open access" fishery, meaning any U.S. vessel is eligible to receive a permit.

The Council recommended the establishment of a reporting requirement for all vessel operators who participate in the PRIA pelagic troll/handline fishery, except at Midway Atoll. They are required to use a new NMFS fish catch and effort reporting form created especially for the PRIA. At Midway Atoll, troll/handline vessel operators (i.e., charter boat captains), who operate under the Midway Atoll National Wildlife Refuge program, administered by the U.S. Fish and Wildlife Service (USFWS), must continue to report their catch and effort data on existing fish catch reporting forms provided by the USFWS. NMFS and USFWS will coordinate their efforts to obtain the necessary data from fishermen at Midway Atoll and avoid duplication of reporting regimes.

This rule requires vessel operators, except operators of vessels operating in the U.S. EEZ around Midway Atoll, to submit their catch reports to NMFS within 10 days after the completion of each fishing trip to the U.S. EEZ around the PRIA. The 10–day requirement is to allow vessels to make fish landings at Palmyra Atoll and to potentially conduct another fishing trip enroute to the vessel's homeport. By landing at Palmyra Atoll, these vessels need not return to their home ports between trips, and, in that case, the prompt transmittal of catch reports to NMFS would be infeasible. For this reason NMFS allows

the operators whose vessels are registered for use with PRIA troll/handline pelagic permits an extended reporting window.

Changes From the Proposed Rule

The regulatory text for this rule corrects a typographical error in the prohibition on longline fishing within longline fishing areas at § 660.22(i) to reference § 660.27 instead of a redundant reference to § 660.17. Also, a cross reference in §660.21(l)(1) is revised to comport with the redesignation of paragraphs in § 660.21.

No comments were received on the proposed rule. Therefore, the final rule contains no substantive changes to the proposed rule.

Clarification

This final rule includes a clarification affecting the Hawaii-based pelagic longline fishery. NMFS issued a final rule of June 12, 2002, (67 FR 40232), implementing the reasonable and prudent alternative of the March 29, 2001 biological opinion under the Endangered Species Act for the fishery. The June 12, 2002, final rule supplanted and incorporated most of the provisions of an emergency rule first published at 66 FR 31561, June 12, 2001, and extended at 66 FR 63630, December 10, 2001 until June 8, 2002. The preamble to the June 12, 2002, final rule discussed that the final rule would "allow the processing of applications for the re-registration of a vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing..." The regulatory language that established October as the month for re-registration, as it had appeared in the emergency rule, was inadvertently not included as part of the June 12, 2002, final rule, although regulatory language establishing the application timeframe was included. This clarification reinstates the regulatory language as it appeared in the emergency rule and retains the language of the June 12, 2002, final rule.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the pelagic troll and handline fisheries in the PRIA and filed with the Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). On May 30, 2002, NMFS issued a Record of Decision that documents the agency's final decision concerning the management of fisheries, including the PRIA pelagic troll and handline fisheries, governed by the FMP. In August 2000, the Council prepared a document analyzing the specific measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under OMB Control Numbers 0648–0204 and 0648–0214. Public reporting burden for these collections of information is estimated at 30 minutes for a permit application and 5 minutes for a daily troll/handline log sheet. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this rule to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

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

Dated: August 28, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended to read as follows:

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

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definitions for "Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean)","Pelagic handline fishing", and "Pelagic troll fishing" are added in alphabetical order to read as follows:

§ 660.12 Definitions.

* * * * *

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

* * * * *

Pelagic handline fishing means fishing for pelagic management unit species from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for pelagic management unit species from a moving vessel using hook and line gear.

* * * * *

3. In § 660.14, paragraph (a) is revised to read as follows:

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of § 660.21, § 660.41, or § 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Administrator as required by this paragraph (a). Each form must be signed and dated by the fishing vessel operator.

(1) The operator of any vessel subject to the requirements of § 660.21(a) through (c), § 660.41, or § 660.81 must submit the original logbook form for each day of the fishing trip to the

Regional Administrator within 72 hours of each landing of management unit species.

(2) Except for a vessel that is fishing in the U.S. EEZ around Midway Atoll as specified in paragraph (a)(3) of this section, any operator whose vessel is registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d) must submit the original logbook form for each day of fishing within the U.S. EEZ around the PRIA to the Regional Administrator within 10 days of each landing of management unit species.

(3) The operator of a vessel fishing in the U.S. EEZ around Midway Atoll and registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d) must submit an appropriate reporting form as required and in a manner specified by the U.S. Fish and Wildlife Service for each day of fishing within the U.S. EEZ around Midway Atoll, which is defined as an area of the Pacific Ocean bounded on the east by 177°10' W. long., on the west by 177°30' W. long., on the north by 28°25' N. lat., and on the south by 28°05' N. lat.

* * * * *

4. In § 660.21, paragraph (l) is redesignated as paragraph (n), paragraphs (d) through (k) are redesignated as (e) through (l) respectively, newly redesignated paragraph (l)(1) is revised; and paragraphs (d) and (m) are added to read as follows:

§ 660.21 Permits.

* * * * *

(d) A fishing vessel of the United States must be registered for use with a PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the U.S. EEZ around the PRIA.

* * * * *

(l) * * *

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part and in the fishery management plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (l)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

* * * * *

(m) Except during October, NMFS will not register with a Hawaii longline limited access permit any vessel that is de-registered from a Hawaii longline limited access permit after March 29, 2001.

5. In § 660.22, the phrase "U.S. possessions in the Pacific Ocean area" is revised to read "U.S. island possessions in the Pacific Ocean" each place that it appears; paragraph (i) is revised; and new paragraph (vv) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27.

* * * * *

(vv) Use a U.S. vessel employing pelagic handline or trolling methods to fish in the U.S. EEZ around the PRIA without a valid PRIA pelagic troll and handline fishing permit registered for use with that vessel.

[FR Doc. 02–22546 Filed 9–3–02; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 171
Wednesday, September 4, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F 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 McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. This proposal would require a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain's and first officer's rudder pedals, and follow-on actions. This action is necessary to prevent failure of the rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–207–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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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–207–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–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the rudder pedal arm assembly for the captain and first officer was found broken on a McDonnell Douglas Model MD–11 airplane. Investigation revealed that the thickness of the walls of the rudder pedal arm was below the minimum design specification. The same rudder pedal arm assemblies are also installed on certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, and MD–11F airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Subsequent to the first report, we received several reports that, during inspections to determine the thickness of the walls of the rudder pedal

assemblies, the clevis of the rudder pedal arm was found cracked or broken. The cracking of the clevis has been attributed to fatigue.

These conditions, if not corrected, could result in failure of the rudder pedal arm assembly. In the event of an engine failure while the airplane is in take-off configuration, such failure of the rudder pedal arm assembly could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F airplanes); and Boeing Alert Service Bulletin MD11–27A080, Revision 01, dated June 6, 2002 (for MD–11 and MD–11F airplanes). These service bulletins describe procedures for a one-time inspection to determine the thickness of the walls of the rudder pedal arm assembly for the captain's and first officer's rudder pedals, and these follow-on actions:

- If the wall thickness is within the design specifications or operational limits specified in the applicable service bulletin: Performing a dye penetrant inspection for cracking of the clevis of the rudder pedal arm assembly.
- If the wall thickness is within design specifications and no cracking is found (Condition 1): Performing repetitive dye penetrant inspections for cracking of the clevis of the rudder pedal assembly, or replacing the rudder pedal arm assembly with a new, improved assembly.
- If the wall thickness is within operational limits and no cracking is found (Condition 2): Changing the part number of the rudder pedal arm assembly to identify the assembly as a "temporary operation" part, and eventually replacing of the "temporary operation" rudder pedal arm assembly with a new, improved rudder pedal arm assembly.
- If the wall thickness is not within the limits in the service bulletin, or the clevis is cracked or broken (Condition 3 or 4): Replacing the rudder pedal assembly with a new, improved rudder pedal assembly.

Accomplishment of the actions specified in the applicable 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 applicable service bulletin described previously, except as discussed below in the "Differences Between Service Bulletin and Proposed AD" section of this proposed AD.

Operators may note that the service bulletins described previously specify that, if the thickness of the walls of the rudder pedal arm assembly is within design specifications and no cracking of the clevis of the rudder pedal assembly is found (Condition 1), repetitive dye penetrant inspections for cracking of the clevis of the rudder pedal assembly may be accomplished in lieu of replacement of the rudder pedal arm assembly. We consider three criteria for situations in which repetitive inspections of a crack-prone area may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) The area is easily accessible, (2) the cracking is easily detectable, and (3) the consequences of the cracking are not likely to be catastrophic. In consideration of the cracking that may occur on the clevis of the rudder pedal assembly, we have determined that the circumstances warranting continual repetitive inspections meet these three criteria.

Differences Between Service Bulletin and Proposed AD

While the Revision Transmittal Sheet for Revision 01 of Boeing Alert Service Bulletin MD11–27A080 specifies an interval of 5,200 flight hours if repetitive inspections are necessary, this proposed AD would require such inspections, when necessary, to be done every 4,200 flight hours for MD–11 and MD–11F airplanes, as specified under paragraph 1.E. "Compliance" in that service bulletin.

Also, where paragraph 1.E. "Compliance" of Boeing Alert Service Bulletin MD11–27A080, Revision 01, specifies repetitive "close visual" inspections, this proposed AD would require repetitive dye penetrant inspections, as described in the Accomplishment Instructions of that service bulletin.

We have identified these discrepancies in the service bulletin to the airplane manufacturer. If it becomes necessary in the future to revise the service bulletin, the airplane manufacturer will be able to correct these discrepancies at that time.

Cost Impact

There are approximately 594 airplanes of the affected design in the worldwide fleet. We estimate that 366 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection to determine wall thickness, 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 $87,840, or $240 per airplane.

Should an operator be required to accomplish the follow-on inspection to detect cracking, the inspection would take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection would be approximately $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the replacement of a rudder pedal arm assembly, the replacement would take approximately 4 work hours per assembly, per airplane, at an average labor rate of $60 per work hour. Parts would cost approximately $2,943 per assembly. Based on these figures, the cost impact of this replacement would be approximately $3,148 per rudder pedal arm assembly, per airplane.

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

For Model MD–11 and –11F airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We have also been advised that manufacturer warranty remedies may be available for labor costs associated with accomplishing the actions that would be required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

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:

McDonnell Douglas: Docket 2001–NM–207–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002; and Model MD–11 and MD–11F airplanes; as listed in Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002; 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 (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 rudder pedal arm assembly, which, under certain conditions, could result in reduced controllability of the airplane, accomplish the following:

One-Time Ultrasonic Inspection

(a) Within 6 months after the effective date of this AD, perform a one-time ultrasonic inspection to determine the thickness of the walls of the rudder pedal arm assembly for both the captain's and first officer's rudder pedals, per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing AlertService Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable.

(1) If the wall thickness is within the design specifications or operational limits specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin: Before further flight, perform a dye penetrant inspection for cracking of the clevis of the rudder pedal arm assembly, per the Accomplishment Instructions of the service bulletin. If no cracking is found, do paragraph (b) or (c) of this AD, as applicable.

(2) If the wall thickness is outside the limits specified in the applicable service bulletin: Do paragraph (d) of this AD.

Condition 1: Wall Thickness Within Design Specifications; No Cracking

(b) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal assembly is within the DESIGN SPECIFICATIONS as specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, AND no cracking of the clevis is found: Repeat the dye penetrant inspection specified in paragraph (a)(1) of this AD to find cracking of the clevis of the rudder pedal assembly at the applicable intervals specified in paragraph (b)(1) or (b)(2) of this AD; per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable. Replacement of the rudder pedal arm assembly with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin terminates the repetitive inspections.

(1) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Repeat the inspection every 5,200 flight cycles until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

(2) For MD–11 and MD–11F airplanes: Repeat the inspection every 4,200 flight cycles until the rudder pedal arm assembly is replaced with a new, improved assembly per the Accomplishment Instructions of the applicable service bulletin.

Condition 2: Wall Thickness Within Operational Limits; No Cracking

(c) During the inspections required by paragraphs (a) and (a)(1) of this AD, if the wall thickness of the rudder pedal arm assembly is within the OPERATIONAL LIMITS specified in the Accomplishment Instructions and Figure 1 of the applicable service bulletin, AND no cracking of the clevis is found: Do paragraphs (c)(1) AND (c)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and MD–11F airplanes); as applicable.

(1) Condition 2, Phase 1: Before further flight, change the part number of the rudder pedal arm assembly to identify the assembly as a "temporary operation" part.

(2) Condition 2, Phase 2: At the applicable time specified in paragraph (c)(2)(i) or (c)(2)(ii) of this AD, replace the "temporary operation" rudder pedal arm assembly with a new, improved rudder pedal arm assembly.

(i) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes: Replace within 5,200 flight cycles after the inspection in paragraph (a)(1) of this AD.

(ii) For MD–11 and MD–11F airplanes: Replace within 4,200 flight cycles after the inspection in paragraph (a)(1) of this AD.

Conditions 3 and 4: Wall Thickness Not Within Limits; Clevis Cracked or Broken

(d) During the inspection per paragraph (a) of this AD, if the wall thickness of the rudder pedal arm assembly is not within the design specifications or the acceptable operational limits specified in the applicable service bulletin; OR during any inspection per paragraph (a)(1) or (b) of this AD, if the clevis of the rudder pedal assembly is cracked or broken: Before further flight, replace the rudder pedal assembly with a new, improved rudder pedal assembly per Condition 3 or 4, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–27A233, Revision 01, dated June 6, 2002 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F airplanes); or Boeing Alert Service Bulletin MD11–27A080, Revision 01, June 6, 2002 (for MD–11 and

MD–11F airplanes); as applicable. Such replacement terminates any repetitive inspections required by this AD.

Spares

(e) As of the effective date of this AD, no person shall install a rudder pedal arm assembly having part number ABH7239–1 or ABH7239–2 on any airplane.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permits

(g) 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 August 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22434 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 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 McDonnell Douglas Model MD–90–30 airplanes. This proposal would require measuring the length of the wear indicator on the brake stack of the main landing gear (MLG) brake assembly to determine the degree of wear, and follow-on actions. This proposal also would require eventual replacement of the existing MLG brake assembly with a new, improved or modified assembly, which would constitute terminating action for any repetitive actions being performed per this proposed AD. This action is necessary to prevent failure of the MLG brakes and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 21, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–212–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 Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Technical Information*: Ken Sujishi, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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–212–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–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of discrepancies of the carbon brake assembly installed on the main landing gear (MLG) of certain McDonnell Douglas Model MD–90–30 airplanes. On the discrepant MLG brake assemblies, which had wear of 50 percent or more, piston insulators had pushed below the surface of the pressure plate. In a few

cases where the brake assembly was near "full worn" condition, the piston insulators had broken through the pressure plate and pushed into the rotating carbon disk of the brake assembly. This condition, if not corrected, could result in failure of the MLG brakes and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000, which recommends accomplishment of Aircraft Braking Systems Corporation (ABS) Service Bulletin MD90–32–13.

ABS Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000, describes procedures for measuring the wear indicator on the MLG brake stack. When the wear indicator on the brake stack measures 1.30 inches or less, the ABS service bulletin specifies inspecting the contact area between the piston insulators and the pressure plate to find discrepancies of the pressure plate (*i.e.*, the surface of the piston insulator is flush with or has pushed beyond the surface of the counterbore). The follow-on actions are as follows:

- If no discrepancy of the pressure plate is found—repetitive inspections for discrepancies of the pressure plate.
- If any discrepancy is found and the length of the wear indicator on the MLG brake is within certain limits—overhaul of the MLG brake, including replacement of the carbon brake stack.
- If any discrepancy is found and the length of the wear indicator on the MLG brake is outside certain limits—repair of the brake assembly, which involves replacing the swage tube subassembly of the brake with a new subassembly, replacing the pressure plate with a new, improved pressure plate, shortening the wear indicator tube, inspecting to determine the radius of the piston insulators, and replacing the piston insulators with reworked insulators if necessary.

Overhaul or repair of the brake assembly eliminates the need for the repetitive inspections.

The FAA also has reviewed and approved Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000. That service bulletin describes procedures for replacement of the MLG brake assembly with a brake assembly that has been modified according to ABS Service Bulletin MD90–32–14, dated May 9, 2000.

ABS Service Bulletin MD90–32–14 describes procedures for modifying brake assemblies in certain configurations to a new configuration. The modification involves replacing certain wear indicator tubes with new tubes, measuring the radius of the piston insulators, reworking the piston insulators if necessary, installing new or refurbished components, and reidentifying the brake assembly.

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

Explanation of Requirements of Proposed Rule

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

Differences Between Service Bulletins and Proposed AD

ABS Service Bulletin MD90–32–13, Revision 2, specifies that, if the wear indicator on the brake stack measures more than 1.30 inches, no further action is necessary to comply with the service bulletin. However, we find that, as the brake continues in service and the wear indicator on the brake stack decreases to 1.30 inches or less, the actions in that service bulletin will apply. Therefore, this proposed AD would require repetitive measurements of the wear indicator on the brake stack every 260 landings, until the wear indicator on the brake stack measures 1.30 inches or less, at which time the proposed follow-on actions would apply.

As part of the follow-on actions that would be required by the proposed AD, Boeing Alert Service Bulletin MD90–32A042, Revision 01; and ABS Service Bulletin MD90–32–13, Revision 2; specify performing an inspection of the MLG brake assembly. However, neither service bulletin specifies what type of inspection is necessary. We have determined that a general visual inspection is necessary; therefore, paragraph (b) of this proposed AD would require a general visual inspection of the MLG brake assembly for discrepancies of the pressure plate (*i.e.*, the surface of the piston insulator is flush with or has pushed beyond the surface of the counterbore). Note 2 of this proposed AD defines such an inspection.

Also, ABS Service Bulletin MD90–32–13, Revision 2, specifies to use the repair procedure in that service bulletin only when the wear indicator on the MLG brake is not longer than 2.10 inches. For a wear indicator on the MLG brake that is longer than 2.10 inches, the pressure plate modification cannot be accomplished per the service bulletin, and is not necessary until the MLG brake is worn further. Thus, we have clarified in this proposed AD that an MLG brake with a wear indicator longer than 2.10 inches may remain installed without repair or replacement until the MLG brake assembly is replaced with a new, improved or modified MLG brake assembly.

These issues have been discussed with the airplane manufacturer, and the manufacturer concurs with our decision to issue this proposed AD with these differences.

Cost Impact

There are approximately 115 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed measurement of the brake stack wear indicator, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $1,260, or $60 per airplane, per measurement cycle.

It would also take approximately 1 work hour per airplane to accomplish the proposed inspection for discrepancies of the pressure plate of the MLG brake, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $1,260, or $60 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed replacement of the MLG brake assembly, at an average labor rate of $60 per work hour. Required parts would cost approximately $55,000. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,162,560, or $55,360 per airplane.

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

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–212–AD.

Applicability: Model MD–90–30 airplanes, certificated in any category; equipped with a main landing gear (MLG) brake assembly having part number (P/N) 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P.

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 (h) 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 MLG brake and consequent loss of braking capability, which could result in the airplane overrunning the runway during take-off or landing, accomplish the following:

Measurement of Brake Wear

(a) Within 120 days after the effective date of this AD, measure the length of the wear indicator on the brake stack of the MLG brake assembly to determine the degree of wear, according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000.

(1) If the wear indicator measures more than 1.30 inches: Repeat the measurement of the brake stack wear indicator every 260 landings, until the wear indicator measures 1.30 inches or less. When the wear indicator measures 1.30 inches or less, do paragraph (a)(2) of this AD.

(2) If the wear indicator measures 1.30 inches or less: Before further flight, do paragraph (b) of this AD.

Repetitive Inspections for Discrepancies of Pressure Plate

(b) Perform a general visual inspection of the MLG brake assembly for discrepancies of the pressure plate (*i.e.*, the surface of the piston insulator is flush with or has pushed beyond the surface of the counterbore), according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. If no discrepancy of the pressure plate is found, repeat the inspection at intervals not to exceed 260 landings, until paragraph (c)(1), (c)(2), or (d) of this AD has been accomplished.

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

Corrective Actions

(c) If any discrepancy of the pressure plate is found during any inspection required by paragraph (b) of this AD: Before further flight, do paragraph (c)(1), (c)(2), (c)(3), or (d) of this AD.

(1) If the length of the wear indicator on the MLG brake is less than 0.40 inch: Overhaul the MLG brake assembly (including replacing the carbon stack) according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. Such overhaul terminates the repetitive inspections required by paragraph (b) of this AD.

(2) If the length of the wear indicator on the MLG brake is greater than or equal to 0.40 inch but less than or equal to 2.10 inches: Repair the MLG brake assembly according to Boeing Alert Service Bulletin MD90–32A042, Revision 01, dated August 17, 2000; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–13, Revision 2, dated April 28, 2000. The repair procedures involve replacing the swage tube subassemblies of the brake with new subassemblies, replacing the pressure plate with a new, improved pressure plate, shortening the wear indicator tube, inspecting to determine the radius of the piston insulators, and replacing the piston insulators with reworked insulators if necessary. Such repair terminates the repetitive inspections required by paragraph (b) of this AD.

(3) If the length of the wear indicator on the brake is greater than 2.10 inches: No further action is required by this paragraph.

Replacement With Modified Brake Assembly

(d) Except as provided by paragraph (c) of this AD, at the next brake overhaul, or within 36 months after the effective date of this AD, whichever is first: Replace any MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–1–P, 5012193–2, 5012193–2–P, 5012193–3, or 5012193–3–P; with a new, improved or modified MLG brake assembly having P/N 5012193–4; according to Boeing Service Bulletin MD90–32–045, Revision 01, dated December 15, 2000; and Aircraft Braking Systems Corporation Service Bulletin MD90–32–14, dated May 9, 2000. The modification involves replacement of certain wear indicator tubes with new tubes, installation of a new, improved pressure plate, measurement of the radius of the piston insulators, rework of the piston insulators if necessary, and reidentification of the brake assembly. Accomplishment of the replacement specified in this paragraph terminates the requirements of this AD.

Actions Accomplished Per Previous Revisions of Service Bulletin

(e) Inspections and corrective actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin MD90–32A042, dated April 27, 2000, is acceptable for compliance with the corresponding actions required by paragraphs (a), (b), and (c) of this AD.

(f) Replacements accomplished before the effective date of this AD according to Boeing

Service Bulletin MD90–32–045, dated July 21, 2000, are acceptable for compliance with paragraph (d) of this AD.

Spares

(g) As of the effective date of this AD, no person may install a MLG brake assembly having P/N 5012193R, 5012193–1, 5012193–2, or 5012193–3 on any airplane, unless the MLG brake assembly is inspected and any applicable corrective action has been accomplished according to this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(i) 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 August 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22436 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108697–02]

RIN 1545–BA60

Required Distributions From Retirement Plans; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to required minimum distributions for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts.

DATES: The public hearing is being held on Wednesday, October 9, 2002 at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Wednesday, September 25, 2002.

ADDRESSES: The public hearing is being held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC:ITA:RU, (REG–108697–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC:ITA:RU, (REG–108697–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit electronic outlines of oral comments directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing contact Sonya M. Cruse (202) 622–7805 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed regulations (REG–108697–02) that was published in the **Federal Register** on Wednesday, April 17, 2002 (67 FR 18834).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, September 25, 2002.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts.

For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–22465 Filed 8–29–02; 11:51 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AJ60

Schedule for Rating Disabilities; The Spine

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Musculoskeletal System that addresses disabilities of the spine. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: Comments must be received on or before November 4, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AJ60." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7215.

SUPPLEMENTARY INFORMATION: VA proposes to amend its Schedule for Rating Disabilities by revising that portion of the Musculoskeletal System that addresses disabilities of the spine. VA published an advance notice of proposed rulemaking in the **Federal**

Register on December 28, 1990 (55 FR 53315), advising the public that it was preparing to revise and update the schedule for rating disabilities of the orthopedic system. What is referred to as "The Orthopedic System" in the title of the advance notice of proposed rulemaking is part of the Musculoskeletal System portion of the rating schedule. The rest of the Musculoskeletal System portion addresses muscle injuries. The revision of the Muscle Injuries portion of the Musculoskeletal System was published as a final rule in the **Federal Register** of June 3, 1997 (62 FR 30235).

In addition to publishing an advance notice, VA also contracted with an outside consultant to recommend changes to the evaluation criteria to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review that portion of the rating schedule dealing with the musculoskeletal system in order to formulate recommendations. The comments of the consultants regarding disabilities of the spine are incorporated into the discussions below.

In response to the advance notice of proposed rulemaking, VA received one comment focusing on the spine. The commenter suggested VA adopt an evaluation system with eight progressive grades of spine disability that would be based on a variety of findings, including muscle guarding, radiculopathy, muscle atrophy and other impairments of the lower extremities, instability of the spine, cauda equina syndrome, paraplegia, and bowel and bladder involvement. The commenter's proposed system would assign one evaluation based on presence or absence of these factors. While such a grading system may be useful for clinical purposes, it is not feasible for rating purposes because it assigns one grade or level of disability that is based not only on orthopedic disabilities of the spine, but also on gastrointestinal, genitourinary, and neurologic disabilities, all of which have specific separate evaluation criteria in the Digestive, Genitourinary, and Neurologic System sections of the rating schedule. For this reason, we do not propose to adopt the eight-grade method of categorizing spine disabilities. However, we do propose to revise the evaluation criteria for rating disabilities of the spine by establishing a general rating formula that will apply to all diseases and injuries of the spine. Intervertebral disc syndrome was addressed in a separate rulemaking, RIN 2900–AI22. The final revision of intervertebral disc syndrome was published in the **Federal Register** on August 22, 2002 at 67 FR 54345. This proposed regulatory amendment would make editorial changes to the evaluation criteria for intervertebral disc syndrome to make them compatible with the new general rating formula. This does not, however, represent any substantive change to the recently adopted evaluation criteria for intervertebral disc syndrome.

We propose to add a note following the general rating formula that would direct the rating agency to separately evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, and sensory or motor loss of the extremities. Such evaluations would be based on criteria in the Digestive, Genitourinary, and Neurologic System portions of the rating schedule, depending on the specific findings. Bowel and bladder impairment and sensory or motor loss in extremities are among the neurologic impairments that most commonly result from disease or injury of the spine. However, a great variety of neurologic disabilities might stem from diseases and injuries of the spine. In view of this fact, and the many different sets of evaluation criteria that might be needed, it would be impractical to repeat them all in the orthopedic part of the schedule.

The current rating schedule provides diagnostic codes for eleven spine conditions. Four codes represent diagnoses of spine disabilities: Vertebral fracture (diagnostic code 5285); intervertebral disc syndrome (diagnostic code 5293); sacroiliac injury and weakness (diagnostic code 5294); lumbosacral strain (diagnostic code 5295). The seven remaining codes concern findings of ankylosis (bony fixation) or limitation of motion of the spine rather than diagnoses. The codes representing ankylosis or limitation of motion of the spine include current diagnostic codes 5286 (ankylosis of entire spine), 5287 (ankylosis of cervical spine), 5288 (ankylosis of dorsal spine), 5289 (ankylosis of lumbar spine), 5290 (limitation of motion of cervical spine), 5291 (limitation of motion of dorsal spine), and 5292 (limitation of motion of lumbar spine). Evaluations involving ankylosis are assigned based on whether the ankylosis is favorable or unfavorable, without defining those terms, and with separate evaluations provided for lumbar, dorsal and cervical spine. Evaluations involving limitation of motion of the lumbar, dorsal and cervical spine are based on such indefinite criteria as "slight," "moderate," or "severe" limitation of motion. We propose to delete the seven diagnostic codes (5286 through 5292) that involve findings of ankylosis or limitation of motion of the spine because, rather than representing conditions or diagnoses, they are findings that are common to a variety of spinal conditions. The general rating formula we are proposing will include objective criteria for evaluating limitation of motion and ankylosis and will eliminate indefinite criteria and terminology. We also propose to define favorable ankylosis and unfavorable ankylosis in a note which will be explained in a separate paragraph of this summary.

Our contract consultants recommended that we add spinal stenosis (narrowing of the spinal canal, with associated symptoms) and spondylolisthesis or segmental instability to the updated schedule. Consistent with our consultants' recommendations, we propose to add these and several other spine disabilities that are distinct from those currently listed in the rating schedule and that occur frequently enough to warrant inclusion.

In order to add these spine disabilities and still group evaluation criteria for all injuries and disabilities of the spine together in one section of the rating schedule, we propose to move all diagnostic codes for spinal disabilities and assign them new diagnostic codes ranging from diagnostic code 5235 through diagnostic code 5243. We propose to provide new diagnostic codes for the following conditions that are already in the Schedule: 5235 for vertebral fracture, 5236 for sacroiliac injury and weakness, 5237 for lumbosacral strain, and 5243 for intervertebral disc syndrome. The disabilities we propose to add are: spinal stenosis (a narrowing of the central spinal canal that causes pressure on the spinal cord and/or nerve roots, most commonly due to degenerative arthritis or degenerative disc disease) (diagnostic code 5238), spondylolisthesis or segmental instability (slipping of all or part of one vertebra forward on another vertebra that may compress spinal nerves) (diagnostic code 5239), ankylosing spondylitis (a rheumatic disease that affects the spine and sacroiliac joints and that may have extra-articular (outside the joints) findings) (diagnostic code 5240), and spinal fusion (diagnostic code 5241). We also propose to add degenerative arthritis of the spine (diagnostic code 5242), a common condition that will ordinarily be evaluated under the general rating

formula for diseases and injuries of the spine. There is currently a single diagnostic code (5003) for degenerative arthritis of any joint, with evaluation criteria based on X-ray findings, or X-ray findings plus limitation of motion. The general rating formula we are proposing will provide criteria for evaluating degenerative arthritis of the spine except when X-ray findings, as discussed under diagnostic code 5003, are the sole basis of its evaluation.

Diagnostic code 5285 is currently titled "Vertebra, fracture of, residuals." Our contract consultants recommended that we include dislocation of a vertebra under this diagnostic code because it may result in the same type of disability as a fracture, and we accordingly propose to move this disability to diagnostic code 5235, as previously explained, and rename it "Vertebral fracture or dislocation." There are currently two defined evaluation levels for vertebral fractures under this code: 100 percent, based on the criteria "With cord involvement, bedridden, or requiring long leg braces'; and 60 percent, based on the criteria "Without cord involvement; abnormal mobility requiring neck brace (jury mast)." There is also a direction to rate other cases based on limitation of motion or muscle spasm, with 10 percent to be added to the rating if there is demonstrable deformity of the vertebral body.

Our contract consultants suggested we assign a 100-percent rating for vertebral fracture or dislocation if an individual is "non-ambulatory," rather than if he or she requires long leg braces, because devices other than leg braces are commonly used. But because a veteran who is non-ambulatory may warrant any of several different evaluations, depending on the specific findings, we do not propose to adopt the consultants' suggestion. Instead, to ensure that all disabilities resulting from fracture or dislocation of the spine are taken into account in the evaluation, we propose to evaluate all disabilities of the spine, including fractures and dislocations of the spine, using a general formula that will be based on the orthopedic findings such as limitation of motion, ankylosis, muscle spasm, guarding, and tenderness, present in the individual case. The neurologic disabilities such as bowel or bladder impairment that result from spinal fracture or dislocation will be separately evaluated, as discussed above.

Vertebral fracture with abnormal mobility requiring a neck brace, which is one of the criteria in the current schedule for a 60-percent evaluation for vertebral fracture, is a condition that ordinarily occurs only during the acute or convalescent phase of an injury. This temporary condition can therefore be evaluated under the provisions of 38 CFR 4.28 ("Prestabilization rating from date of discharge from service"), 4.29 ("Ratings for service-connected disabilities requiring hospital treatment or observation"), or 4.30 ("Convalescent ratings"), and we propose to remove it from the evaluation criteria.

Our contract consultants also recommended deleting the 60 percent level of evaluation for vertebral fracture without cord involvement because such a condition is not itself disabling. Under the proposed general rating formula, fractures without cord involvement would be rated on the basis of findings of limitation of motion, ankylosis, muscle spasm, guarding, and tenderness, at an evaluation level of zero, 10, 20, 30, 50 or 100 percent, depending on the extent and severity of findings.

The consultants stated that fracture or dislocation of the vertebrae is disabling only when there are residuals, and pointed out that completely asymptomatic fractures of vertebrae are not rare. A recent medical textbook on disability evaluation stated that vertebral fractures with loss of height of the vertebral body of 50-percent or less ordinarily do not require surgery, heal uneventfully, and are compatible with the resumption of normal activities after healing ("Disability Evaluation," 292–3 (Stephen L. Demeter, M.D., Gunnar B.J. Anderson, M.D., Ph.D., and George M. Smith, M.D., 1996)). We therefore propose to remove the current direction to add 10-percent to an evaluation for vertebral fracture based on demonstrable deformity of the vertebral body. Instead, we propose to make "vertebral body fracture with loss of 50-percent or more of the height" one of the criteria for a 10-percent evaluation. This will apply to vertebral fractures of that extent only when there are symptoms such as pain, stiffness, or aching in the area of the fracture. Otherwise, disability due to a vertebral body compression fracture would be evaluated at any appropriate level of evaluation, depending on the findings. This will ensure that evaluations are based on the actual signs and symptoms present, rather than solely on the presence of X-ray abnormalities, a finding not always indicative of actual disability.

Our contract consultants recommended adding the words "surgical or non-surgical" to the current criteria for ankylosis of the spine. However, because the evaluation would be based on the same criteria whatever the cause of the ankylosis, we do not propose to adopt this suggestion. Instead, we propose to incorporate the current evaluation criteria for ankylosis of the spine into the proposed general rating formula without substantive change. We also propose to add a note following the formula defining unfavorable ankylosis as a condition in which the entire cervical spine, the entire thoracolumbar spine, or the entire spine is fixed in flexion (*i.e.*, bent forward) or extension (*i.e.*, bent backward), and the ankylosis results in one or more of the following: difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin (ribs) on the abdomen; dyspnea (shortness of breath) or dysphagia (difficulty swallowing); atlantoaxial (the atlas and axis otherwise known as the first and second cervical vertebrae) or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. These signs and symptoms, which may be indications for spinal surgery, represent disability greater than limitation of motion of the spine alone. A spinal segment fixed in neutral position (for purposes of spinal range of motion, generally at zero degrees) is in favorable ankylosis (American Medical Association *Guides to the Evaluation of Permanent Impairment*, 2nd ed., (1984)).

Our contract consultants recommended deleting zero percent and ten percent evaluations for "slight" limitation of motion under current diagnostic codes 5290, 5291, and 5292 because such minor conditions are difficult to distinguish from normal and do not result in significant impairment. The current evaluation criteria for limitation of motion of segments of the spine—"slight," "moderate," and "severe"—are subjective. We propose to remove those terms and specify in the general rating formula the exact extent of limitation of motion of either forward flexion or of the combined range of motion (the sum of the range of flexion, extension, left and right rotation, and left and right lateral flexion) that warrants each level of evaluation. This will ensure consistent evaluations.

We further propose to add a note following the general rating formula that would specify the normal ranges of motion for the cervical and thoracolumbar spine and a new plate (Plate V) with diagrams demonstrating the ranges of motion. We propose to define the normal range of motion for the cervical spine as: forward flexion, zero to 45 degrees; extension, zero to 45

degrees; left and right lateral flexion, zero to 45 degrees; and left and right rotation, zero to 80 degrees. We propose to define the normal range of motion for the thoracolumbar spine as: flexion, zero to 90 degrees; extension, zero to 30 degrees; left and right lateral flexion, zero to 30 degrees; and left and right rotation, zero to 30 degrees. These ranges of motion are based on the American Medical Association *Guides to the Evaluation of Permanent Impairment,* 2nd ed., (1984), which is the last edition of the *Guides* that measured range of motion of the spine using a goniometer. Subsequent editions of the *Guides* use an inclinometer for spine measurements, in part, they state, because it is difficult to measure movements of the small joints of the spine using a goniometer. The Veterans Health Administration (VHA) has advised us that obtaining consistent and accurate measurements of the range of motion of the spine using an inclinometer is technically difficult and that measurement by means of a goniometer is the current and preferred method of measurement in VHA because of ease of use and accuracy. Since measurement of the movement of the small or individual joints of the spine is not required by the evaluation criteria, and uniformity and consistency of measurements of range of motion are important for VA compensation purposes, we propose to require the use of a goniometer to determine the range of motion of the spine and to establish the normal range of motion based on measurements using a goniometer. Since goniometer measurements are shown in five degree increments, we propose to add a note to specify that each range of motion measurement be rounded to the nearest five degrees.

We propose that the general rating formula provide criteria for the cervical and thoracolumbar spinal segments only, excluding a separate set of criteria for the thoracic (or dorsal) segment of the spine. The thoracic segment of the spine consists of the twelve thoracic vertebrae. Because the thoracic and lumbar segments ordinarily move as a unit, it is clinically difficult to separate the range of movement of one from that of the other. This combination of segments is also used in the 1984 AMA *Guides.* We also propose to replace the term "dorsal" with the term "thoracic" throughout this section, in keeping with current medical terminology.

The current rating schedule states that ratings for ankylosis or limitation of motion shall not be assigned for more than one spinal segment by reason of involvement of only the first or last vertebrae of an adjacent segment. Because we propose to eliminate a separate evaluation for the thoracic spine, the vertebrae involved are the last cervical vertebra (C–7), and the first thoracic vertebra (T–1). Disability in both segments could exist, even if only C–7 or T–1 is involved. Separate evaluations for the cervical spine and the thoracolumbar spine should not be precluded in this situation if disability in both segments exists. Therefore, we propose to eliminate this provision.

Current diagnostic code 5295 (lumbosacral strain) supports evaluations from zero to forty percent, based on pain, muscle spasm, limitation of motion, listing of the spine, loss of lateral motion with osteoarthritic changes, etc. We propose to move this disability to diagnostic code 5237 and evaluate lumbosacral strain under the general rating formula, which would include criteria adequate for its evaluation.

The proposed general rating formula for diseases and injuries of the spine would apply to spinal stenosis, spondylolisthesis, lumbosacral strain, spinal fracture or dislocation, spinal fusion of single or multiple levels, ankylosing spondylitis, sacroiliac injury and weakness, degenerative arthritis (see also diagnostic code 5003) and, in part, intervertebral disc syndrome, which was revised in a separate rulemaking. The rating formula would be used when any of these conditions results in symptoms such as pain (with or without radiation), stiffness, or aching of the spine due to residuals of injury or disease. It would provide evaluation levels of zero, ten, twenty, thirty, forty, fifty, and one hundred percent, based on limitation of motion of the spine, either limitation of forward flexion alone, or limitation of the combined range of motion; the severity of ankylosis; and on the extent of muscle spasm, guarding, or localized tenderness. We propose no change from the current schedule in the overall possible range of evaluations for limitation of motion or ankylosis, but propose more objective criteria in order to ensure more consistent evaluations.

Because of the new general rating formula we are proposing, we also propose to revise the introductory language used under intervertebral disc syndrome. It currently states, "Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 separate evaluations of its chronic orthopedic and neurologic manifestations along with evaluations for all other disabilities, whichever method results in the higher evaluation." We propose to change it to "Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 evaluations under the General Rating Formula for Diseases and Injuries of the Spine along with evaluations for all other disabilities, whichever method results in the higher evaluation."

We propose to provide additional rating guidance through the use of several notes following the rating formula. The first note would direct that any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, be separately evaluated. The second note would define, for VA compensation purposes, the normal ranges of motion for the cervical and thoracolumbar spinal segments and state that the normal combined range of motion for the cervical spine is 340 degrees and for the lumbar spine is 240 degrees and would state that the normal ranges of motion for each component of spinal motion provided are the maximum that can be used for calculation of the combined range of motion. The third note would state that in exceptional cases, an examiner may state that because of age, body habitus (physique, posture, and position), neurologic disease, or other factors not the result of disease or injury of the spine, the range of motion of the spine in a particular individual should be considered normal for that individual even though it does not conform to the normal range of motion stated in Note 2. Provided that the examiner furnishes an explanation, the examiner's assessment that the range of motion is normal for that individual will be accepted. The fourth note would state that for evaluation purposes, measurement of range of motion would be rounded to the nearest 5 degrees. The fifth note would define favorable and unfavorable ankylosis, for VA compensation purposes, as described above. The sixth note would direct that disability of the thoracolumbar and cervical spine segments be evaluated separately, except when there is unfavorable ankylosis of both segments, which will be rated as a single disability. This exception is proposed because unfavorable ankylosis of a single segment can be compensated for to some extent by the other spinal segment, even if it is favorably ankylosed. However, if both segments are ankylosed in an unfavorable position, no compensation is possible,

and the overall disability is total. Separately combining unfavorable ankylosis of each segment would result in an evaluation of only 70 percent, a level which is not commensurate with the extent of disability.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: July 18, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 4 (subpart B) as follows:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4, subpart B continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

2. In § 4.71a, the table "The Spine" is revised and is transferred so that it precedes the table "The Hip and Thigh'; and Plate V is added immediately following the table "The Spine", to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

THE SPINE

	Rating
5235 Vertebral fracture or dislocation.	
5236 Sacroiliac injury and weakness.	
5237 Lumbosacral strain.	
5238 Spinal stenosis.	
5239 Spondylolisthesis or segmental instability.	
5240 Ankylosing spondylitis.	
5241 Spinal fusion.	
5242 Degenerative arthritis of the spine (see also diagnostic code 5003).	
5243 Intervertebral disc syndrome:	
Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 evaluations under the General Rating Formula for Diseases and Injuries of the Spine along with evaluations for all other disabilities, whichever method results in the higher evaluation	
With incapacitating episodes having a total duration of at least six weeks during the past 12 months	60
With incapacitating episodes having a total duration of at least four weeks but less than six weeks during the past 12 months	40
With incapacitating episodes having a total duration of at least two weeks but less than four weeks during the past 12 months	20
With incapacitating episodes having a total duration of at least one week but less than two weeks during the past 12 months	10
Note (1): For purposes of evaluations under diagnostic code 5243, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.	
Note (2): If intervertebral disc syndrome is present in more than one spinal segment, provided that the effects in each spinal segment are clearly distinct, evaluate each segment on the basis of incapacitating episodes or under the General Rating Formula for Diseases and Injuries of the Spine, whichever method results in a higher evaluation for that segment.	
General Rating Formula for Diseases and Injuries of the Spine (including spinal stenosis, spondylolisthesis, lumbosacral strain, fracture or dislocation, spinal fusion, ankylosing spondylitis, sacroiliac injury and weakness, degenerative arthritis (see also diagnostic code 5003), and disc disease (if not evaluated based on incapacitating episodes):	
With symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease and:	
Unfavorable ankylosis of the entire spine	100
Unfavorable ankylosis of the entire thoracolumbar spine	50
Unfavorable ankylosis of the entire cervical spine; or, forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine	40
Forward flexion of the cervical spine 15 degrees or less; or, favorable ankylosis of the entire cervical spine	30
Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or, forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees; or, the combined range of motion of the thoracolumbar spine not greater than 120 degrees; or, the combined range of motion of the cervical spine not greater than 170 degrees; or, muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis	20

THE SPINE—Continued

	Rating
Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; or, forward flexion of the cervical spine greater than 30 degrees but not greater than 40 degrees; or, combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees; or, combined range of motion of the cervical spine greater than 170 degrees but not greater than 335 degrees; or, muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour; or, vertebral body fracture with loss of 50 percent or more of the height	10
No muscle spasm, guarding, or localized tenderness, and any limitation of motion less severe than the criteria for a 10-percent evaluation	0
Note (1): Evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, separately, under an appropriate diagnostic code.	
Note (2): (*See* also Plate V.) For VA compensation purposes, normal forward flexion of the cervical spine is zero to 45 degrees, extension is zero to 45 degrees, left and right lateral flexion are zero to 45 degrees, and left and right lateral rotation are zero to 80 degrees. Normal forward flexion of the thoracolumbar spine is zero to 90 degrees, extension is zero to 30 degrees, left and right lateral flexion are zero to 30 degrees, and left and right lateral rotation are zero to 30 degrees. The combined range of motion refers to the sum of the range of forward flexion, extension, left and right lateral flexion, and left and right rotation. The normal combined range of motion of the cervical spine is 340 degrees and of the thoracolumbar spine is 240 degrees. The normal ranges of motion for each component of spinal motion provided in this note are the maximum that can be used for calculation of the combined range of motion.	
Note (3): In exceptional cases, an examiner may state that because of age, body habitus, neurologic disease, or other factors not the result of disease or injury of the spine, the range of motion of the spine in a particular individual should be considered normal for that individual, even though it does not conform to the normal range of motion stated in Note (2). Provided that the examiner supplies an explanation, the examiner's assessment that the range of motion is normal for that individual will be accepted.	
Note (4): Round each range of motion measurement to the nearest five degrees.	
Note (5): For VA compensation purposes, unfavorable ankylosis is a condition in which the entire cervical spine, the entire thoracolumbar spine, or the entire spine is fixed in flexion or extension, and the ankylosis results in one or more of the following: difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin on the abdomen; dyspnea or dysphagia; atlantoaxial or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. Fixation of a spinal segment in neutral position (zero degrees) always represents favorable ankylosis.	
Note (6): Separately evaluate disability of the thoracolumbar and cervical spine segments, except when there is unfavorable ankylosis of both segments, which will be rated as a single disability.	

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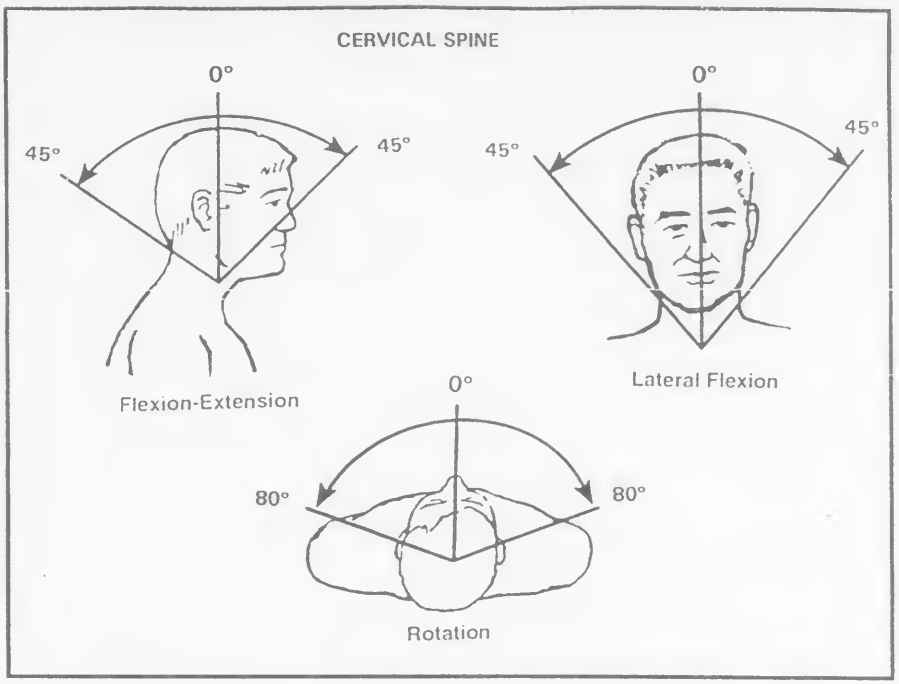

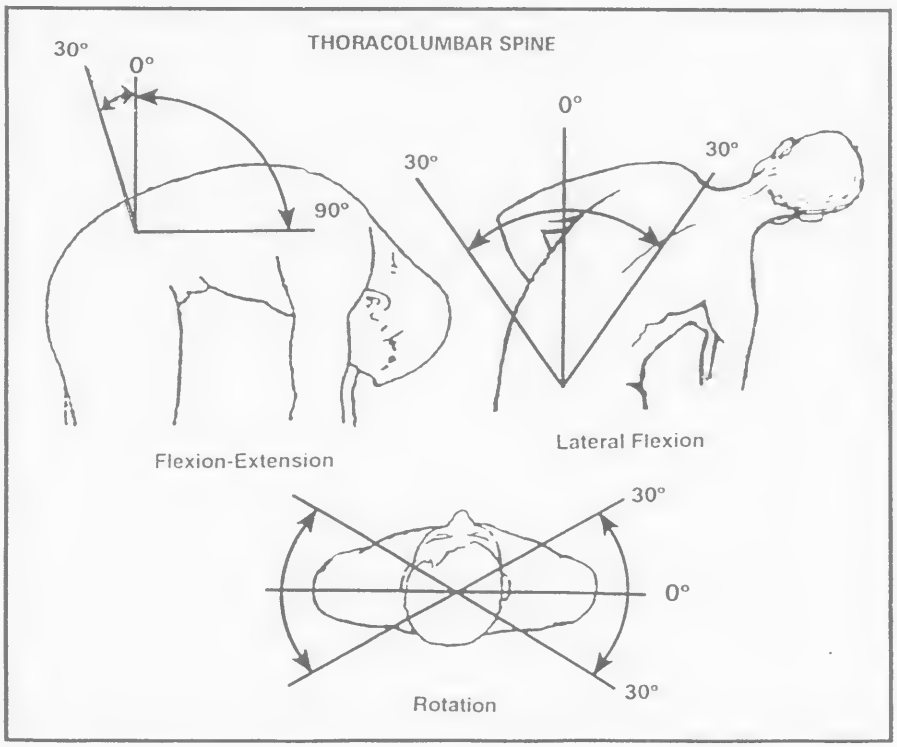

PLATE V
RANGE OF MOTION OF CERVICAL AND THORACOLUMBAR SPINE

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–22440 Filed 9–3–02; 8:45 am]
BILLING CODE 8320–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020816198–2198–01; I.D. 071202A]

RIN 0648–AP41

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States; Amendment 5

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery off the Southern Atlantic States (FMP). This proposed rule would establish a limited access program for the rock shrimp fishery in the exclusive economic zone (EEZ) off Georgia and off the east coast of Florida (limited access area), establish a minimum mesh size for a rock shrimp trawl net in the limited access area, require the use of an approved vessel monitoring system (VMS) by vessels allowed to fish for rock shrimp in the limited access program, and require an operator of a vessel in the rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida) to have an operator permit. The intended effects are to minimize additional increases in harvesting capacity in the rock shrimp fishery; reduce the bycatch of small, unmarketable rock shrimp; enhance compliance with fishery management regulations; improve protection of essential fish habitat, including an area that contains the last 20 acres (8 hectares) of intact Oculina coral remaining in the world; and ensure the long-term economic viability of the rock shrimp industry.

DATES: Comments on this proposed rule must be received no later than 5 p.m., eastern time, on October 21, 2002.

ADDRESSES: Copies of Amendment 5 may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366; fax: 843–769–4520; e-mail: *safmc@noaa.gov*. Amendment 5 includes a Final Supplemental Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

Written comments on this proposed rule must be mailed to Dr. Peter Eldridge, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge; phone: 727–570–5305; fax: 727–570–5583; e-mail: *Peter.Eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Limited Access

Background

In its March 2001 preliminary qualitative analysis of federally managed fisheries, NMFS classified the rock shrimp fishery off the southern Atlantic states as one of the fisheries where there are indications of over-capacity. With over-capacity as well as open access to the fishery, any gains in the health of the stocks would likely attract new entrants to the fishery and an increase in harvesting capacity by those already in the fishery. This increased effort due to unrestricted new entry to the fishery could threaten the long-term economic viability of the rock shrimp industry and would increase bycatch in the fishery. Accordingly, Amendment 5 proposes a limited access program for the fishery off Georgia and the east coast of Florida to minimize such adverse impacts. The center of abundance and the concentrated commercial fishery for rock shrimp is off northeast Florida and extends to the waters off Georgia. To further address bycatch in this fishery, NMFS has initiated a voluntary onboard observer program consistent with the recommendation in Amendment 5.

The current requirement for a Federal vessel permit for the rock shrimp fishery in the EEZ off the southern Atlantic states, i.e., from the Virginia/North Carolina border through the east coast of Florida, remains in effect. However, in addition, to participate in the fishery off Georgia and the east coast of Florida, vessel owners would be required to obtain a limited access endorsement for South Atlantic rock shrimp. Limited access endorsements would be required effective 180 days after the final rule containing this measure is published.

Initial Eligibility for Limited Access Endorsements

Initially, the Regional Administrator, Southeast Region, NMFS (RA) would issue limited access endorsements to owners of vessels that had valid Federal permits for South Atlantic rock shrimp on or before December 31, 2000, and that had landings of rock shrimp from the South Atlantic EEZ of at least 15,000 lb (6,804 kg) during any one of the calendar years 1996 through 2000. Vessels that had Federal permits for South Atlantic rock shrimp would be determined solely from NMFS' permit records. Federal permits were required in the fishery beginning November 1, 1996. Claimed landings would be verified from landings data in state or Federal database systems that were submitted on or before January 31, 2001. Only landings when a vessel had a valid Federal permit for rock shrimp, that were harvested from the South Atlantic EEZ, and that were landed and sold in compliance with state and Federal regulations would be used to establish eligibility.

Credit for Historical Landings

For the purpose of initial eligibility for a limited access endorsement for South Atlantic rock shrimp, the owner of a vessel that had a permit for South Atlantic rock shrimp during the qualifying period would retain the rock shrimp landings record of that vessel during the time of his/her ownership, unless, prior to the publication of the final rule implementing this amendment, a sale of the vessel included a written agreement stating that credit for those qualifying landings was transferred to the new owner. Qualifying landings would be landings of at least 15,000 lb (6,804 kg) in any

one of the calendar years 1996 through 2000. Such transfer of credit would be for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the seller's ownership; no partial transfers would be allowed.

Implementation of the Limited Access Program

To implement the limited access program, the RA would notify each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a currently permitted vessel in the fishery, of its initial determination of eligibility for a limited access endorsement for South Atlantic rock shrimp and provide an application for the endorsement. Applications for endorsements would have to be postmarked or hand-delivered to the RA not later than 120 days after the final rule that contains this measure is published. If an owner's application for a limited access endorsement is based on qualifying landings that were transferred to him/her through a written agreement, as discussed in the previous paragraph, the application would have to be accompanied by a copy of that agreement and a statement of the cost associated with obtaining the catch history.

If the RA determines that the eligibility requirements for a limited access endorsement were not met, the RA would notify the applicant, in writing, not later than 30 days prior to the date that a limited access endorsement is required in the fishery. An applicant would have an opportunity to request reconsideration of the RA's determination regarding initial endorsement eligibility. An Application Oversight Board would be established to assist in reviewing disputes over eligibility to ensure that the criteria for a limited access permit are applied to an owner's application in a proper manner.

Transferability of a Limited Access Endorsement

An owner issued a limited access endorsement could request that the endorsement be transferred to another vessel or to another owner by submitting an application for transfer to the RA. An owner must report any costs associated with such transfer on the application for transfer. A transfer of an endorsement to a new owner would include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to that owner; partial transfers would not be allowed.

As is the case with all permits, licenses, and endorsements issued by the RA, a fee would be charged for each application or request for transfer. The amount of the fee would be stated on the application form and would be calculated in accordance with NOAA guidelines for recovering the Federal costs of administering the program for transferring the endorsement.

Restrictions on Renewal of Limited Access Endorsements

The RA would not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if a required application for renewal of the endorsement is not received within 1 year after the endorsement's expiration date. The Council believes that this time frame is adequate for a vessel owner to decide whether to continue in the fishery, thus providing the Council information necessary to estimate participation levels for the upcoming year, effectively manage the fishery, and achieve the stated objectives of the FMP. A specific deadline for renewal would also relieve the RA of the administrative burden of keeping track of all possible future participants in the fishery.

A limited access endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years would not be renewed. For the purpose of this measure, "inactive" would mean that the vessel with the endorsement had not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

An endorsement that was not renewed because of inactivity would be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996, but who did not qualify for an initial limited access endorsement. Such owners have at least some history of participation in and dependence on this fishery and, therefore, would be given higher priority for entering the limited access fishery compared to those lacking such history. To be placed on the list, an owner would have to submit a written request to the RA postmarked or hand-delivered not later than 1 year after the final rule containing this measure is published. Documentation of claimed landings would be required and would be verified by comparison with state trip ticket or dealer records.

Minimum Mesh Size

Historically, the cod end mesh size commonly used in the rock shrimp fishery was 1 7/8 to 2 inches (4.8 to 5.1 cm), stretched mesh. Some fishermen are now using smaller mesh or are putting a bag liner inside the cod end. This results in the bycatch of juvenile rock shrimp, some of which are unmarketable and are discarded dead. This proposed rule would establish, in the limited access area, a minimum mesh size for the cod end of a rock shrimp trawl of 1 7/8 inches (4.8 cm) and prohibit the use of smaller-mesh bag liners. This would reduce bycatch by allowing escapement of juvenile rock shrimp so that they could be caught later at a larger, more profitable size and would increase the overall yield from the fishery.

VMS

This rule would require the use of an operating, NMFS-approved VMS by each vessel that has been issued a limited access endorsement for South Atlantic rock shrimp when such vessel is on a trip off the southern Atlantic states (North Carolina through the east coast of Florida). An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

NMFS would publish in the **Federal Register** a list of approved VMS mobile transmitting units and associated communications service providers that meet the minimum standards for the rock shrimp fishery. Originally, Amendment 5 specified required operational VMS characteristics, e.g., position accuracy, reporting and transmission specifications, etc. However, since the initial development of Amendment 5, VMS technology has rapidly evolved. At the Council's June 2002 meeting, the Council received a VMS briefing from NMFS law enforcement staff indicating that VMS units are now available that are more effective than those contemplated originally in Amendment 5. Based on that new information, the Council approved a motion to allow NMFS as much flexibility as possible in establishing the operational characteristics of the VMS unit to be implemented in the rock shrimp fishery. The Council has revised the applicable VMS text in Amendment 5 and in this proposed rule, consistent with that motion.

A vessel that has been issued a limited access endorsement for the South Atlantic rock shrimp fishery would be required to have an operating VMS commencing 270 days after the final rule implementing this amendment

is published (i.e., 90 days after the limited access endorsement is required) or 90 days after publication of the list of approved transmitting units and associated communications service providers, whichever is later.

Upon installation of an approved transmitting unit and activation of the communication services, a vessel owner or operator would be required to submit a statement certifying compliance with an installation and activation checklist to NMFS, Office of Enforcement, Southeast Region. Such checklist would be available from the NMFS, Office of Enforcement, Southeast Region, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

An owner of a vessel would pay for the acquisition, installation, and operation of the VMS for his or her vessel, provided that such costs do not exceed $1200 for acquisition and initial installation of the VMS or $500 for annual communication costs. However, cost to the vessel owner for annual communication may be as high as $800 if NMFS determines that additional communication is necessary.

If the cost for acquisition and initial installation of a NMFS-approved VMS were to exceed $1,200, it is the Council's intent that NMFS would be responsible for the cost exceeding that amount. An owner may choose to install a more expensive VMS; that is, one with additional features that supplement an approved device. Such additional, optional features might include software to display vessel positions, a message terminal display, a configuration to automatically send position reports to a private address, the ability to send and receive private e-mail messages, etc. However, it is the Council's intent that any costs exceeding the limits specified above, that result from such additional, optional features, would not be paid by NMFS.

The VMS would advise NMFS when and where a vessel was fishing or had been fishing. Thus, it would provide effort data and would significantly aid in enforcement of areas closed to trawling, particularly the Oculina Bank habitat area of particular concern (HAPC). There is a critical need to increase the level of surveillance in this area as it contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world. All position reports would be treated in accordance with NMFS' existing guidelines for confidential data.

Operator Permits

To enhance enforcement of fishery regulations, the Council proposes to require operator permits in the South Atlantic rock shrimp fishery. "Operator" is defined as the master or other individual aboard and in charge of a vessel. Each vessel that has a Federal permit for the fishery would be required to have on board at least one person who has an operator permit when the vessel is at sea or offloading. In addition to penalties that currently exist for violations of the regulations, an operator permit could be sanctioned. For example, an operator whose permit is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904 would not be allowed aboard any vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. To enhance enforceability of this measure, a vessel's owner and operator would be responsible for ensuring that a person with such a suspended, revoked, or modified operator permit is not aboard his/her vessel. A list of operators whose permits are revoked, suspended, or modified would be readily available from the RA.

Operator permits would be required in the fishery commencing 120 days after the final rule that contains this measure is published. The RA would mail application forms to owners of vessels with permits for the South Atlantic rock shrimp fishery, and applications also would be available from the RA upon request. Information required on an application would include name, address, and other identifying information, such as date of birth, height, weight, and hair and eye color, of the applicant, and other information necessary for the issuance or administration of the permit. In addition, each applicant would be required to provide two recent (no more than 1 year old) color, passport-sized photographs. A fee would be charged for each application. The amount of the fee would be stated on the application form and would be calculated in accordance with NOAA guidelines for recovering the Federal costs of administering the program for issuing operator permits. In general, an operator permit would be valid for a 3–year period (i.e., from the operator's birth month in year X through the operator's birth month in year X+3). However, there are two instances in which issuance and/or renewal would probably not correspond with the operator's birth month -the one-time issuance of an initial permit or a permit not renewed immediately upon its expiration (birth month in year X+3). In such cases, the operator's permit would expire at the end of the operator's birth month that is between 2 and 3 years after initial issuance or renewal.

An operator of a vessel in the South Atlantic rock shrimp fishery would be required to present his/her operator permit for inspection upon the request of an authorized officer. Because an operator permit is a Federal picture identification card issued without verification of the information on the application, the operator would be required to also present one other form of personal identification that includes a picture. This additional verification of identification would help to deter use of a fraudulent operator permit.

Availability of Amendment 5

Additional background and rationale for the measures discussed above are contained in Amendment 5. The availability of Amendment 5 was announced in the **Federal Register** on July 25, 2002, (65 FR 48603). Written comments on Amendment 5 must be received by September 23, 2002. All comments received on Amendment 5 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that Amendment 5 that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 5 and in response to this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis that describes the impact this proposed rule, if adopted, would have on small entities. The analysis is summarized as follows.

The number of vessels with permits for the South Atlantic rock shrimp fishery varies from year to year but has not exceeded 431. Since permits were required in the fishery in 1996, at least 540 different vessels have been permitted in the fishery. Similarly, the number of vessels that have landed rock shrimp varies from year to year. In 1996, the number of active vessels reached an historical peak of 153. From 1996 through 2000, at least 279 different vessels have had landings of South Atlantic rock shrimp. All of the vessels are commercial vessels; there is no recreational component of the fishery.

All of the commercial vessels that have been permitted in the fishery would be affected by this proposed rule. Based on the Small Business Administration's current definition of a small entity in the fish harvesting sector (annual gross revenues not exceeding $3.5 million), the vast majority of these vessels are small entities. One company did own as many as 12 permitted vessels during the 1996–2000 time period. Since none of these vessels were active in the fishery during these years, this company had zero landings and gross revenues from the fishery during these years. However, data on the company's operations in other fisheries has led to a determination that this company is a large entity. To maintain confidentiality, additional, detailed information regarding this company's operations cannot be provided.

At least 111 small entities (vessels) that have been active in the fishery are not expected to qualify for the limited access permit and could experience some short-term loss in revenue resulting from limiting access in the South Atlantic rock shrimp fishery off Georgia and Florida. The average loss in gross revenue per vessel would be expected to be no larger than $1,365 annually in the short term. Vessels that entered the fishery in 2001 could experience higher losses in average revenue, though data are not presently available to make such a determination. However, it is expected that some of these vessels would mitigate this loss by participating in other fisheries. Because information is not available on these vessels' economic dependence on the rock shrimp fishery, it is not possible to calculate the impact of limited access on their profitability. Since the single, large entity earned zero gross revenues from the fishery, no measurable economic impact would be imposed on this entity as a result of this action. Further, this entity would not be subject to other actions only applicable to limited access permit holders, and thus would not be affected by those actions.

For the 168 vessels expected to qualify for limited access permits, each would be required to pay a $50 fee per permit application. In addition, a time burden would be imposed as a result of having to apply for the limited access permit. The time burden for completing the application is estimated at 20 minutes. According to 2000 data from the Bureau of Labor Statistics, the average hourly wage for first-line supervisors/managers in the fishing, forestry, and farming industries is $16.72. Thus, the monetary value of this time burden is $5.58 per vessel. As a result, the total cost of this action per qualifying vessel is $55.58, or $9337 for all qualifying vessels. However, since these permits will be renewed, via application, biannually rather than annually, the total cost per year would be approximately $27.79. In cases where vessel owners have qualified as the result of a transfer in catch history, documentation would be needed to support a determination of eligibility. The time burden associated with compiling such documentation is estimated at 1 hour, for an additional one-time cost of $16.72 in the first year. Therefore, for these vessels, the monetary value of the time burden associated with this action is estimated at $19.51 per vessel. Thus, total annual costs would be $44.51 in the first year, and $27.79 in years thereafter.

For vessel owners that do not initially qualify for a limited access permit, two additional opportunities exist to obtain such a permit. Specifically, the vessel owner may submit a request to the RA for reconsideration of an initial determination of non-eligibility. The time burden associated with filing such a request is estimated to be 2 hours. In addition, these vessel owners may submit a request to be placed on a list of those desiring the re-issuance of a permit that was not renewed in a timely manner by an initial qualifier. The time burden associated with filing this request is estimated to be 5 minutes. Thus, the monetary value of these time burdens is $35 per vessel. Though it is not possible to perfectly predict how many non-qualifiers will submit such requests, those owners whose vessels were active in the fishery but did not qualify are most likely to submit one or both requests. Given that 111 active vessels are not expected to qualify, and since these vessels would have also submitted an application and therefore paid the requisite and non-refundable $50 fee, the total burden per vessel would be $85 for all such vessels, or $9435 in the aggregate.

This proposed action would result in lesser impacts than rejected option 2, which would limit eligibility to those who had met the criteria prior to December 31, 1999 rather than December 31, 2000. Rejected option 2 would exclude an additional 26 vessels, most of which were very active in the fishery in 2000, and the average annual short-term revenue loss per active vessel would increase from $1,365 to $4,153. The Council's Rock Shrimp Advisory Panel also supports the proposed action. Given the possibility of continued entry of new vessels into the fishery and an exacerbation of the current overcapacity problem, the no action option (rejected option 1) is not acceptable. Rejected option 3 would only enable those who entered the fishery after April 4, 1994 to obtain nontransferable permits. Relative to the proposed action, this option is more restrictive on recent participants and was not supported by industry representatives. Also, it is likely that rejected option 3 would not reduce the initial level of overcapacity in the fishery. Based on the objectives of the FMP and the issues being addressed, the proposed action is superior to the rejected alternatives.

The minimum mesh size requirement applicable to the limited access area could increase costs for those vessel owners whose gear does not meet the proposed minimum mesh size and who obtain limited access endorsements. The gear replacement cost would be expected to be between $75 and $80 per net ($150 to $320 per vessel). During the 1996–2000 time period, active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery. These vessels also typically earn revenues from other fisheries, such as the penaeid shrimp fisheries of the South Atlantic and Gulf of Mexico. Since the minimum mesh size is the predominant mesh size presently being used in the fishery, a majority of vessel owners likely will not incur these costs. However, for those owners not presently using the minimum mesh size or larger, the gear modification expense could represent between 0.1 percent and 1 percent of their annual gross revenues from this fishery in the first year.

This proposed action would result in gear replacement costs for those vessels that utilize trawl nets with a smaller mesh size. Compared to the no action option, this measure would impose a higher cost on the industry. However, the Council's Rock Shrimp Advisory Panel was of the opinion that the replacement cost for the cod end would be recovered in the future as overall yields increase from allowing recruitment of small shrimp that escape to larger size classes. Also, the time saved from not having to cull many small, unmarketable shrimp in each haul could translate into more tows per trip. In comparison to rejected options 3 and 4, the Advisory Panel offered an opinion that the recommended mesh size would be more effective at allowing the escapement of small, unmarketable shrimp than the 1 and 3/4–inch mesh size. However, the 2–inch mesh size would allow escapement of a much higher proportion of marketable shrimp compared to this proposed mesh size. Under the assumption that the net replacement cost would be recouped

from higher returns, and the Advisory Panel's recommendation that 1 and 7/8 inches is the optimal mesh size for this fishery, this proposed action is superior to the alternatives considered.

The requirement for an operating VMS would impose a one-time cost to owners who obtain limited access endorsements that would not exceed $1,200. This capital cost is expected to be amortized over the average life-span of the equipment, presently estimated at 7 years. Thus, the annual cost per vessel is approximately $171. In addition, there would be some level of recurring operating/repair/maintenance costs and no more than $800 in annual communication costs. Therefore, the requirement for an operating VMS would decrease a vessel's annual profitability by approximately $971. Given the previously noted annual gross revenue estimates, the expected annual explicit cost of the VMS requirement alone could represent between 0.8 percent and 3 percent of these vessels' annual gross revenues from the rock shrimp fishery.

In addition, time burdens would be imposed as a result of the VMS requirement. Specifically, the time to install the VMS is estimated to be 4 hours; the time to complete and submit a statement certifying compliance with the installation and activation checklist is estimated to be 15 minutes; annual maintenance is estimated to be 2 hours each year; and the time to transmit position reports is estimated to be 14 minutes per day at sea. Current information suggests that the average, annual number of days at sea is approximately 200 for qualifying vessels active in this fishery. As such, this particular time burden is estimated at 2800 minutes or 46.67 hours per vessel. Therefore, the total time burden associated with VMS is approximately 53 hours per vessel in the first year, the monetary value of which is approximately $883 per vessel. In the years thereafter, only the time burdens associated with annual maintenance and the time to transmit position reports would be incurred. Thus, the time burden per vessel in later years would be 48.67 hours, the monetary value of which is approximately $813 annually per vessel. By combining the explicit and implicit costs, the total annual cost of this action is $1854 per vessel in the first year, and $1784 per vessel in later years, or $311,472 and $299,712 annually for all qualifying vessels.

This proposed action would likely result in higher costs than rejected option 3, under which only vessels with a past fishery violation would be required to use VMS, as opposed to all vessels. The use of an approved vessel monitoring system is necessary to protect essential fish habitat and essential fish habitat areas of particular concern. Illegal use of rock shrimp trawls within the Oculina Bank can result in damage to bottom habitat, as emphasized in a recent report presented to the Council on this topic. This latest report indicates that only 20 acres of Oculina coral remain intact, not only in this area, but in the world. Requiring rock shrimp vessels to carry an approved VMS unit will improve compliance and allow the rock shrimp fishermen to demonstrate that they are not fishing in any closed areas. Currently, the probability of detecting fishing in the Oculina Bank HAPC is low, given the distance from shore and the frequency of Coast Guard patrols in this area. This technology will significantly improve the detection of fishery violations in this closed area. Thus, this option is superior to the no action option and rejected option 3. Rejected option 3 would only provide coverage for some vessels in the industry and would not be as effective as the preferred alternative in improving compliance. In comparison to rejected option 2, the VMS system requirements should be specified in order to ensure that the utilized system will ensure sufficient surveillance of vessel activities. In this respect, the proposed action is preferable to rejected option 2. Also, the proposed action establishes a cap on the cost per vessel for purchase of the VMS unit and annual communications. Based on these facts, the proposed action is superior to the alternatives considered.

The requirement for operator permits in the South Atlantic rock shrimp fishery would increase costs to owners who operate their own vessels and to individual non-owning operators. The cost of a permit is expected to be not more than $50 and would generally be incurred once every 3 years, for an approximate cost per year of $16.67. Thus, the total explicit cost imposed on all qualifiers combined in the first year would be approximately $8400. The time burden of applying for this permit is estimated to be 60 minutes. In monetary terms, this time burden equates to $8.36 per vessel operator, or $2.79 per year. As a result of this action, the annual total cost per qualifying vessel is $19.46, or $3270 for all qualifying vessels.

This burden would also be imposed on vessel operators in the open access component of the fishery (i.e., the Carolinas), which could consist of as many as 24 additional vessels. If the single, large entity eventually chose to participate in the open access component of the fishery, it would also have to incur these expenses. Since the cost is constant on a per-vessel basis, disproportional impacts would not occur. In any case, for participants in the open access component of the fishery, these costs are unlikely to substantially reduce profitability.

This proposed action would result in higher costs than the no action option (rejected option 1) since it would require an operator's permit, estimated to cost $50 per operator, that would be valid for three years. The Council's Rock Shrimp Advisory Panel recommended operator permits to assist in reducing the cost of penalties to the industry from federal fishery management violations. It is expected that an operator's permit requirement will improve compliance with fisheries management regulations. Even though rejected option 2, which only requires an operator's permit for captains who do not own the vessel they operate, would result in a lower cost to the industry, it would not eliminate the possibility that a vessel owner who had a vessel permit sanction for a federal fishery violation could obtain an operator's permit and work onboard another rock shrimp vessel. Thus, the proposed action is preferable to the rejected alternatives.

Overall, the total costs of these actions on active, non-qualifying vessels could be as high as $1450 per vessel, or $160,950 in the aggregate, in the short-term. For the vessel owners who qualify for a limited access permit, the total annual costs of these actions could be as high as $2238 per vessel in the first year, and $1831 thereafter. Given that active vessels expected to qualify for a limited access permit earned between $31,902 and $127,319 in gross revenues per year from the rock shrimp fishery, such costs could represent between 1.8 percent and 7.0 percent of these revenues in the first year, and between 1.4 percent and 5.7 percent in years thereafter. Depending on the profit margins associated with activity in this fishery, these losses could be considered substantial, at least for some of the affected small entities. However, it is expected that future gains in the fishery would offset the short-term costs to these small entities. The Council's industry representatives (Rock Shrimp Advisory Panel) recommended that the Council consider a limited access program to avoid a situation where the current overcapacity problem, the primary source of which is the large number of latent permits, is exacerbated and thus increases the risk that firms dependent on rock shrimp could be forced out of the fishery or out of

business. The Rock Shrimp Advisory Panel requested operator's permits to protect their interests since many owners do not operate their own vessels, and this measure would allow them to hire captains who are likely to be more compliant with fishery regulations. Vessel owners are also liable for any fishery violations even if they are not on board the vessel during the period when the infraction occurs; however, this is true regardless of operator permits. There have been a number of instances of illegal fishing in an important closed fishing area, the Oculina Bank HAPC, by vessels in the rock shrimp fishery. Given the dwindling law enforcement resources for patrolling these areas, which are several miles offshore, the Council recommended that vessels in this fishery be required to use an approved VMS since they regularly operate in close proximity to the Oculina Bank HAPC. There is a critical need to implement this measure for increased protection of the Oculina coral habitat. A recently completed research survey concluded that this area contains the last 20 acres (8 hectares) of intact *Oculina* coral remaining in the world. To the extent enforcement is increased and trawling in the Oculina Bank HAPC is eliminated, there will be corresponding benefits in terms of protecting *Oculina* coral, habitat, and juvenile rock shrimp.

No duplicative, overlapping, or conflicting Federal rules have been identified.

A copy of the analysis is available from the Council (see **ADDRESSES**).

This rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA)--namely, application for a limited access endorsement for the South Atlantic rock shrimp fishery, documentation of eligibility through a written agreement, transfer of a limited access endorsement, installation and operation of a VMS by a vessel that has been issued a limited access endorsement, and application for an operator permit for the South Atlantic rock shrimp fishery in the EEZ off the southern Atlantic states (North Carolina through the east coast of Florida). NMFS has submitted these collection-of-information requirements to OMB for approval. The average public reporting burdens are estimated as follows: For the limited access endorsement, 20 minutes for each application for the endorsement or for the transfer of an endorsement, 1 hour for documentation of eligibility submitted with the application, 2 hours for each request for reconsideration of the RA's determination regarding initial endorsement eligibility, and 5 minutes for each request to be placed on the list of owners desiring consideration for reissue of an endorsement that had not been renewed; for the VMS, 4 hours per installation, 15 minutes for completion and submission of the statement certifying compliance with the installation and activation checklist, 14 minutes per day at sea for transmittal of position reports, and 2 hours for annual maintenance; and for the operator permit, 60 minutes for each application.

The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these burden estimates or any other aspects of the collections of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 28, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, paragraph (a)(2)(viii), (c), (f) through (j), and (l) are revised and paragraphs (a)(5) and (b)(4) are added to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(viii) *South Atlantic rock shrimp.* (A) For a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ or possess rock shrimp in or from the South Atlantic EEZ, a commercial vessel permit for rock shrimp must be issued to the vessel and must be on board. (See paragraph (a)(5) of this section for the requirements for operator permits for the South Atlantic rock shrimp fishery.)

(B) In addition, effective 180 days after the final rule containing this measure is published, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board. See § 622.19 for limitations on the issuance, transfer, renewal, and reissuance of a limited access endorsement for South Atlantic rock shrimp.

* * * * *

(5) *Operator permits.* (i) For a person to be an operator of a vessel fishing for rock shrimp in the South Atlantic EEZ or possessing rock shrimp in or from the South Atlantic EEZ, or to be an operator of a vessel that has a valid permit for South Atlantic rock shrimp issued under this section, such person must have and carry on board a valid operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.).

(ii) An owner of a vessel that fishes for rock shrimp in the South Atlantic EEZ or possesses rock shrimp in or from the South Atlantic EEZ, and an owner of a vessel that has a valid permit for rock shrimp issued under this section, must ensure that at least one person with a valid operator permit for the South Atlantic rock shrimp fishery is aboard while the vessel is at sea or offloading.

(b) * * *

(4) *Operator permits.* An applicant for an operator permit must provide the following:

(i) Name, address, telephone number, and other identifying information specified on the application.

(ii) Two recent (no more than 1–yr old), color, passport-size photographs.

(iii) Any other information that may be necessary for the issuance or

administration of the permit, as specified on the application form.

(c) *Change in application information.* The owner or operator of a vessel with a permit, a person with a coral permit, a person with an operator permit, or a dealer with a permit must notify the RA within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

* * * * *

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or, in the case of a vessel or dealer permit, the vessel or dealership is sold.

(g) *Transfer*--(1) *Vessel permits, licenses, and endorsements and dealer permits.* A vessel permit, license, or endorsement or a dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper, or in § 622.19(e) for a commercial vessel permit for South Atlantic rock shrimp. A person who acquires a vessel or dealership who desires to conduct activities for which a permit, license, or endorsement is required must apply for a permit, license, or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(2) *Operator permits.* An operator permit is not transferable.

(h) *Renewal*--(1) *Vessel permits, licenses, and endorsements and dealer permits.* Although a vessel permit, license, or endorsement or a dealer permit required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or a dealer who has met the specific requirements for the requested permit, license, or endorsement; who has submitted all reports required under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal); that the permit, license, or endorsement is ineligible for automatic renewal; or that a new application is required.

(i) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(ii) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iii) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(iv) *If notification is not received.* A vessel owner or dealer must contact the RA if he/she does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit.

(2) *Operator permits.* An operator permit required by this section is issued for a period not longer than 3 years. A permit not renewed immediately upon its expiration would expire at the end of the operator's birth month that is between 2 and 3 years after issuance. For renewal, a new application must be submitted in accordance with paragraph (b)(4) of this section.

(i) *Display.* A vessel permit, license, or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the vessel permit, license, or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer. An operator of a vessel in the South Atlantic rock shrimp fishery must present his/her operator permit and one other form of personal identification that includes a picture (driver's license, passport, etc.) for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* (1) A permit, license, or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit, license, or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(2) A person whose operator permit is suspended, revoked, or modified may not be aboard any fishing vessel subject to Federal fishing regulations in any capacity, if so sanctioned by NOAA, while the vessel is at sea or offloading. The vessel's owner and operator are responsible for compliance with this measure. A list of operators whose permits are revoked or suspended may be obtained from the RA.

* * * * *

(l) *Replacement.* A replacement permit, license, or endorsement may be issued. An application for a replacement permit, license, or endorsement is not considered a new application. An application for a replacement operator permit must include two new photographs, as specified in paragraph (b)(4)(ii) of this section.

* * * * *

3. In § 622.7, paragraphs (b) and (c) are revised and paragraph (bb) through (ee) are added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(b) Falsify information on an application for a permit, license, or endorsement or submitted in support of such application, as specified in

§ 622.4(b), (g), (p), or (q), or in § 622.18 or 622.19.

(c) Fail to display a permit, license, or endorsement, or other required identification, as specified in § 622.4(i).

* * * * *

(bb) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a vessel monitoring system (VMS) unit or communication service provider.

(cc) Operate or own a vessel that is required to have a permitted operator aboard when the vessel is at sea or offloading without such operator aboard, as specified in § 622.4(a)(5)(i) and (ii).

(dd) When a vessel that is subject to Federal fishing regulations is at sea or offloading, own or operate such vessel with a person aboard whose operator permit is revoked, suspended, or modified.

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

4. In subpart A, § 622.9 is added to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) *Requirement for use.* An owner or operator of a vessel that has been issued a limited access endorsement for South Atlantic rock shrimp must ensure that such vessel has a NMFS-approved, operating VMS on board when on a trip in the South Atlantic. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by NMFS for use in the South Atlantic rock shrimp fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must--

(1) Follow procedures indicated on an installation and activation checklist, which is available from NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL; phone: 727–570–5344; and

(2) Submit to NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, and follow instructions from that office. If notified by NMFS that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of South Atlantic rock shrimp in or from the South Atlantic EEZ, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

5. In subpart B, § 622.19 is added to read as follows:

§ 622.19 South Atlantic rock shrimp limited access.

(a) *Applicability.* Effective 180 days after the final rule to implement this section is published, for a person aboard a vessel to fish for rock shrimp in the South Atlantic EEZ off Georgia or off Florida or possess rock shrimp in or from the South Atlantic EEZ off Georgia or off Florida, a limited access endorsement for South Atlantic rock shrimp must be issued to the vessel and must be on board.

(b) *Initial eligibility.* A vessel is eligible for an initial limited access endorsement for South Atlantic rock shrimp if the owner--

(1) Owned a vessel with a Federal permit for South Atlantic rock shrimp on or before December 31, 2000, and

(2) Landed at least 15,000 lbs (6.804 kg) of South Atlantic rock shrimp in any one of the calendar years 1996 through 2000 from a vessel that he/she owned.

(c) *Determinations of eligibility*--(1) *Permit history.* The sole basis for determining whether a vessel had a Federal permit for South Atlantic rock shrimp, and that vessel's owner during the time it was permitted, is the RA's permit records. A person who believes he/she meets the permit history criterion based on ownership of a vessel under a different name, as may have occurred when ownership changed from individual to corporate or vice versa, must document his/her ownership.

(2) *Landings.* (i) Landings of rock shrimp from the South Atlantic EEZ during the qualifying period are verified from landings data that were submitted on or before January 31, 2001 and are in state or Federal database systems--no additional landings data will be accepted.

(ii) Only landings when a vessel had a valid Federal permit for rock shrimp, that were harvested from the South Atlantic EEZ, and that were landed and sold in compliance with state and Federal regulations will be used to establish eligibility.

(iii) For the purpose of eligibility for an initial limited access endorsement for South Atlantic rock shrimp, the owner of a vessel that had a permit for South Atlantic rock shrimp during the qualifying period retains the rock shrimp landings record of that vessel during the time of his/her ownership, unless, prior to the publication of the final rule implementing this amendment, a sale of the vessel includes a written agreement that credit for qualifying landings is transferred to the new owner. Qualifying landings are landings of at least 15,000 lb (6,804 kg) of rock shrimp harvested from the South Atlantic EEZ in any one of the calendar years 1996 through 2000. Such transfer of credit must be for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the seller's ownership; no partial transfers are allowed.

(d) *Implementation procedures*--(1) *Notification of status.* On or about 60 days after the final rule to implement this section is published, the RA will notify each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a vessel currently permitted for South Atlantic rock shrimp, of the RA's initial determination of eligibility for a limited access endorsement for South Atlantic rock shrimp. The notification will include a determination regarding the 15,000–lb (6,804–kg) threshold level for the endorsement. If the landings in the combined state and Federal databases do not meet the 15,000–lb (6,804–kg) threshold for any of the qualifying years, the landings in each of the qualifying years, as shown in those databases, will be included. Each notification will include an application for such endorsement. Addresses for notifications will be based on the RA's permit records. Each owner of a vessel that had a permit for South Atlantic rock shrimp on or before December 31, 2000, and each owner of a currently

permitted vessel, who does not receive notification by the date that is 75 days after the final rule to implement this section is published must advise the RA of non-receipt within 15 days thereafter.

(2) *Applications.* (i) An owner of a vessel who desires a limited access endorsement for South Atlantic rock shrimp must submit an application for such endorsement postmarked or hand-delivered not later than 120 days after the final rule containing this measure is published. Failure to apply in a timely manner will preclude issuance of an endorsement even if the vessel owner meets the eligibility criteria for the endorsement.

(ii) An applicant who agrees with the RA's initial determination of eligibility does not need to provide documentation of eligibility with his/her application.

(iii) An applicant who disagrees with the RA's initial determination of eligibility must provide documentation of eligibility with his/her application. Such documentation must include the name and official number of the vessel permitted for South Atlantic rock shrimp and the dates, quantities, trip tickets, and purchasing dealers for specific landings claimed for the vessel. In addition, if an owner's application for a limited access endorsement is based on qualifying landings that were transferred to him/her through a written agreement, as discussed in paragraph (c)(2)(iii) of this section, the application must be accompanied by a copy of that agreement and a statement of the cost associated with obtaining the catch history. Documentation and other information submitted on or with an application are subject to verification by comparison with state or Federal records and information. If such documentation and information cannot be verified from state or Federal records and information, the documentation and other information will be rejected. Submission of false documentation or information may disqualify an owner from obtaining an initial limited access endorsement for South Atlantic rock shrimp and is a violation of the regulations in this part.

(iv) If an application that is postmarked or hand delivered in a timely manner is incomplete, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 20 days of the date of the RA's notification, the application will be considered abandoned.

(3) *Issuance.* If a complete application is submitted in a timely manner and the eligibility requirements specified in paragraph (b) of this section are met, the RA will take action as follows:

(i) If a qualified applicant owns a vessel that has a valid permit for South Atlantic rock shrimp, the RA will issue an initial limited access endorsement for South Atlantic rock shrimp and mail it to the vessel owner prior to the date that such endorsement is required in the fishery.

(ii) If a qualified applicant does not currently own a vessel, the RA will inform him/her of qualification, but no endorsement will be issued. Such qualified applicant must apply for a permit and endorsement for a vessel that he/she owns, or transfer the rights to the endorsement to an owner of a vessel, prior to the date that is 2 years after such endorsement is required in the fishery. After that date, the rights to an initial limited access endorsement for South Atlantic rock shrimp that were based on the qualification will expire. A qualified applicant who desires to transfer the rights to an initial endorsement to the owner of a vessel must submit an application requesting such transfer to the RA. Such transfer of rights will include transfer of credit for the vessel's entire record of landings of rock shrimp from the South Atlantic during the time of the qualified applicant's ownership.

(4) *Reconsideration.* (i) If the eligibility requirements specified in paragraph (b) of this section are not met, the RA will notify the applicant, in writing, not later than 30 days prior to the date that a limited access endorsement is required in the fishery. The notification will include the reason for the determination that the eligibility requirements were not met. An applicant may request reconsideration of the RA's determination regarding initial endorsement eligibility by submitting a written request for reconsideration to the RA. Such request must be postmarked or hand-delivered not later than 240 days after the final rule containing this measure is published and must provide additional written documentation supporting eligibility for the endorsement.

(ii) Upon receipt of a request for reconsideration, the RA will forward the initial application, the RA's response to that application, the request for reconsideration, and pertinent records to an Application Oversight Board consisting of state directors (or their designees) from each state in the Council's area of jurisdiction. Upon request, a vessel owner may make a personal appearance before the Application Oversight Board.

(iii) If reconsideration by the Application Oversight Board is requested, such request constitutes the applicant's written authorization under section 402(b)(1)(F) of the Magnuson-Stevens Act for the RA to make available to the members of the Application Oversight Board such confidential catch and other records as are pertinent to the matter under reconsideration.

(iv) The Application Oversight Board may only deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly in the applicant's case, based solely on the available record, including documentation submitted by the applicant. The Application Oversight Board may not consider whether an applicant should have been eligible for a vessel permit because of hardship or other factors. The Application Oversight Board members will provide individual recommendations for each application for reconsideration to the RA.

(v) The RA will make a final decision based on the eligibility criteria specified in paragraph (b) of this section and the available record, including documentation submitted by the applicant, and the recommendations and comments from members of the Application Oversight Board. The RA may not consider whether an applicant should have been eligible for a vessel permit because of hardship or other factors. The RA will notify the applicant of the decision and the reason for it, in writing, within 15 days of receiving the recommendations from the Application Oversight Board members. The RA's decision will constitute the final administrative action by NMFS.

(e) *Transfer of an endorsement.* A limited access endorsement for South Atlantic rock shrimp is valid only for the vessel and owner named on the permit/endorsement. To change either the vessel or the owner, an application for transfer must be submitted to the RA. An owner of a vessel with an endorsement may request that the RA transfer the endorsement to another vessel owned by the same entity, to the same vessel owned by another entity, or to another vessel with another owner. A transfer of an endorsement under this paragraph will include the transfer of the vessel's entire catch history of South Atlantic rock shrimp to a new owner; no partial transfers are allowed.

(f) *Renewal.* The RA will not reissue a limited access endorsement for South Atlantic rock shrimp if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(g) *Non-renewal of inactive endorsements.* In addition to the sanctions and denials specified in § 622.4(j)(1), a limited access

endorsement for South Atlantic rock shrimp that is inactive for a period of 4 consecutive calendar years will not be renewed. For the purpose of this paragraph, "inactive" means that the vessel with the endorsement has not landed at least 15,000 lb (6,804 kg) of rock shrimp from the South Atlantic EEZ in a calendar year.

(h) *Reissuance of non-renewed permits.* A permit that is not renewed under paragraph (g) of this section will be made available to a vessel owner randomly selected from a list of owners who had documented landings of rock shrimp from the South Atlantic EEZ prior to 1996 but who did not qualify for an initial limited access endorsement. To be placed on the list, an owner must submit a written request to the RA postmarked or hand-delivered not later than 1 year after the final rule containing this measure is published. The written request must contain documentation of each specific landing claimed, i.e., date, quantity of rock shrimp, name and official number of the harvesting vessel, ownership of the vessel at the time of landing, and name and address of the purchasing dealer. Claimed landings that are not verified by comparison with state trip ticket or dealer records will not be recognized.

6. In § 622.41, the heading of paragraph (g)) is revised and paragraph (j) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Penaeid shrimp in the South Atlantic* * * *

* * * * *

(j) *Rock shrimp in the South Atlantic off Georgia and Florida.* The minimum mesh size for the cod end of a rock shrimp trawl net in the South Atlantic EEZ off Georgia and Florida is 1 7/8 inches (4.8 cm), stretched mesh. This minimum mesh size is required in at least the last 40 meshes forward of the cod end drawstring (tie-off rings), and smaller-mesh bag liners are not allowed. A vessel that has a trawl net on board that does not meet these requirements may not possess a rock shrimp in or from the South Atlantic EEZ off Georgia and Florida.

[FR Doc. 02–22544 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082602B]

New England Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in the Skate Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted through October 15, 2002. The public hearings will begin on September 16, 2002, and end on October 1, 2002. See Public Hearings for specific hearing dates.

ADDRESSES: To obtain copies of the public hearing document or to submit comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. When submitting comments, identify correspondence as "Comments on Draft Skate FMP." Hearings will be held in Massachusetts, New Hampshire, Rhode Island, and Delaware. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. For specific locations, see Public Hearings.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to implement a management program for the Northeast Region's skate complex and its associated fisheries and to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for the Skate FMP. Once it has considered public comments, the Council will approve final management measures and prepare a submission package for NMFS. There will be an additional opportunity for public comment when the Notice of Availability and the proposed rule for the Skate FMP are published in the **Federal Register.**

Major elements of the proposals in this public hearing document include: (1) a Federal permit program for skate fishery participants; (2) modifications to reporting requirements for all federally-permitted vessels and dealers that allow for the collection of skate-specific fishery information; (3) identification of the fishing year and management unit for the skate complex; (4) requirement for a letter of authorization for vessel-to-vessel sales of skates for bait; (5) specification of rebuilding programs for overfished skate species; (6) selection of overfishing definitions for each species of skates; (7) designation of essential fish habitat (EFH) for each life history stage of the skate species; (8) prohibitions on the possession, landing, and/or sale of barndoor, thorny, and smooth skates; (9) development of a monitoring and adjustment mechanism for this plan including a framework adjustment process; (10) skate possession limits for the wing fishery; and (11) identification of management measures in other fisheries that benefit skates. The Council will consider all comments received on these proposals until the end of the comment period on October 15, 2002.

Public Hearings

The dates, times, locations, and telephone numbers of the public hearings are as follows:

Monday, September 16, 2002 at 6 p.m.–Whaling Museum, 18 Johnny Cake Hill, New Bedford, MA 02740; telephone: (508) 997–0046;

Tuesday, September 17, 2002 at 6 p.m.–Narragansett Town Hall, 5th Avenue, Narragansett, RI; telephone: (401) 789–1044;

Friday, September 20, 2002 at 10 a.m.–Provincetown Town Hall, 260 Commercial Street, Provincetown, MA 02657; telephone: (508) 487–7013;

Monday, September 23, 2002, at 6 p.m.–Sheraton Portsmouth, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300; and

Tuesday, October 1, 2002 at 7 p.m.–Holiday Inn Select, 630 Naamans Road, Wilmington, DE 19703; telephone: (302) 791–4603.

Special Accommodations

These hearings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

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

Dated: August 29, 2002.

Virginia M. Fay,

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

[FR Doc. 02–22522 Filed 8–29–02; 4:09 p.m.]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 171
Wednesday, September 4, 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

Agricultural Marketing Service

[PY–00–004]

Voluntary Grade Standards for Rabbits and U.S. Grade C-Quality Poultry

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is changing the voluntary United States Grade Standards for Rabbits. Specifically, the changes will add stewer rabbits to the roaster and mature rabbit class; update and clarify the tolerances for conformation, fleshing, disjointed and broken bones, and freezing; and provide new tolerances for cuts and tears and discolorations. The standards are being updated to provide more specific grade factors for increasing accuracy of grade determination. Additionally, AMS is updating the voluntary United States Grade Standards for Grade C-quality ready-to-cook poultry for consistency with existing U.S. Grade A and B standards.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Contact Rex A. Barnes at (202) 720–3271.

SUPPLEMENTARY INFORMATION: Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, and is offered on a fee-for-service basis. Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

On December 4, 1995, the Voluntary United States Grade Standards for Rabbits and Poultry were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program. AMS continues to administer the voluntary standards, maintaining their existing numbering system, and copies of the official standards are available upon request.

Background and Comments

The U.S. Grade Standards for Rabbits have not been revised since developed on July 15, 1979. Since that time, rabbit producers and processors have requested that AMS clarify the rabbit standards by developing detailed defect tolerances for cuts and tears, discolorations, and freezing defects to reflect developing processing technology.

Additionally, the U.S. Grade Standards for Rabbits and Poultry were last revised on April 29, 1998. AMS is updating the current requirements for U.S. Grade C-quality ready-to-cook poultry to be consistent with requirements for Grades A- and B-quality poultry to facilitate application of the grades by the Agency and the industry.

On August 16, 2001, a Notice announcing the proposed changes was published in the **Federal Register** (66 FR 42988). No comments were received during the 60-day comment period.

The Agency expects the changes to assist in the marketing of graded rabbit and poultry products, and is, therefore, revising the subject standards as proposed. Copies of the revised United States Grade Standards for Poultry and Rabbits are available at www.ams.usda.gov/poultry/standards, or write to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0259, Washington, DC, 20250–0259; fax (202) 690–0941; or phone (202) 720–3506. The changes are summarized as follows:

Stewer Rabbits

AMS is adding stewer rabbits to the class of roaster and mature rabbits and decreasing the age requirement for these rabbits to 6 months of age. This change is consistent with actual rabbit grower and breeding terminology.

Grades A-, B-, and C-quality Rabbits

(1) Information provided for conformation and fleshing has been updated. Current grade criteria describe hip and back characterizations that are not applicable to meat-yielding rabbit breeds today.

(2) Disjointed and broken bone criteria is updated to reflect processing techniques, including the presence of broken bones due to the removal of head and feet. Descriptions are added to indicate points at which a bone may be broken in relation to the presence of meat tissue.

(3) The term "pockmarks" has been removed from the freezing defects section and replaced with "drying out of the outer layer of flesh." AMS has found that the pockmarks traditionally found on skin-on poultry are not applicable to rabbits. The drying out of the outer layer of flesh (freezer burn) is a more descriptive explanation for freezing defects that occur on rabbit products during frozen storage.

(4) New tolerances are established for cuts and tears. Current standards do not provide for hand and mechanical cuts needed to start the hide or pelt removal process. Processors have said that since the hide or pelt must be removed from all rabbits, a provision for the normal processing cuts is needed. AMS agrees and worked with the industry to develop a tolerance for the cuts and tears to reflect industry-processing techniques.

(5) New discoloration tolerances include definitions to indicate whether slight, lightly shaded, or moderately shaded discolorations, blood clots, or incomplete bleeding will be allowed for each U.S. grade. Current standards do not indicate the dimensions for discolorations making the grade establishment of rabbit carcasses and parts more difficult.

U.S. Grade C-quality Standards for Poultry

AMS is clearly defining current U.S. Grade C-quality requirements in the same format that is used for Grades A- and B-quality poultry. Subject headings, text, and tables are added for poultry conformation, fleshing, fat covering, defeathering, exposed flesh, discolorations, trimming, and freezing defects.

The current C-quality requirements have been utilized by AMS grading staff

for many years, and are already defined and printed in the Grade C-quality standard table and the Poultry Graders Handbook. No new requirements are imposed on industry with this format change.

Other miscellaneous changes are being made to remove obsolete material, clarify, and simplify the standards.

Authority: 7 U.S.C. 1621.

Dated: August 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–22521 Filed 9–3–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for an Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to obtain information regarding transportation brokerage services needed to meet domestic and export food assistance program needs.

This information collection will allow CCC to determine the availability of brokers to meet CCC's transportation needs. This agreement supplements the Standard Rules Tender (SRT) Governing Motor Carrier Transportation, and/or Standard Operating Agreement (SOA) Governing Intermodal Transportation which are currently approved.

DATES: Comments on this notice must be received on or before November 4, 2002 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648; e-mail *gmborchert@kcc.fsa.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Brokerage Agreement for the Transportation of USDA Commodities.

OMB Control Number: 0560-New.

Type of Request: Regular submission for a new collection.

Abstract: CCC, through the Kansas City Commodity Office (KCCO), solicits bids from brokers for the purpose of providing transportation brokerage services of agricultural commodities. Only approved Intermodal Marketing Companies (IMC) will be authorized to provide rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service, that CCC hires, to provide program transportation needs. Only approved Motor Carriers will be authorized to provide over the road trucking service, that CCC hires, to meet domestic and export program needs. Intermodal Marketing Companies and Motor Carriers that choose to broker loads with the KCCO/Export Operations Division (EOD) are required to complete and submit the Brokerage Agreement for the Transportation of USDA Commodities form. This form is filled out one time only. EOD is collecting information to determine the brokers that are available to meet CCC requirements for hauling agricultural products for CCC.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Brokers.

Respondents: 113.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 113 hours.

Proposed topics for comment include: (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 collected; or (d) ways to minimize the burden of the collection of the 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. Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 6501 Beacon Drive, Kansas City, Missouri 64133–4676, telephone (816) 926–6509, fax (816) 926–1648. All comments will become a matter of public record.

Signed at Washington, DC, on August 23, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–22520 Filed 9–3–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on October 1, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on October 1, 2002 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. e-mail: *lchapman@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting will focus on a discussion of the strategy for requesting and selecting Title II projects using 2002 and 2003 funds. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: August 27, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–22462 Filed 9–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on September 23, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on September 23, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093, Phone: (530) 623–1709. e-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting fuels and roads/restoration projects for Title II funding. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: August 27, 2002.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 02–22463 Filed 9–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. The National Income and Product Accounts (NIPA) annual revision, 2. The upcoming NIPA comprehensive revision, and 3. Discussion of topics for future agendas.

DATES: On Friday, November 15, 2002, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at BEA, 2nd floor, Conference Room A&B, 1441 L Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Verna Learnard of BEA at 202–606–9690 in advance. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Verna Learnard at 202–606–9690.

SUPPLEMENTARY INFORMATION: The Committee was established on September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international economic accounts. This will be the Committee's sixth meeting.

Dated: August 26, 2002.

Rosemary D. Marcuss,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. 02–22513 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: September 30–October 1, 2002. On September 30, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On October 1, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone 301–763–2070, TTY 301–457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census and the development of the American Community Survey and other related programs will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 reengineered decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer.

Dated: August 28, 2002.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 02–22514 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Tetrabal Corporation, Inc., and Ihsan Medhat "Sammy" Elashi, also known as I. Ash, Haydee Herrera and Abdulah Al Nasser and doing business as Kayali Corp.; Maysoon Al Kayali, Mynet.Net Corp.; Renewal of Order of Temporarily Denying Export Privileges

In the matter of: Tetrabal Corporation, Inc., 605 Trail Lake Drive, Richardson, Texas 75081, and Ihsan Medhat "Sammy" Elashi, also known as: I. Ash, Haydee Herrera, and Abdulah Al Nasser, and doing business as Kayali Corp., 605 Trail Lake Drive, Richardson, Texas 75081; Respondents. Maysoon Al Kayali, 605 Trail Lake Drive, Richardson, Texas 75081; Mynet.Net Corp., 605 Trail Lake Drive, Richardson, Texas 75081; Related persons.

Through the Office of Export Enforcement ("OEE"), the Bureau of Industry and Security ("BIS"), United States Department of Commerce, has asked me to renew in part the order pursuant to section 766.24 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("EAR" or "Regulations"),[1] temporarily denying all United States export privileges to Infocom Corporation, Inc., Tetrabal Corporation, Inc. ("Tetrabal"), and Ihsan Medhat "Sammy" Elashi ("Ihsan Elashi") that was issued on September 6, 2001, and renewed and modified on March 4, 2002. BIS has asked that I continue the order as to Tetrabal and Ihsan Elashi and continue to name Maysoon Al Kayali and Mynet.Net Corp as related persons.[2]

In its request BIS states that, based upon the evidence previously adduced and events occurring since the March 4 renewal of the order, BIS believes that Tetrabal and Ihsan Elashi have violated the Regulations by shipping and attempting to ship goods to Libya and Syria without obtaining the necessary authorizations from BIS, and further violated the Regulations by shipping goods in contravention of the original denial order. After the September 6 order, Ihsan Elashi made at least 10 exports of computer equipment that violated the order. Maysoon Al Kayali assisted Ihsan Elashi in making some of these exports in violation of the denial order. Additionally, Ihsan Elashi used Mynet.Net as the exporter for at least one of the shipments. In several of these exports, Ihsan Elashi used concealment and subterfuge in an attempt to hide his exports which violated the terms of the September 6 order.

Since the issuance of the March 4 order, Ihsan Elashi has pled guilty to violating the September 6 order. On June 17, in U.S. District Court in Dallas, Texas, Ihsan Elashi pled guilty to charges of violating the TDO, access device fraud, money laundering, and wire fraud. Superseding Indictment, CR. NO. 3:02–CR–033–L, NDTX, returned Feb. 7, 2002 ("Indictment"); Plea Agreement, CR. NO. 3:02–CR–033–L, filed Jun. 17, 2002 ("Plea Agreement"). The export control charge that Ihsan Elashi pled guilty to alleged that, on September 22, 2001, he and Tetrabal exported computers and monitors to Saudi Arabia while subject to the TDO in violation of the International Emergency Economic Powers Act, 50 U.S.C. 1702 and 1705(b). Indictment at page 4. Sentencing is set for September 9. Currently, Ihsan Elashi is free on bail.

The Assistant Secretary for Export Enforcement previously found that TDO was necessary and consistent with the public interest in order to preclude future violations of the Regulations. Temporary Denial Order of September 6, 2001, 66 FR 47630, 47631 (Sept. 13, 2001). The acting Assistant Secretary made the same finding upon renewal of the order. Temporary Denial Order of March 4, 2002, 67 FR 10890, 10891 (Sept. 13, 2001). I find that the need for the TDO continues as to Ihsan Elashi and Tetrabal. Ihsan Elashi and his firm, Tetrabal, committed repeated violations of the Regulations that were deliberate and covert, and they actively sought to engage in further export transactions that, given the nature of the items shipped, could go undetected. *Id.* Ihsan Elashi has pled guilty to a criminal charge of violating the original TDO and faces the possibility of a lengthy term of imprisonment.[3] The risk that he and his firm, Tetrabal, would violate the Regulations continues. It is necessary to give notice to companies in the United States and abroad that they should cease dealing with the respondents in export transactions involving U.S.-origin items. The need for the continuation of the TDO as to Ihsan Elashi and Tetrabal as denied persons is also established by the flagrant violations of the order that have occurred more recently and by Ihsan Elashi's continuing ability to violate the Regulations while free on bail pending sentencing.

Accordingly, I am renewing this order with the amendments requested by BIS because I have concluded that a TDO is necessary, in the public interest, to prevent an imminent violation of the Regulations.

It is therefore ordered:

First, that Tetrabal Corporation, Inc., 605 Trail Lake Drive, Richardson, Texas 75081 and Ihsan Medhat "Sammy" Elashi, also known as I, Ash, Haydee Herrera, and Abdulah Al Nasser, and doing business as Kayali Corp., 605 Trail Lake Drive, Richardson, Texas 75081 (collectively, "the denied persons"), and the following persons subject to the order by their relationship to the denied persons, Maysoon, Al Kayali and Mynet.Net Corp, both at 605 Trail Lake Drive, Richardson, Texas 75081 ("the related persons") (together, the denied persons and the related persons are "persons subject to this order") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the Ear, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Ear, or in any other activity subject to the Ear.

Second, that no person may, directly or indirectly, do any of the following:

[1] The Regulations were issued pursuant to the Export Administration Act of 1979 ("Act"), 50 U.S.C. app. 2401–2420 (1994 & Supp. IV 1998), as reauthorized by Act of November 13, 2000, Pub. L. No. 106–508, 114 Stat. 2360. The Act lapsed on August 20, 2001. Pursuant to the International Emergency Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. IV 1998)), the President, through Executive Order 13222 of August 17, 2001 (66 FR 44025 (August 22, 2001)) as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in force.

[2] BIS has indicated that further investigation has revealed that Abdulah Al Nasser is a name that Ihsan Elashi has used to conduct export business but that the Abdulah Al Nasser in question is not related to Ihsan Elashi. Consequently, Adbulah Al Nasser is no longer a related person but the public is advised that Ihsan Elashi has used that name.

[3] According to a June 19, 2002 press release of the United States Attorney for the Northern District of Texas, Ihsan Elashi faces a maximum penalty of 50 years imprisonment, a fine of $1.25 million or twice the monetary gain to the defendant or twice the financial loss to the victims, as well as a $400 mandatory special assessment on the charges to which he pled guilty.

A. Export or reexport to or on behalf of a person subject to this order any item subject to the Ear;

B. Take any action that facilitates that acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the Ear that has been or will be exported from the United States including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a person subject to this order of any item subject to the Ear that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any item subject to the Ear with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Ear that has been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, of whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the Ear that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, in addition to the related persons named above, after notice and opportunity for comment as provided in section 766.23 of the Ear, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the Ear where the only items involved that are subject to the Ear are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of section 766.24(e) of the Regulations, the denied persons may, at any time appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022. A related person may appeal to the Administrative Law Judge at the aforesaid address in accordance with the provisions of section 766.23(c) of the Regulations.

This Order is effective on August 30, 2002 and shall remain in effect for 180 days.

In accordance with the provisions of section 766.24(d) of the Regulations, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Tetrabal, or Ihsan Elashi may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on Tetrabal and Ihsan Elashi and each related person and shall be published in the **Federal Register.**

Entered this 28th day of August, 2002.

Michael J. Garcia,

Assistant Secretary for Export Enforcement.

[FR Doc. 02–22549 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–827

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Notice of Intent to Rescind Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary Notice of Intent to Rescind Administrative Review.

SUMMARY: On October 1, 2001, we published the notice of initiation of this antidumping duty review with respect to Tubos de Acero de Mexico, S.A. ("TAMSA"). See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 66 FR 49924 (October 1, 2001). We have preliminarily determined that the review of TAMSA should be rescinded.

EFFECTIVE DATE: September 4, 2002.

FOR FURTHER INFORMATION CONTACT: James Terpstra or David Salkeld, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations refer to the regulations codified at 19 CFR part 351 (2001).

Case History

On August 1, 2001, the Department of Commerce ("the Department") published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe ("SLP") from Mexico, for the period February 4, 2000 through July 31, 2001 (66 FR 39729). On August 31, 2001, we received a request from the petitioner[1] to review TAMSA. On October 1, 2001, we published the notice of initiation of this antidumping duty administrative review with respect to TAMSA. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001).

TAMSA submitted an October 4, 2001 letter certifying that neither TAMSA, nor its U.S. affiliate, Siderca Corp., entered for consumption, or sold, exported, or shipped for entry for consumption in the United States subject merchandise during the period of review ("POR"). On May 8, 2002, we published a notice extending the preliminary results until no later than June 3, 2002. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 30873 (May 8, 2002). On May 29, 2002, petitioner in this case made a submission arguing that the review should not be rescinded. Because it was not practicable to address the issues raised by June 3, 2002, we postponed the preliminary determination an additional 90 days, until September 3, 2002, in accordance with 751(a)((3)(A) of the Act. *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 39349 (June 7, 2002).

[1] The petitioner is United States Steel Corporation.

Scope of the Review

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials ("ASTM") A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and the American Petroleum Institute ("API") 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333; ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods ("OCTG"), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A–335 specification unless they are used in an application that would normally utilize ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, and API 5L specifications.

D. Line and riser pipe for deepwater application, i.e., line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, "API 5L").

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A–335 specification is being used in an A–106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise subject to this scope is dispositive.

Rescission of First Administrative Review

TAMSA submitted an October 4, 2001 letter certifying that neither TAMSA, nor its U.S. affiliate, Siderca Corp., entered for consumption, or sold, exported, or shipped for entry for consumption in the United States subject merchandise during the period of review ("POR"). *See Memorandum from James Terpstra through Melissa Skinner to Holly A. Kuga, "Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Mexico: Preliminary Notice of Intent to Rescind Administrative Review,"* (Preliminary Rescission Memo) dated September 3, 2002, located in the case file in the Central Records Unit ("CRU"), main Commerce Building, room B–099. We conducted a shipment data query on SLP produced by TAMSA during the POR. To further confirm TAMSA's claim that it did not export subject merchandise to the United States during the POR, we requested entry documentation from Customs related to 14 entries. *See* Memorandum from Geoffrey Craig to Lee Kramer, dated October 10, 2001, in the CRU.

On January 17, 2002, we stated that based on our shipment data query and examination of entry documents, we should treat TAMSA as a non-shipper and, in accordance with section 351.213(d)(3) of the Department's regulations, rescind this review. *See Memorandum from James Terpstra through Melissa Skinner to the File, "Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Mexico: Rescission of First Administrative Review*, dated January 17, 2002, on file in the CRU. We allowed parties to comment on our intent to rescind the review. *Id.* On January 28, 2002, petitioner submitted a letter objecting to the Department's intent to rescind because the Department did not disclose the documentation or methodology it used to reach its initial decision. Petitioner also asserted that the Department must investigate those entries of subject merchandise that fell within the exclusion clause of the scope (*i.e.*, SLP used for deepwater applications) and demonstrate that those entries were, in fact, used in a deepwater application.

TAMSA responded in a February 1, 2002 letter stating that the Department need not require that exporters and U.S. importers prove the end use of the imported product. TAMSA cites the Department's final determination in the antidumping duty investigation, which states that "{T}he Department will not instruct Customs to require end-use certificates until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application." *Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Mexico*, 65 FR 39358, 39359 (June 26, 2000)(Issues and Decision Memorandum, Scope of Investigation). TAMSA also noted that Customs is capable of making informed decisions in terms of evaluating whether an entry will indeed be used for deepwater applications.

On March 11, 2002, we asked TAMSA to elaborate and provide documentation on one of the 14 entries during the POR that we requested from Customs because the entry was subject to antidumping duties. Based on the fact that we were aware of at least one entry of subject merchandise, we issued a sales questionnaire to TAMSA on March 11, 2002.

On March 25, 2002, TAMSA placed on the record documentation related to this entry showing that the entry was for testing purposes. For further discussion, *see* the Preliminary Rescission Memo. Although TAMSA did not formally respond to the questionnaire, its March 25, 2002, letter essentially reiterated TAMSA's earlier statement that it did not have any shipments of subject merchandise because the sole entry of subject merchandise was for testing purposes and did not meet other criteria that would be necessary for the entry to be deemed a sale.

Consistent with the Court of Appeals for the Federal Circuit's decision in *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997), we determine that TAMSA's sole entry does not constitute a "sale" for the purposes of our proceeding. With respect to the other 13 entries, we disagree with petitioner's contention that the burden is on the Department to prove that entries excluded from the order (*e.g.*, SLP used for deepwater application) are used for that purpose. As stated in the scope, until petitioner presents evidence suggesting that entries are being used in a covered application, we will not require an end-use certificate. Petitioner has not provided any evidence to suggest that the entries are being used in a covered application. Thus, there were no sales of subject merchandise by TAMSA during the POR.

Further, we have satisfied petitioner's request that all documentation related to our analysis be placed on the record. On April 25, 2002, we asked TAMSA to place on the record the remaining 13 entry documents that were collected from Customs and analyzed by the Department. On April 29, 2002, TAMSA submitted the 13 entry documents. In comments submitted on May 29, 2002, petitioner argued that the documents did not sufficiently show that the entries were used in a deepwater application.

Based on our shipment data query and examination of entry documents, we are treating TAMSA as a non-shipper for the purpose of this review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, and consistent with our practice, we preliminarily determine to rescind this review. *See e.g., Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review*, 65 FR 12209 (March 8, 2000); *Persulfates From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 18963 (April 10, 2000).

An interested party may request a hearing within 30 days of publication of

this preliminary notice. *See* 19 CFR 351.309. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of this preliminary notice. Rebuttal briefs, limited to issues raised in such briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of this preliminary notice.

This notice is in accordance with section 751(a)(1) of the Act and section 351.213(d) of the Department's regulations.

Dated: August 27, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–22537 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501; C–507–601]

Certain In-Shell Pistachios (C–507–501) and Certain Roasted In-Shell Pistachios (C–507–601) From the Islamic Republic of Iran: Preliminary Results of New Shipper Countervailing Duty Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty new shipper reviews.

SUMMARY: The Department of Commerce (the Department) is conducting new shipper countervailing duty reviews of the countervailing duty orders on certain in-shell pistachios and certain roasted in-shell pistachios from the Islamic Republic of Iran (Iran) for the period October 1, 2000, through September 30, 2001. If the *Final Results* remain the same as the *Preliminary Results* of these new shipper reviews, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the "Preliminary Results of New Shipper Reviews" section of this notice. Interested parties are invited to comment on these *Preliminary Results*. (*See* the "Public Comment" section of this notice).

EFFECTIVE DATE: September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Case History

On March 11, 1986, the Department published in the **Federal Register** the countervailing duty order on certain in-shell pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-Shell Pistachios from Iran,* 51 FR 8344 (March 11, 1986) (*In-Shell Pistachios*). On March 1, 2001, the Department published a notice of "Opportunity to Request an Administrative Review" (66 FR 13283). On September 18, 2001, we received a timely request for a new shipper review from Tehran Negah-Nima Trading Company (Nima), the respondent company in the proceeding.[1] On November 7, 2001, we initiated a new shipper review covering the period October 1, 2000, through September 30, 2001 (66 FR 56277).

On October 7, 1986, the Department published in the **Federal Register** the countervailing duty order on certain roasted in-shell pistachios from Iran. *See Final Affirmative Countervailing Determination and Countervailing Duty Order: Roasted In-Shell Pistachios from Iran,* 51 FR 35679 (October 7, 1986) (*Roasted In-Shell Pistachios*). On October 1, 2001, the Department published a notice of "Opportunity to Request an Administrative Review" (66 FR 49923) of this countervailing duty order. We received a timely request for a new shipper review from Nima on September 18, 2001. On November 27, 2001, we initiated a review covering the period October 1, 2000 through September 30, 2001 (66 FR 59235).

On January 18, 2002, we issued our initial questionnaire to the Government of Iran (GOI) and Nima, covering both new shipper reviews of in-shell and roasted in-shell pistachio nuts from Iran. On May 15, 2002, we issued supplemental questionnaires to the GOI and Nima. On July 26, 2002, we issued a second supplemental questionnaire to Nima. On August 6, 2002, we issued a second supplemental questionnaire to the GOI. On August 7, 2002, we issued additional follow-up questions regarding the second supplemental questionnaire issued to Nima.

On April 24, 2002, we extended the period for the completion of the *Preliminary Results* pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act). *See Certain In-Shell Pistachios from Iran and Certain In-Shell Roasted Pistachios from Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Reviews,* 67 FR 20093 (April 24, 2002).

In accordance with 19 CFR 351.214, these new shipper reviews cover only those producers or exporters for which a review was specifically requested. Accordingly, these new shipper reviews cover Nima and nine programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA), effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (2001).

New Subsidy Allegations Alleged by Petitioners

On December 11, 2001, petitioners submitted new subsidy allegations.[2] On January 4, 2002, petitioners submitted documentation in support of their new subsidy allegations. Upon review of petitioners' new subsidy allegations, we initiated an investigation on two additional programs allegedly operated by the GOI: Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods and a Quality Improvement Program for Dried Fruit Exports. For more information, see the May 8, 2002, New Subsidies Allegations Memorandum from the team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, Import Administration, a public document on file in room B–099 of the Main Commerce Building.

[1] The use of the name Nima refers to Tehran Negah-Nima Trading Company as well as its grower, Maghsoudi Farms, and its supplier, Fallah Pistachio.

[2] Petitioners are composed of members of the California Pistachio Commission.

Scope of Reviews

In-Shell Pistachios

The product covered by this new shipper review is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

Roasted In-Shell Pistachios

The product covered by this new shipper review is all roasted in-shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the HTSUS under item number 0802.50.20.00. The written description of the scope of this proceeding is dispositive.

Analysis of Programs

Programs Preliminarily Determined To Be Not Used

Based on the information supplied by Nima, we preliminarily determine that the programs listed below were not used during the POR. For further discussion of the Export Certificate Voucher Program, see the August 27, 2002, memorandum from the team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, Import Administration, a public document, which is on file in room B–099 of the Central Records Unit located in the Main Commerce building.

A. *Export Certificate Voucher Program*
B. *Price Supports and/or Guaranteed Purchase of All Production*
C. *Provision of Fertilizer and Machinery*
D. *Provision of GOI Credit*
E. *Tax Exemptions*
F. *Provision of Water and Irrigation*
G. *Technical Assistance from the GOI*
H. *Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods*
I. *Program to Improve Quality of Exports of Dried Fruit*

Preliminary Results of New Shipper Reviews

In accordance with section 751(a)(2)(B)(i) of the Act, we determined an individual rate for each manufacturer of the subject merchandise participating in these new shipper reviews. We preliminarily determine the total estimated net countervailable subsidy rates to be:

IN-SHELL PISTACHIOS

Producer/exporter	Net subsidy rate
Tehran Negah-Nima Trading Company.	0.00 percent *ad valorem*.

ROASTED IN-SHELL PISTACHIOS

Producer/exporter	Net subsidy rate
Tehran Negah-Nima Trading Company.	0.00 percent *ad valorem*.

As provided for in the Act and 19 CFR 351.106(c)(1) of the Department's Regulations, any rate less than 0.5 percent ad *valorem* in a new shipper review is *de minimis*. Accordingly, if the *Final Results* of these new shipper reviews remain the same as these *Preliminary Results*, no customs duties will be assessed. The Department will instruct Customs to liquidate without regard to countervailing duties, shipments of the subject merchandise (*e.g.*, in-shell and roasted in-shell pistachios from Iran) for Nima entered, or withdrawn from warehouse, for consumption on or after October 1, 2000 and on or before September 30, 2001. Also, the cash deposit rates will be set at zero for this company. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of review.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these *Preliminary Results*. Any such hearing is tentatively scheduled to be held 37 days from the date of publication of these *Preliminary Results*, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Parties may file case briefs pursuant to 19 CFR 351.309(c)(ii). Six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 30 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Parties may also submit rebuttal briefs pursuant to 19 CFR 351.309(d). Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Further written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

These determinations are issued and published pursuant to sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: August 27, 2002.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–22536 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.082802E]

Marine Mammals; File No. 939–1682

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Michael Moore, Ph.D., Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, has applied in due form for a permit to collect, import and export parts from all cetaceans and pinniped species (excluding walrus) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before October 4, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to examine parameters that affect the health of marine mammals in terms of body condition and exposure to, and effects of, hydrocarbon contaminants. The applicant requests opportunistic collection of samples from deceased stranded marine mammals, subsequent export/re-import of those samples and authorization to import/re-export marine mammal parts taken from captive stocks, direct and indirect take in fisheries, found dead at sea or beached, found dead by natural causes or taken under a permit by biopsy. No animals will be deliberately killed to fulfill samples requested by the applicant.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 29, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–22545 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice; extension of solicitation period for applications for NTIS Advisory Board.

SUMMARY: The National Technical Information Service (NTIS) is extending the solicitation period for seeking qualified Candidates to serve as members of its Advisory Board (Board). The Board will meet semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than December 3, 2002.

ADDRESSES: Applications should be submitted to Ronald E. Lawson, Director, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Walter L. Finch, (703) 605–6507 or via e-mail at *wfinch@ntis.gov.*

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) issued a Federal Register notice on May 30, 2002 (67 FR 37778) seeking five qualified candidates to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to Section 3704b(c) of Title 15, United States Code. It will meet semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates were given until August 28, 2002 to express their interest by submitting a resume and a statement explaining their interest in serving on the Board.

In order to widen the pool of candidates and to provide candidates greater time to submit their expression of interest, NTIS is extending the solicitation period until December 3, 2002.

Dated: August 27, 2002.

Ronald E. Lawson,

Director.

[FR Doc. 02–22548 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Sublimit for Certain Cotton Textiles Produced or Manufactured in the People's Republic of China

August 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a sublimit.

EFFECTIVE DATE: September 4, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current sublimit for Category 326 is being increased for carryforward. The limit for Categories 317/326 does not change.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 4, 2002, you are directed to increase the sublimit for Category 326, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Sublevel in Group I 317/326	24,971,671 square meters of which not more than 4,914,073 square meters shall be in Category 326.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–22422 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Colombia

August 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Issuing a directive to the Commissioner of Customs increasing the limit for Category 443 for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 57044, published on November 14, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 2002

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 5, 2002, you are directed to increase the current limit for Category 443 to 154,453 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–22424 Filed 9–3–02; 8:45 a.m.

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Romania

August 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 5, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63033, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC

20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on September 5, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	4,883,108 square meters.
435	18,001 dozen.
444	2,329 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–22425 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on the Elimination of the Paper Visa Requirement for Certain Textile Products Exported from Korea

August 28, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1945, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to a textile visa arrangement between the United States and the Republic of Korea, certain textiles and textile products exported from Korea must be accompanied by a visa issued by the Government of the Republic of Korea in order to be imported in the United States. (See 56 FR 18574, published on April 23, 1991 and 61 FR 69082, published on December 31, 1996).

The Electronic Visa Information System (ELVIS) allows certain foreign governments to electronically transfer textile and textile product shipment information to the U.S. Customs Service and thereby issue a visa electronically. On December 31, 1996 (61 FR 69082), CITA announced that the Government of the Republic of Korea would begin implementation of a dual system, issuing both paper and electronic visas.

As a result of the successful use of the dual visa system, preparations are under way to move beyond the current dual system to the paperless ELVIS system with the Republic of Korea. Exempt goods, for example cottage industry handwoven and handloomed fabrics, handmade articles and garments of handwoven and handloomed fabrics, and traditional folklore handicraft products, would still require an exempt certification issued by the Government of the Republic of Korea.

CITA is soliciting public comments on the elimination of the paper visa requirement for the Republic of Korea and utilization of the ELVIS system exclusively. Comments must be received on or before November 4, 2002. Comments may be mailed to James C. Leonard, III, Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

The solicitation of comments is not a waiver in any respect of the exemption of the rulemaking provision contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a foreign affairs function of the United States.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–22423 Filed 9–3–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forth coming Meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: September 24, 2002.

ADDRESSES: The Academy for Educational Development, 1875 Connecticut Avenue NW., Suite 900, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rossyln PO Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *collere@ndu.edu*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: August 28, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22418 Filed 9–3–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: September 17, 2002 from 0800 a.m. to 1700 p.m. and September 18, 2002 from 0800 a.m. to 1430 p.m.

ADDRESSES: Sea Crest Oceanfront Resort & Conference Center, 350 Quaker Road, North Falmouth, MA 02556–2943.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Banks, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

SUPPLEMENTARY INFORMATION:

Matters to be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend,

appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: August 27, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–22417 Filed 9–3–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

List of Approved "Ability-to-Benefit" Tests and Passing Scores

AGENCY: Department of Education.

ACTION: Notice to remove the American College Testing Assessment test from the list of approved "ability-to-benefit" tests.

SUMMARY: The Secretary gives notice that the American College Testing (ACT) Assessment: (English and Math) test is being withdrawn, at the request of the test publisher, from the list of approved "ability-to-benefit" (ATB) tests. The ACT Assessment test consists of a test of English and a test of Math.

With this notice, the Secretary is amending the list of approved ATB tests and passing scores that were published in the **Federal Register** on April 19, 2002, under the authority of section 484(d) of the Higher Education Act of 1965, as amended (HEA) and the regulations the Secretary promulgated to implement that section in 34 CFR part 668, subpart J, by removing the ACT Assessment test and its passing scores. An institution will no longer be permitted to use this test to determine if a student who does not have a high school diploma or its recognized equivalent, is eligible to receive funds under any title IV, HEA program. The title IV, HEA programs include the Federal Pell Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, and the Leveraging Educational Assistance Partnership (LEAP) programs.

Transition

Institutions are allowed to continue to make ATB eligibility determinations using the tests and passing scores that were listed in the April 19, 2002 **Federal Register**, including the American College Testing (ACT) Assessment: (English and Math) until January 2, 2003. After that date only the tests and passing scores included in this notice may be used.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue, SW., (830 Union Center Plaza), Washington, DC 20202–5345. Telephone: (202) 377–4050.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On October 25, 1996, we published a notice in the **Federal Register** (61 FR 55542–55543) that provided a list of eight "ability-to-benefit" tests. These tests were approved under section 484(d) of the HEA and the regulations that were promulgated to implement that section in 34 CFR part 668, subpart J. The notice also included approved passing scores for each of the approved tests.

In a notice published in the **Federal Register** on October 27, 1998, (63 FR 57540–57541), we added the American College Testing (ACT) Assessment to the list of approved ability-to-benefit tests.

In a notice published in the **Federal Register** on May 5, 1999, (64 FR 24246–24247), we indicated that the nine approved ATB tests could be used for testing students with disabilities if the tests are given in a manner that is consistent with the applicable requirements of section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

In a notice on January 12, 2001 (66 FR 2892–2893), we approved the Combined English Language Skills Assessment (CELSA) test as an English as a Second Language (ESL) test under 34 CFR 668.153(a)(9) and (a)(4).

Additionally, in a notice published in the **Federal Register** on April 19, 2002, (67 FR 19430–19432), we extended the Secretary's approval of seven ATB tests for five years and at the request of the test publisher removed the Test of Adult Basic Education (TABE)—Forms 5 and 6, Level A as an approved ATB test.

List of Approved Tests and Passing Scores: For the convenience of all interested parties, we have listed the eight ATB tests and passing scores.

1. ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2, C2, D2 and E2.

Passing Scores: The approved passing scores on this test are as follows: Reading (35), Writing (35), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243.

Contact: Dr. John D. Roth. Telephone: (319) 337–1030. Fax: (319) 337–1790.

2. Career Programs Assessment (CPAT) Basic Skills Subtests (Language Usage, Reading and Numerical)—Forms B and C.

Passing Scores: The approved passing scores on this test are as follows: Language Usage (42), Reading (43), and Numerical (41).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243.

Contact: Dr. John D. Roth. Telephone: (319) 337–1030. Fax: (319) 337–1790.

3. COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement.

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (25), Reading (62), and Writing (32).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243.

Contact: Dr. John D. Roth. Telephone: (319) 337–1030. Fax: (319) 337–1790.

4. Combined English Language Skills Assessment (CELSA), Forms 1 and 2.

Passing Scores: The approved passing scores on this test are as follows: CELSA Form 1 (90) and CELSA Form 2 (90).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Association of Classroom Teacher Testers (ACTT), 1187 Coast Village Road, PMB 378, Montecito, California 93108–2794.

Contact: Pablo Buckelew. Telephone: (805) 569–0734. Fax: (805) 569–0004.

5. Computerized Placement Tests (CPTs)/Accuplacer (Reading Comprehension, Sentence Skills, and Arithmetic).

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (55), Sentence Skills (60), and Arithmetic (34).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992.

Contact: Ms. Suzanne Murphy. Telephone: (405) 842–9891. Fax: (405) 842–9894.

6. Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992.

Contact: Ms. Suzanne Murphy. Telephone: (405) 842–9891. Fax: (405) 842–9894.

7. Test of Adult Basic Education (TABE): (Reading, Total Mathematics, Language)—Forms 7 and 8, Level A, Complete Battery and Survey Versions.

Passing Scores: The approved passing scores on this test are as follows: Reading (559), Total Mathematics (562), Language (545).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill, 20 Ryan Ranch Road, Monterey, California 93940–5703.

Contact: Ms. Veronika Guerrero. Telephone: (831) 393–6416. Fax: (831) 393–7128.

8. Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1795 N. Butterfield Road, Libertyville, IL 60048.

Contact: Mr. Victor S. Artese. Telephone: (800) 323–3742.

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. 1091(d).

Dated: August 28, 2002.

Candace M. Kane,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–22547 Filed 9–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–006 and EL01–68–021]

California Independent System Operator Corporation; Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Notice of Filing

August 27, 2002.

Take notice that on August 21, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's July 17, 2002 Order, 100 FERC ¶ 61,060(2002).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 11, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22474 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–065]

Columbia Gulf Transmission Company; Notice of Compliance Filing

August 28, 2002.

Take notice that on August 22, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet:

Effective July 1, 2002:
1st Revised Second Revised Sheet No. 316.
Effective July 5, 2002:
Substitute Third Revised Sheet No. 316.
Effective August 2, 2002:
Substitute Fourth Revised Sheet No. 316.

Columbia Gulf states that on July 18, 2002, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement with Conoco, Inc. (Conoco) in Docket No. RP96–389–058. Also, on July 19, 2002 and July 23, 2002, Columbia Gulf made similar filings with the Commission seeking approval of Rate Schedule FTS–1 negotiated rate agreements with Aquila Merchant Services (Aquila), and Reliant Energy Services (Reliant), in Docket Nos. RP96–389–059 and RP96–389–061, respectively. On August 12, 2002, the Commission issued orders approving the Conoco and Aquila service agreements effective July 1, 2002. On August 15, 2002, the Commission approved the Reliant service agreement with an effective date of July 1, 2002. In the orders, the Commission directed Columbia Gulf to file a tariff sheet identifying the agreements as non-conforming agreements in compliance with section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreements in its Volume No. 1 tariff. The Substitute

Third and Fourth Revised Sheets No. 316 are being filed to reflect the July 1, 2002 effective dates of the Conoco, Aquila, and Reliant agreements.

Columbia Gulf states that copies of its filing has been mailed to each of the parties listed on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22485 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 28, 2002.

Take notice that on August 23, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Second Revised Sheet No. 284, Third Revised Sheet No. 285, Original Sheet No. 285A, and Fifth Revised Sheet No. 289 to be effective on September 23, 2002.

Northern is hereby updating and clarifying Section 46 (Creditworthiness) and Section 47 (Capacity Release) of its tariff due to increased rating agency downgrades to many energy companies over the past twelve months. Such modifications are intended to ensure that Northern and its shippers are adequately protected against the potential for shipper default in order to minimize potential exposure.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22475 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–488–001 and RP01–50–002]

Portland Natural Gas Transmission System; Notice of Compliance Filing

August 28, 2002.

Take notice that on August 22, 2002, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

PNGTS states that the filing is being made in compliance with the Commission's July 23, 2002 Order on PNGTS's August 15, 2000 Order No. 637 compliance filing.

PNGTS states that copies of its filing are being served on all jurisdictional customers, applicable state commissions, and to parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22486 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RP02–357–001]

Questar Pipeline Company; Notice of Compliance Filing

August 28, 2002.

Take notice that on August 5, 2002, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Seventh Revised Sheet No. 172 and Original Sheet No. 172A, effective July 7, 2002.

Questar states that the filing is being made in compliance with the Commission's July 5, 2002 order in Docket No. RP02–357–000.

Questar states that the tariff sheets reflect the inclusion of a provision to credit Rate Schedule PAL1 revenues to Rate Schedule FSS customer to the extent that PAL1 daily charge revenues exceed the cost of providing the PAL1

service. It is proposed that each 12-month period beginning February 1, 2002, Questar states that it will determine the amount of daily charge revenues from Rate Schedule PAL1 and will pay or credit the FSS customers 75% of the PAL1 daily charge revenues that exceeded the $1,341,523 cost of service determined in Docket No. RP02–357–000.

Questar states that a copy of this filing has been served upon all parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 4, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22487 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–385–001]

Questar Southern Trails Pipeline Company; Notice of Compliance Filing

August 28, 2002.

Take notice that on August 15, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No 4, to be effective June 25, 2002.

Southern Trails states that the filing is being made in compliance with the Commission's letter order dated July 31, 2002, in Docket No. RP02–385–000.

On July 1, 2002, Southern Trails filed a pro forma tariff sheet and offer of settlement revising its transportation rates to reflect a net cost of service reduction associated with revised independent deprecation rates for its various classes of assets. The effect would be to reduce the firm reservation rate under Rate Schedule FT from $11.44244/Dth to $11.22231/Dth and the interruptible transportation rate under Rate Schedule IT from $0.38586/Dth to $0.37937/Dth.

Southern Trails states that a copy of the filing has been served upon its customers, the Public Service Commission of Utah, New Mexico, Arizona and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before September 4, 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 208–1659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22488 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–925–000 and ER02–925–001]

Southern California Edison Company; Notice of Change of Informal Settlement Conference

August 28, 2002.

The Notice of Informal Settlement Conference issued on August 23, 2002 in the above-captioned proceeding stated that the conference would be held on September 4th and 5th 2002 . The dates have been changed to September 5th and 6th, 2002. The time is still 10:00 a.m.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Thomas J. Burgess at (202)502–6058 or Dawn K. Martin at (202)502–8661.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22473 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2483–000, *et al.*]

Idaho Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

August 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Idaho Power Company

[Docket No. ER02–2483–000]

Take notice that on August 21, 2002, Idaho Power Company filed Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service between Idaho Power Company and Enron Power Marketing, Inc. under its open access transmission tariff in the above-captioned proceeding.

Comment Date: September 11, 2002.

2. Virginia Electric and Power Company

[Docket No. ER02–2485–000]

Take notice that on August 21, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC (CPV) containing revised Appendices C, F and G and correcting typographical errors.

Dominion Virginia Power respectfully requests that the Commission accept the Interconnection to allow it to become

effective on December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11, 2001 order.

Copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: September 11, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–2486–000]

Take notice that on August 22, 2002, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised Generator Interconnection and Operating Agreement with Industrial Power Generating Corporation (Ingenco). The Revised Interconnection Agreement has been modified to reflect the increase in initial capacity from Ingenco's generating facility from 12 MWs to 16 MWs.

Dominion Virginia Power requests that the Commission make the agreement effective August 23, 2002.

Copies of the filing were served upon Industrial Power Generating Corporation and Virginia State Corporation Commission.

Comment Date: September 12, 2002.

4. California Independent System Operator Corporation

[Docket No. ER02–2487–000]

Take notice that on August 22, 2002, the California Independent System Operator Corporation (ISO) tendered for filing First Revised Service Agreement No. 381 under the Original Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Metropolitan Water District of Southern California (MWD). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of March 15, 2001.

The ISO states that this filing has been served on MWD and the California Public Utilities Commission.

Comment Date: September 12, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–2488–000]

Take notice that on August 22, 2002, the California Independent System Operator Corporation (ISO) tendered for filing First Revised Service Agreement No. 356 under the Original Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Colton Power, LP (Colton) (formerly Alliance Colton, LLC). The ISO has revised the PGA to update Original Volume No. 1 of the PGA. The ISO requests that the revised PGA be made effective as of March 21, 2000.

The ISO states that this filing has been served on Colton and the California Public Utilities Commission.

Comment Date: September 12, 2002.

6. California Independent System Operator Corporation

[Docket No. ER02–2489–000]

Take notice that on August 22, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a revision to Appendix A of the Responsible Participating Transmission Owner Agreement between the ISO and Pacific Gas and Electric Company (PG&E). The ISO states that the revision modifies the Appendix to remove two previously terminated Sacramento Municipal Utility District (SMUD) transmission agreements and PG&E's Scheduling Coordinator responsibility for the remaining SMUD transmission agreements, effective with the operation of SMUD's new control area; correct the footnote regarding the California Power Exchange performing as Scheduling Coordinator for certain PG&E-Western existing contracts; and remove Destect Power Services form Appendix A.

The ISO states that this filing has been served on SMUD, the California Public Utilities Commission and all entities that are on the official service list for Docket No. ER98–1057–000.

Comment Date: September 12, 2002.

7. Ameren Services Company

[Docket No. ER02–2490–000]

Take notice that on August 22, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Conoco, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Conoco, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: September 13, 2002.

8. PJM Interconnection, L.L.C.

[Docket No. ER02–2491–000]

Take notice that on August 22, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing five executed interim interconnection service agreements between PJM and Handsome Lake Energy L.L.C., PPL Martins Creek LLC, and Pennsylvania Electric Company d/b/a GPU Energy, and an executed interconnection service agreement between PJM and Pennsylvania Electric Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 12, 2002.

9. Public Service Company of New Mexico

[Docket No. ER02–2492–000]

Take notice that on August 23, 2002, Public Service Company of New Mexico (PNM) submitted for filing an executed Network Integration Transmission Service Agreement (NITSA) and an associated Network Operating Agreement (NOA) with The Incorporated County of Los Alamos (County), dated July 30, 2002, under the terms of PNM's Open Access Transmission Tariff (OATT). The purpose of the NITSA and NOA is to facilitate electric transmission service for County, replacing several separate existing Service Agreements between PNM and County under which PNM heretofore provided such services to County. Service under the PNM-County NITSA and NOA commenced on August 1, 2002, and PNM is requesting that same date as the effective date for the NITSA and NOA. In conjunction with the NITSA and NOA, PNM and County are terminating the old Service Agreements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

A copy of this filing has been served upon County and informational copies have been sent to the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: September 13, 2002.

10. Southern Company Services, Inc.

[Docket No. ER02–2493–000]

Take notice that on August 22, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company and Southern Electric Generating Company, tendered for Commission review information concerning the revised depreciation rates. The purpose of the filing is to secure Commission authority, as required by Order No. 618, to use revised depreciation rates for purposes of actual cost reconciliation under the following Commission jurisdictional contracts:

Unit Power Sale Agreements with Florida Power & Light Co.(Southern Operating Companies, Rate Schedule FERC No. 67), Florida Power Corporation (Southern Operating

Companies, Rate Schedule FERC No. 66), and Jacksonville Electric Authority (Southern Operating Companies, Rate Schedule FERC No. 68); Scherer 4 Transmission Service Agreements with Jacksonville Electric Authority (GPCo, First Revised Rate Schedule No. 825) and Florida Power & Light Co. (GPCo, First Revised Rate Schedule No. 826); and Transmission Service Agreement with Entergy Power, Inc. (Southern Operating Companies, First Revised Rate Schedule FERC No. 78).

If permitted to be made effective as of January 1, 2002, for billing purposes, application of the revised depreciation rates will result in reductions in the costs and charges otherwise applicable under the affected contracts.

Comment Date: September 12, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22420 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2671–001, *et al.*]

Sithe Edgar, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

August 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe Edgar, LLC; Sithe New Boston LLC; Sithe Framingham, LLC; Sithe West Medway, LLC; Sithe Wyman, LLC, Sithe Mystic, LLC; Sithe Mystic Development, LLC; Sithe Fore River Development, LLC; Sithe Power Marketing, L.P.; Sithe Energy Marketing, L.P.; AG-Energy, L.P.; Power City Partners, L.P.; Seneca Power Partners, L.P.; and Sterling Power Partners, L.P.

[Docket Nos. ER99–2671–001, ER01–42–004, ER01–41–003, ER99–2404–003, ER02–2202–001, and ER98–2782–003]

Take notice that on August 20, 2002, Sithe Edgar, LLC; Sithe New Boston, LLC; Sithe Framingham, LLC; Sithe West Medway, LLC; Sithe Wyman, LLC; Sithe Mystic, LLC; Sithe Mystic Development, LLC; Sithe Fore River Development, LLC; Sithe Power Marketing, L.P.; AG-Energy, L.P.; Power City Partners, L.P.; Seneca Power Partners, L.P.; and Sterling Power Partners, L.P.; (collectively, the Sithe Entities), tendered for filing a notice of change in status pursuant to section 205 of the Federal Power Act with respect to each entity's authority to engage in wholesale sales of capacity, energy and ancillary services at market-based rates. The change in status involves the sale of indirect ownership interests in the Sithe Entities from Vivendi Universal, S.A.; Energies, USA, S.A.; and certain individual Stockholders to Apollo Energy, LLC.

Comment Date: September 11, 2002.

2. Southern Company Services, Inc.

[Docket Nos. ER02–2015–001 and ER02–2455–000]

Take notice that on August 9, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement (Agreement) between Athens Development Company, L.L.C. and GPC (Service Agreement No. 452 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of August 9, 2002 has been requested.

Comment Date: September 6, 2002.

3. New England Power Pool

[Docket No. ER02–2395–001]

Take notice that on August 21, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted in the above-captioned docket a supplemental filing amending its July 31, 2002 filing which requested, in part, that (I) Allied Utility Network LLC (Allied Utility) be accepted for membership in NEPOOL effective August 1, 2002 and that (ii) the Participant status of PSEG Energy Technologies Inc. (PSEG ET) and Public Service Electric and Gas Company (PSE&G together with PSEG ET, the PSEG Affiliates) be terminated as of July 1, 2002. The supplemental filing requests that the July 31 filing be amended to reflect a request from Allied Utility that its membership in NEPOOL be effective as of October 1, 2002 and to reflect a request of the PSEG Affiliates that the termination of the Participant status of PSE&G be made effective as of July 1, 2002 and the termination request of PSEG ET be withdrawn.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: September 12, 2002.

4. PJM Interconnection, L.L.C.

[Docket No. ER02–2478–000]

Take notice that on August 19, 2002, PJM Interconnection, L.L.C. (PJM) submitted for filing an executed interconnection service agreement among PJM and Global Winds Harvest, Inc. and P&T Technology AG.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Copies of this filing were served upon each of the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: September 9, 2002.

5. Desert Power, L.P.

[Docket No. ER02–2479–000]

Take notice that on August 19, 2002, Desert Power, L.P. filed with the Federal Energy Regulatory Commission (Commission) a Service Agreement between Desert Power, L.P. and PacificCorp.

Comment Date: September 9, 2002.

6. Duke Energy Corporation

[Docket Nos. ER02–2480–000]

Take notice that on August 20, 2002, Duke Energy Corporation (Duke), on

behalf of Duke Electric Transmission (Duke ET), tendered for filing a Letter Agreement between Duke ET and Mountain Creek 2001 Trust, as assignee of GenPower Anderson, LLC, under Duke ET's Open Access Transmission Tariff.

Duke seeks an effective date of May 8, 2001 for the Letter Agreement.

Comment Date: September 11, 2002.

7. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER02–2481–000]

Take notice that on August 20, 2002, Wolverine Power Supply Cooperative, Inc., submitted for filing an executed Power Enabling Agreement Between Cinergy Services, Inc. and Wolverine Power Supply Cooperative, Inc., dated February 12, 2001. Wolverine requests that this agreement be designated as Service Agreement No. 15 under its FERC Electric Tariff, Original Volume No. 2.

Wolverine requests an effective date of February 12, 2001 for this Agreement. Wolverine states that a copy of this filing has been served upon Cinergy Services, Inc. and the Michigan Public Service Commission.

Comment Date: September 11, 2002.

8. Southern California Edison Company

[Docket No. ER02–2482–000]

Take notice that on August 21, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and WM Energy Solutions, Inc. (WM Energy). The Letter Agreement specifies the terms and conditions under which SCE will begin engineering and design of the facilities necessary to interconnect the El Sobrante Landfill 4 MW generating facility to SCE's electrical system and to provide wholesale Distribution Service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and WM Energy.

Comment Date: September 12, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22419 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–106–000, et al.]

Vivendi Universal, S.A., et al.; Electric Rate and Corporate Regulation Filings

August 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Vivendi Universal, S.A., Energies USA, S.A., Apollo Energy, LLC, Sithe Energies, Inc. and Individual Stockholders

[Docket No. EC02–106–000]

Take notice that on August 20, 2002, Vivendi Universal, S.A. (Vivendi), Energies USA, S.A. (EUSA), Apollo Energy, LLC (Apollo Energy), Sithe Energies, Inc. (Sithe), and Individual Stockholders (collectively, Applicants), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Vivendi, EUSA and Individual Stockholders will sell their ownership interests in Sithe to Apollo Energy for cash. Sithe states that it is engaged primarily, through various subsidiaries, in the development and operation of non-utility generation facilities. Apollo Energy was created for the purpose of acquiring the interests in Sithe and has not control over electric generation or transmission facilities. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: September 20, 2002.

2. EWO Marketing L.P. Constellation Power Source, Inc.

[Docket No. EC02–107–000]

Take notice that on August 19, 2002, EWO Marketing L.P. (EWOM) and Constellation Power Source, Inc. (CPS) tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act for EWOM to transfer to CPS its interest in a long-term power supply agreement with Wayne White Counties Electric Cooperative, Inc. Copies of this filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the City Council of New Orleans, the Mississippi Public Service Commission, and the Texas Public Utility Commission.

Comment Date: September 9, 2002.

3. PJM Interconnection, L.L.C.

[Docket No. ER02–597–001]

Take notice that on August 22, 2002, PJM Interconnection, L.L.C. (PJM) PJM Interconnection, L.L.C. (PJM), in compliance with paragraph 3 of the Commission's July 1, 2002 order in this proceeding, 100 FERC ¶61,011 ("July 1 Order") submitted a refund report.

PJM states that copies of this filing have been served on all parties.

Comment Date: September 12, 2002.

4. Ameren Services Company

[Docket No. ER02–930–002]

Take notice that on August 23, 2002, Ameren Services Company (ASC) tendered for filing a Network Integration Transmission Service Agreement and Network Operating Agreement between ASC and City of Farmington, Missouri. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreements in Docket No. ER 02–930–000 with the executed Agreements.

Comment Date: September 13, 2002.

5. Southern California Edison Company

[Docket No. ER02–1952–001]

Take notice that on August 23, 2002. Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the filing made on May 31, 2002, in Docket No. ER02–1952–000. In that filing, SCE filed an unexecuted Service Agreement for Wholesale Distribution Service (Service Agreement) under SCE's Wholesale Distribution Access Tariff (Tariff), an unexecuted Interconnection Facilities Agreement (Interconnection Agreement), and an unexecuted Reliability Management System Agreement (RMS Agreement) between

SCE and Berry Petroleum Company (BPC).

This amended filing reflects SCE's and BPC's resolution of issues between them and that the agreements have been executed.

Copies of this filing were served upon the Public Utilities Commission of the State of California and BPC.

Comment Date: September 13, 2002.

6. Niagara Mohawk Power Corporation

[Docket No. ER02–2494–000]

Take notice that on August 23, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for acceptance an amendment to the Interconnection Agreement for Nine Mile Point Unit 2 located in Scriba, Oswega County, New York (the NMP–2 ICA). The NMP–2 ICA is designated Service Agreement No. 309 of the New York Independent System Operator (NYISO) Open Access Transmission Tariff (OATT). This is the first amendment to the NMP–2 ICA. In general, the amendment adds a new section to the NMP–2 ICA and replaces schedules A, B and D of the agreement with new schedules A, B and D. The new section concerns rights and obligations related to an Energy Management System (EMS) contingency alarm. Schedule A is a diagram describing the interconnection of Nine Mile Point Unit 2. Schedules B and D are lists of equipment at the facilities related to the NMP–2 ICA. The Amendment is fully executed by all the parties to the NMP–2 ICA and it is the result of arm's-length negotiations between the parties.

Niagara Mohawk states that this filing has been served on the persons listed in the service list for Docket No. ER01–1986–000.

Comment Date: September 13, 2002.

7. Niagara Mohawk Power Corporation

[Docket No. ER02–2495–000]

Take notice that on August 23, 2002, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for acceptance an amendment to the Interconnection Agreement for Nine Mile Point Unit 1 located in Scriba, Oswega County, New York (the NMP–1 ICA). The NMP–1 ICA is designated as Service Agreement No. 308 of the New York Independent System Operator (NYISO) Open Access Transmission Tariff (OATT). This is the first amendment to the NMP–1 ICA. In general, the amendment adds a new section to the NMP–1 ICA and replaces schedules B and D of the agreement with new schedules B and D. The new section concerns rights and obligations related to an Energy Management System (EMS) contingency alarm. Schedules B and D are lists of equipment at the facilities related to the NMP–1 ICA. The Amendment is fully executed by all the parties to the NMP–1 ICA and it is the result of arm's-length negotiations between the parties.

Niagara Mohawk states that this filing has been served on the persons listed in the service list for Docket No. ER01–1986–000.

Comment Date: September 13, 2002.

8. Southern California Edison Company

[Docket No. ER02–2496–000]

Take notice, that on August 26, 2002, Southern California Edison Company (SCE) tendered for filing a reduction in the rate for scheduling and dispatching services provided in 2002 as embodied in SCE's agreements with the following entities:

1. Arizona Electric Power Cooperative	132
2. Arizona Public Service Company	348
3. Imperial Irrigation District	268
4. Metropolitan Water District of Southern California	292
5. M–S–R Public Power Agency	339
6. Pacific Gas and Electric Company	256, 318

SCE requests that the revised rate for these services be made effective January 1, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and each entity listed above.

Comment Date: September 16, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22421 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Modification to Recreational Release Flows and Soliciting Comments, Motions to Intervene, and Protests

August 28, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a: Application Type: Request to modify the recreational flow releases for the remainder of the 2002 rafting season.

b: Project No. 432–076.

c: Date Filed: August 14, 2002.

d. Applicant: Carolina Power & Light Company.

e. Name of Project: Walters Hydroelectric Project.

f. Location: The project is located on the Pigeon River in Haywood County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. Applicant Contact: Larry Mann, Carolina Power & Light, Tillery Hydro Plant, 179 Tillery Dam Road, Mt. Gilead, NC 27306.

i. FERC Contact: Any questions on this notice should be addressed to Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@ferc.gov.*

j. Deadline for filing comments and or motions: September 13, 2002.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the following number (P–432–076) on any comments or motions filed.

k. Description of Request: The licensee has requested a modification to make flow releases of 1000 cfs between the hours of 12:30–5:30 pm on Saturdays only. Required releases are 3 weekdays per week from Saturday of Memorial Day weekend through Saturday of Labor Day weekend and on all Saturdays and 4 weekdays per week two weeks prior to Memorial Day

weekend and two weeks after Labor Day weekend. The licensee consulted with the Tennessee Wildlife Resources Agency and the Pigeon River Rafters Association. On August 15, 2002, the Commission granted the licensee's request, but reserved authority to require changes in operation based upon comments received from this notice.

l. Location of Application: This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8371 or for TTY, (202) 208–1659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS, "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22477 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Solicitation of Comments, Motions to Intervene, and Protests

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 11169–019.

c. Date Filed: June 20, 2002.

d. Applicants: H & H Properties (HHP or transferor) and Mayo Hydropower, LLC (Mayo or transferee).

e. Name of Project: Avalon.

f. Location: On the Mayo River, near the Town of Mayodan in Rockingham County, North Carolina. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Dean Edwards, Manager, Mayo Hydropower, LLC., 5400 Downing Street, Dover, FL 33527, Telephone No. (813) 659–1007.

i. FERC Contact: Tom Papsidero, (202) 219–2715.

j. Deadline for filing comments and/or motions: September 27, 2002.

All documents (original and eight copies) should be filed with

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–11169–019) on any comments or motions filed.

k. Description of Transfer: HHP requests approval to transfer its license to Mayo.

l. Location of the Application: This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22478 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Solicitation of Comments, Motions to Intervene, and Protests

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Application Type: Transfer of License.

b. Project No: 11219–027.

c. Date Filed: June 20, 2002.

d. Applicants: Mayo Hydro, LLC (transferor) and Mayo Hydropower, LLC (transferee).

e. Name of Project: Mayo.

f. Location: On the Mayo River, near the Town of Mayodan in Rockingham County, North Carolina. The project does not utilize federal or tribal lands.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Dean Edwards, Manager, Mayo Hydropower, LLC., 5400 Downing Street, Dover, FL 33527, Telephone No. (813) 659–1007.

i. FERC Contact: Tom Papsidero, (202) 219–2715.

j. Deadline for filing comments and/or motions: September 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–11219–027) on any comments or motions filed.

k. Description of Transfer: Mayo Hydro, LLC requests approval to transfer its license to Mayo Hydropower, LLC.

l. Location of the Application: This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22479 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12198–000.

c. Date filed: June 10, 2002.

d. Applicant: Green Point Hydro, LLC.

e. Name and Location of Project: The Green Point Upper Dam Hydroelectric Project would be located on Green Point Creek at an existing dam owned by the Hood River Irrigation District in Hood River County, Oregon. The project would not occupy Federal or Tribal lands.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. Applicant Contact: Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835.

h. FERC Contact: Elizabeth Jones (202) 502–8246.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12198–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed project would operate in run-of-river mode and consist of: (1) An existing concrete dam 31-feet-high, and 920-feet-crest-length, (2) an existing reservoir with a surface area of 44 acres, a storage capacity of 715 acre-feet, and a normal maximum water surface elevation of 3,162 feet, (3) a proposed 144-inch steel penstock approximately 200 feet long,(4) a proposed powerhouse containing two turbines with a total installed capacity of 5.2 MW, (5) a proposed switchyard, (6) approximately five miles of proposed 25kV

transmission line, and (7) appurtenant facilities.

The project would have an estimated annual generation of 24.8 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at Green Point Hydro, LLC, 975 South State highway, Logan, UT 84321, (435) 752–2580.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22480 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12221–000.

c. *Date filed*: June 17, 2002.

d. *Applicant*: Clinton Hydro, LLC.

e. *Name and Location of Project*: The Clinton Dam Hydroelectric Project would be located on the Wakarusa River in Douglas County, Kansas. The project would occupy lands administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contact*: Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835; *npsi@nwpwrservices.com*.

h. *FERC Contact*: Elizabeth Jones (202) 502–8246.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12221–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed run-of-river project would utilize the Corps' existing Clinton Lake Dam and Clinton Lake and would consist of: (1)

A proposed 72-inch steel penstock approximately 250 feet long, (2) a proposed powerhouse containing one turbine with a total installed capacity of 2 MW, (3) a proposed switchyard, (4) approximately two miles of proposed 25kV transmission line, and (5) appurtenant facilities.

The project would have an estimated annual generation of 3 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at Clinton Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. *Preliminary Permit*: Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*: Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent*: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*: Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE,Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22481 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12227–000.

c. Date filed: June 17, 2002.

d. Applicant: Granger Hydro, LLC.

e. Name and Location of Project: The Granger Dam Hydroelectric Project would be located on the San Gabriel River in Williamson County, Texas. The project would occupy lands administered by the U.S. Army Corps of Engineers.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. Applicant Contact: Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835.

h. FERC Contact: Elizabeth Jones (202) 502–8246.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12227–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed run-of-river project, using the Corps' existing Granger Dam and Granger Lake, would consist of: (1) A proposed 120-inch steel penstock approximately 200 feet long, (2) a proposed powerhouse containing two turbines with a total installed capacity of 5 MW, (3) a proposed switchyard, (4) approximately one mile of proposed 25kV transmission line, and (5) appurtenant facilities.

The project would have an estimated annual generation of 5.4 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at Granger Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE ,Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22482 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 28, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 12238–000.

c. Date filed: June 17, 2002.

d. Applicant: Orwell Hydro, LLC.

e. Name and Location of Project: The Orwell Dam Hydroelectric Project would be located on the Otter Tail River in Otter Tail County, Minnesota. The project would occupy lands administered by the U.S. Army Corps of Engineers.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. Applicant Contact: Mr. Brent Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834, fax (208) 745–0835; *npsi@nwpwrservices.com.*

h. FERC Contact: Elizabeth Jones (202) 502–8246.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12238–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project: The proposed run-of-river project would utilize the Corps' existing Orwell Dam and Reservoir and would consist of: (1) A proposed 84-inch steel penstock approximately 250 feet long, (2) a proposed powerhouse containing one turbine with a total installed capacity of 1.2 MW, (3) a proposed switchyard, (4) approximately one mile of proposed 25kV transmission line, and (5) appurtenant facilities.

The project would have an estimated annual generation of 8.4 GWH.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659. A copy is also available for inspection and reproduction at Orwell Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.,Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22483 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

August 29, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 5, 2002(30 Minutes Following Regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on September 5, 2002. Attached is the certification of the General Counsel explaining the action closing the meeting.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will

advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

CERTIFICATION

I hereby certify that, in my opinion, Commission deliberations scheduled for September 5, 2002, concerning non-public investigations and inquiries may properly be closed to public observation. Discussions are likely to involve disclosure of trade secrets or financial information or other privileged or confidential information obtained from a person. Discussions also may involve investigative records compiled for law enforcement purposes, or information which if written would be contained in such records, the disclosure of which would interfere with enforcement proceedings. Further, discussions may involve the possible initiation of administrative proceedings the premature disclosure of which could frustrate implementation of proposed agency action.

The relevant exemptions on which this certification is based are set forth in 5 U.S.C. §§ 552b(c)(4), (7)(A), and (9)(B), (10), and 18 C.F.R. §§ 375.205(a)(4), (7)(I), (9)(ii), and (10).

Dated: August 28, 2002.

Cynthia A. Marlette,

General Counsel.

[FR Doc. 02–22584 Filed 9–3–02; 10:53 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Change in Available Document Formats for FERC Issuances

August 27, 2002.

The Federal Energy Regulatory Commission hereby gives notice that effective September 9, 2002, it will no longer post the scanned image version of issuances in its Federal Energy Regulatory Records Information System (FERRIS).

The change applies to orders and notices issued by the Office of the Secretary as well as to delegated orders and notices. As a result of this change, the signature of the Secretary, Deputy Secretary, Office Director, or other official, as appropriate, will no longer appear on any of the files viewable and/or downloadable from FERRIS. The signed paper copy will continue to be the official copy of record, and persons desiring a copy of the signed copy of record for any Commission issuance will still be able to request the signed copy from the Commission Public Reference Room.

All issuances will be available in FERRIS for viewing and/or download in three file formats: the source document format (WordPerfect or Word), Portable Document Format (PDF), and ASCII text format. The PDF version will provide the page integrity that was previously available only from the scanned image version or an official paper copy.

Elimination of the scanned image file format for issuances will result in faster processing of Commission documents into FERRIS.

For additional information on retrieving a signed copy, please contact the Public Reference Room on 202–502–8371.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–22476 Filed 9–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: The Secretary of the Department of Energy (DOE) has approved Rate Schedule BCP–F6, FY 2003 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and investment repayment within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2002. These Rates will stay in effect through September 30, 2003, or until other Rates replace them.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Jordan, Public Utilities Specialist, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2649, e-mail *jordan@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved the existing Rate Schedule BCP–F6 for BCP electric service on September 18, 2000 (Rate Order No. WAPA–94, 65 FR 60933, October 13, 2000), on an interim basis, effective on October 1, 2000, through September 30, 2005, that allowed for an annual recalculation of the rates. On July 31, 2001, the Federal Energy Regulatory Commission (FERC) approved Rate Order No. WAPA–94 on a final basis.

Under Rate Schedule BCP–F6, the existing composite rate, effective on October 1, 2001, was 10.32 mills per kilowatthour (mills/kWh), the base charge was $48,039,988, the energy rate was 5.33 mills/kWh, and the capacity rate was $0.99 per kilowattmonth (kWmonth). The newly calculated Rates for BCP electric service to be effective October 1, 2002, will result in an overall composite rate of 11.16 mills/kWh. This is an increase of approximately 8 percent when compared with the existing BCP electric service composite rate. The increase is due to an increase in the annual revenue requirement and a projected lower water year from the previous year that results in reduced energy sales. The FY 2003 base charge is increasing to $50,761,729. The increase is due mainly to higher operation and maintenance expenses, replacement costs, replenishing the working capital fund, and a reduction in revenues from reduced tour ticket sales at the Hoover Dam following the September 11, 2001, terrorist attack. The FY 2003 energy rate of 5.58 mills/kWh is approximately a 5-percent increase from the existing energy rate of 5.33 mills/kWh. The FY 2003 capacity rate of $1.08/kWmonth is approximately a 9-percent increase from the existing $0.99/kWmonth capacity rate.

The following summarizes the steps taken by Western to ensure involvement of all interested parties in determining the Rates:

1. On February 13, 2002, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other interested parties announcing an informal customer meeting, and public information and public comment forums.

2. A **Federal Register** (FR) notice was published on February 27, 2002 (67 FR 8964), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 21, 2002, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates. A question and answer session was held.

4. At the public information forum held on April 4, 2002, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2003 in greater detail. A question and answer session was held.

5. A public comment forum was held on April 25, 2002, in Phoenix Arizona, to give the public an opportunity to comment for the record. Three persons representing customers made oral comments.

6. Two comment letters were received during the 90-day consultation and comment period. The consultation and comment period ended May 28, 2002. All comments were considered in developing the Rates for FY 2003. Written comments were received from: Irrigation & Electrical Districts Association of Arizona, Metropolitan Water District of Southern California.

Comments and responses, paraphrased for brevity, are presented below.

Civil Service Retirement Costs

Comment: The Contractors are requesting Western and DOE reexamine the issue of including full civil service retirement costs in the BCP Rates. The Contractors have expressed that the pending legislation S. 1612, clearly demonstrates that no authority exists in law for DOE to collect these costs.

Response: Western began collecting the full costs (including the Office of Personnel Management funded portion) of the Civil Service Retirement System and other post-retirement benefits in the BCP rates after the issuance of a legal opinion from the DOE General Counsel dated July 1, 1998. The FERC approved the collection of these costs on July 31, 2001 (96 FERC ¶ 61,171). Although pending legislation (S. 1612, Section 201) has been proposed in Congress addressing full funding of Federal retiree costs, Western and DOE believe this legislation does not address the recovery of such costs by the Power Marketing Administrations through rates. Therefore, at this time, Western will continue to include these costs in its rate-setting power repayment study.

Non-reimbursable Costs

Comment: The Contractors expressed concern that the increase in security costs and the lost revenues from reduced tourism at the Hoover Dam Visitor Center due to the September 11, 2001, terrorist attack, should be treated as non-reimbursable.

Response: A memorandum dated April 4, 2002, from John W. Keys, III, Commissioner of Reclamation, established that supplemental appropriations received in response to the September 11, 2001, attacks for security at Hoover Dam and future expenditures for counter-terrorism measures should be considered non-reimbursable costs. Other costs associated with the security of the facilities and the lost revenues due to reduced tourism at Hoover Dam are considered reimbursable. Western has not received any appropriations to respond to post September 11th security concerns. If Western does, it will make a determination at that time with regard to the reimbursability of the expenses.

Allocation of Specific Costs

Comment: A Contractor requested Western provide the cost allocation methodology for Hoover-related common facilities at Mead Substation such as the Arizona and Nevada switchyard, potable water and fire system, Buchanan Boulevard, and any other transmission-related costs.

Response: Western presented a proposal, at the Engineering and Operating Committee (E&OC) meeting held May 15, 2002, for allocating future construction costs related to common facilities at Mead Substation. Several Contractors provided feedback and suggestions for Western to consider prior to proceeding forward. Western will continue to work with the Contractors through the E&OC in developing an equitable cost allocation methodology for common facilities at Mead Substation. Western will present the revisions to the proposed cost allocation methodology at the next quarterly E&OC meeting scheduled for October 16, 2002. Any resulting change in the costs allocated to BCP for the Mead Substation will be addressed in future rate processes.

Uprating Credit Program Discrepancies

Comment: A Contractor expressed concerns about the discrepancies in the administration of the uprating credits that still exist under the uprating program. A request was made for Western to hold another meeting in mid-June to resolve the outstanding issues.

Response: Western held a meeting with the Contractors on June 27, 2002. The outstanding issues were resolved.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes the operation and maintenance expenses, payments to States, visitor services, uprating program, replacements, investment repayment, and interest expense. Western's power repayment study allocates the projected annual revenue requirement for electric service between capacity and energy, 50 percent to capacity and 50 percent to energy.

Procedural Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on a interim basis to the Deputy Secretary and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the FERC. Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835). DOE procedures were followed by Western in developing the rate formula approved by FERC on July 31, 2001, at 96 FERC ¶ 61,171.

The Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 requires Western, prior to October 1 of each rate year, to determine the annual rates for the next fiscal year. The rates for the first rate year and each fifth rate year thereafter, shall become effective provisionally upon approval by the Deputy Secretary of Energy subject to final approval by the FERC. For all other rate years, the rates shall become effective on a final basis upon approval by the Deputy Secretary of Energy.

Western will continue to provide the Contractors annual rates by October 1 of each year using the same rate-setting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a power repayment study that updates actual revenues and expenses and includes future estimates of annual revenues and expenses for the BCP including interest and capitalized costs.

Western's BCP electric service rate-setting formula set forth in Rate Order

No. WAPA–70 was approved on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62,050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94 extended the existing rate-setting formula beginning on October 1, 2000, and ending September 30, 2005. The BCP rate-setting formula includes a base charge, an energy rate, and a capacity rate. The rate-setting formula was used to determine the BCP FY 2003 Base Charge and Rates.

Western proposes the FY 2003 base charge of $50,761,729, the energy rate of 5.58 mills/kWh, and the capacity rate of $1.08/kWmonth be approved on a final basis.

Consistent with procedures set forth in 10 CFR part 903, Western held a consultation and comment period. The notice of the proposed FY 2003 Rates for electric service was published in the **Federal Register** on February 27, 2002.

Following review of Western's proposal within DOE, I approve, in the absence of a Deputy Secretary, the FY 2003 Rates, on a final basis for BCP electric service, under Rate Schedule BCP–F6, through September 30, 2003.

Dated: August 14, 2002.

Spencer Abraham,

Secretary.

[FR Doc. 02–22489 Filed 9–3–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0191; FRL–7194–9]

Organophosphate Pesticides; Reassessment of More Non-Contributing Commodity Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 16 OP tolerances can be reassessed at this time. EPA has concluded that these tolerances make, at most, a minimal or negligible contribution to the cumulative risk from OP pesticides. These tolerances are considered to be "non-contributors" based on the small number of reported pesticide residue detections in the monitoring data being used in the OP cumulative risk assessment (CRA), the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) and low consumption in the most highly exposed subgroup (children ages 1 to 2). These non-contributor tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408(q). This notice discusses the concept and basis for this approach to reassessing selected OP tolerances based on available information relating to the revised OP CRA. Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide Interim Reregistration Eligibility Decisions (IREDs), or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns).

DATES: The reassessment of these tolerances is effective as of July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of this notice may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0191. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This officialrecord includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

FQPA significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is "safe." The statute defines "safe" to mean "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data" FFDCA section 408(b)(2)(A)(ii). In making the safety determination, EPA "shall consider, among other relevant factors—available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity." FFDCA section 408(b)(2)(D)(v). The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a 10–year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33% and 66% of tolerance reassessments 3 to 6 years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified OPs as high priority for

tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called IREDs. When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary CRA for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comment. The preliminary and revised OP CRA documents are available at http://www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessments to its FIFRA Scientific Advisory Panel (SAP) for expert, independent scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See http://www.epa.gov/scipoly/sap/index.htm.

III. What Action is the Agency Taking?

A. Reassessment of Tolerances

In this notice, EPA identifies tolerances and considers them reassessed for the purposes of FQPA section 408(q) as of July 31, 2002. A pesticide tolerance subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. For each of the tolerances being reassessed, the Agency has issued an IRED, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of July 31, 2002.

In making the determination that these tolerances contribute negligible (if any) residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity (RAC), no tolerance is herein reassessed as a non-contributor unless all of the RACs (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be minimal. As part of its preliminary and revised CRAs, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be canceled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary and revised CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified, as in this notice. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

B. Tolerances With Low Residue Detections in PDP and Low Consumption

EPA has determined that certain OP tolerances, listed later in the notice, are reassessed at this time because they make, at most, a minimal contribution to OP risk. The Agency examined the monitoring data being used in the OP CRA and found that pesticide residue was detected in a small number of samples that were analyzed for these food commodity/OP combinations, including the parent chemical and the degradates that were tested. In addition, these commodities have low consumption in the most highly exposed subgroup (children ages 1 to 2). The revised OP CRA indicates that relatively few pesticide/cropcombinations account for the vast majority of exposure. These tolerances are not among those pesticide/crop combinations that are major contributors to risk.

The monitoring data being used in the OP cumulative assessment, USDA's PDP data, are the Agency's preferred data for risk assessment. The number of samples analyzed in the PDP for these food commodity/OP combinations ranged from 176 to nearly 3,400 samples. USDA's PDP program has been collecting data on pesticide residues found on foods since 1991, primarily for purposes of estimating dietary exposure to pesticides. For several years, EPA has routinely used the PDP data base in developing assessments of dietary risk. The PDP's sampling procedures were designed to capture actual residues of the pesticide and selected metabolites in the food supply as close as possible to the time of consumption. Data collected close to actual consumption, such as PDP data, depicts a more realistic estimate of exposure, i.e., residues that could be encountered by consumers. The real-world nature of PDP data makes it preferable for the purposes of this assessment than pesticide field trials, which are another data source available to the Agency. Field trial data are designed to test for residues under exaggerated application scenarios, and areprimarily used in establishing tolerances.

The PDP is designed to focus on foods highly consumed by children and to reflect foods typically available throughout the year. PDP's commodity testing profile includes not only fresh fruits and vegetables, but also canned and frozen fruits/vegetables, fruit juices, whole milk, wheat, soybeans, oats, corn syrup, peanut butter, rice, poultry, beef, and drinking water. The PDP generally collects foods at wholesale distribution centers and stores them frozen until analysis. Foods are washed and inedible portions are removed before analysis, but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on theinternet at http://www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited number of food commodity tolerances that are listed in this notice. When PDP data are not available for a commodity, EPA uses data when it is appropriate to do so from commodities that are measured by PDP to serve as surrogate data sources. This well established practice of using surrogate, or "translated," data is based upon the concept that families of commodities with similar cultural practices and insect pests are likely to have similar pesticide use patterns. For example, data on peaches can be used as surrogate data for apricots. The practice of translating data from tested sources to similar situations that have not been directly tested has been used for some time by EPA in the development of pesticide-specific dietary exposure assessments when monitoring data are unavailable. The methods of translation, specifically, what commodities may be used to represent other commodities, have been made public. EPA is using translated data where appropriate for the purposes of the OP CRA and tolerance reassessment as discussed in this notice.

EPA has examined the PDP data that is being used for the OP CRA and found that residues of the parent pesticide or any tested metabolite were reported in a small number of samples analyzed for the 16 OP tolerances listed below. As a result, EPA has concluded that these tolerances make, at most, a minimal or negligible contribution to the cumulative risk from OP pesticides, and, therefore, these tolerances are considered reassessed.

The following 16 tolerances are considered reassessed at this time:

1. *Chlorpyrifos (40 CFR part 180.342)*
Cherry
Cucumber
Vegetable, brassica, leafy, group
2. *Diazinon (40 CFR part 180.153)*
Apricot
Endive (escarole)
Lettuce
Parsley
Parsnip
Pepper
Plum, prune, fresh
Radicchio
Radish
Rutabagas
Spinach
Swiss chard
Turnip, roots

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 20, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–22236 Filed 9–3–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0168; FRL–7194–8]

Organophosphate Pesticides; Reassessment of Diazinon Non-Contributor Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As part of its ongoing review of existing organophosphate (OP) tolerances under the Food Quality Protection Act (FQPA), EPA has determined that 26 tolerances for diazinon can be reassessed at this time. These "non-contributor" tolerances meet the FQPA safety standard in section 408(b)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA) and can be reassessed for the purposes of FFDCA section 408(q). EPA has concluded that these tolerances make, at most, a minimal or negligible contribution to the cumulative risk from OP pesticides. This notice closely relates to previous **Federal Register** notices in which EPA announced the reassessment of non-contributing OP tolerances for certain meats, animal feeds, refined sugars, and commodities that have few or no residue detections in the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP).

DATES: The reassessment of these tolerances is effective as of July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7805C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general who are interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://

www.epa.gov/fedrgstr/. In addition, copies of this notice may also be accessed at http://www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0168. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

FQPA significantly amended the FFDCA, creating a new safety standard for judging the acceptability of tolerances for pesticide residues in food. The new statutory standard allows EPA to approve a new tolerance or leave an existing tolerance in place only if the tolerance is "safe." The statute defines "safe" to mean "that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable data," FFDCA section 408(b)(2)(A)(ii). In making the safety determination, EPA "shall consider, among other relevant factors—available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity," FFDCA section 408(b)(2)(D)(v). The FQPA amendments not only made the new safety standard applicable to new tolerances, but also to tolerances in existence when FQPA became law. FQPA set a 10–year schedule for EPA to reassess all existing tolerances, with interim deadlines for completion of 33% and 66% of tolerance reassessments 3 to 6 years, respectively, after the date of enactment. Pesticide tolerances subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if they meet the section 408(b)(2) safety standard. Finally, FQPA instructed EPA to give priority to the review of tolerances which appear to pose the greatest risk to public health.

Consistent with the FQPA mandate, EPA identified OP pesticides as high priority for tolerance reassessment. EPA has determined that the OPs share a "common mechanism of toxicity," and therefore the Agency will consider the cumulative risks of OPs in making the safety determination for any tolerance for a pesticide in this group. The Agency has reviewed individual OP pesticides to determine whether they meet the current health and safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FFDCA safety standard, and has presented its determinations in documents called Interim Reregistration Eligibility Decisions (IREDs). When the pesticide covered by an IRED shares a common mechanism of toxicity with other pesticides, the IRED addresses the aggregate risk of the chemical but does not take a position on the FFDCA standard until the Agency has also considered the potential cumulative risks of the group of pesticides.

In addition to its consideration of individual OP pesticides, EPA has also conducted a preliminary cumulative risks assessment (CRA) for all of the OPs and sought public comment on the assessment. The Agency recently released the revised OP CRA for public comment. The preliminary and revised OP CRA documents are available at www.epa.gov/pesticides/cumulative. In addition, EPA presented the assessments to its FIFRA Scientific Advisory Panel (SAP) for expert, independent, scientific peer review. The SAP provided a generally favorable review of the preliminary assessment. See http://www.epa.gov/scipoly/sap/index.htm.

III. What Action is the Agency Taking?

A. Reassessment of Diazinon Non-Contributor and Minimal Contributor Tolerances

In this notice, EPA identifies non-contributor and minimal-contributor tolerances for the OP pesticide diazinon and considers these tolerances reassessed for the purposes of FQPA section 408 (q) as of July 31, 2002. A pesticide tolerance subject to reassessment under the FQPA section 408(q) may only remain in effect without modification if it meets the section 408(b) safety standard. This standard is met if EPA finds that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." In evaluating tolerances under the standard, the FQPA also instructs the Agency to consider the cumulative effects of the pesticide and other substances that have a common mechanism of toxicity. The Agency has now completed the IRED for diazinon, which found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has now considered the impact of these cumulative risks in the reassessment of these tolerance and has determined that these tolerances make, at most, only a minimal or negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA believes it is appropriate to consider these tolerances reassessed for the purposes of FQPA section 408(q) as of July 31, 2002.

In making the determination that these tolerances contribute minimal or negligible residues and/or risk, EPA considered, among other things, the nature of the use of the pesticide, the data used in conducting aggregate risk assessments for each individual OP, the potential for drinking water contamination, and other data and analyses available to the Agency (such as food residue monitoring and other information that the Agency is using for the CRA). The Agency concludes that these pesticide uses result in minimal or no detectable residues in food, and have no or negligible effects through drinking water. Because a tolerance may apply to more than one raw agricultural commodity (RAC), no tolerance is herein reassessed as a non-contributor unless all of the RACs (food forms) that are part of that tolerance are also considered to be non-contributors. EPA also considered the potential impacts of future OP risk management decisions and determined that such decisions would be very unlikely to increase the use of the pesticide on these use sites in a manner or to a degree that the potential exposure under the tolerance would no longer be negligible. As part of its preliminary CRA, the Agency developed an estimate of the potential contribution that OP pesticides used in different parts of the country could make to overall risk as a result of the presence of residues of such pesticides in drinking water. Because of the nature of the available data, EPA's estimate employs assumptions that are designed

not to understate potential drinking water exposure. The OP preliminary and revised CRA concluded that drinking water was not a significant source of potential exposure. In reaching the determination to reassess these tolerances, EPA has considered this analysis, the public comment and the SAP's advice, as well as the information developed to assess the aggregate exposure from drinking water for each of the individual pesticides being reassessed.

The Agency's assessment of these tolerances is effectively complete and the tolerances are considered reassessed. Nothing in this notice is intended to modify in any way any determination or requirement set forth in individual pesticide IREDs, or affect existing or future regulatory agreements or use cancellation actions required for some other purpose (e.g., due to worker or ecological risk concerns). For any of the uses that may be canceled pursuant to any such decision, EPA expects that the associated tolerance would be revoked at the appropriate time unless it is properly supported for an import tolerance. In addition, all of these pesticide/use pattern combinations are included in the preliminary CRA and will remain in the CRA even though they involve exposures that pose negligible/minimal risk.

No conclusions about reassessment should be drawn about tolerances that are not identified as non-contributors in this notice. EPA expects that additional tolerances will be appropriate for reassessment based on the kind of approach described here, in the previous **Federal Register** notices of May 22, 2002 (66 FR 35991) (FRL–7178–9), in which EPA announced the reassessment of non-contributing tolerances for certain meats, animal feeds, and refined sugars, **Federal Register** notice of July 17, 2002 (67 FR 46972) (FRL–7186–8), reassessment of non-contributing tolerances for certain commodities with no pesticide residue detections in PDP, and **Federal Register** notice of August 14, 2002 (67 FR 52987) (FRL–7192–6), reassessing tolerances for certain commodities with a small number (less than 1%) of residue detections in PDP. Additional tolerances may be reassessed without the need for regulation upon completion of the CRA. In other words, the failure of a tolerance to be identified as a non-contributor in this or any other announcement does not imply that the pesticide/use combination will ultimately be subject to regulatory action. For tolerances reassessed as announced in this notice or using the approach described herein, EPA has concluded that the decision to reassess these tolerances will have no impact on any subsequent determination or decisions that may be necessary if the CRA were to conclude that cumulative exposure to the OPs poses risks of concern.

B. Animal Commodities and Animal Feed Tolerances for Diazinon.

EPA has determined that four animal commodities and four animal feed tolerances for diazinon, listed in List 1 and 2 below, are reassessed at this time. EPA announced the reassessment of many OP non-contributing animal commodity and feed tolerances in an earlier **Federal Register** notice of May 22, 2002. The assessment approach applied to those OP meat and feed tolerances is now being applied to the diazinon non-contributor meat and feed tolerances listed in this notice, and is briefly described below.

Human exposure to pesticide residues can occur as a consequence of the use of a pesticide on animals or their feed if the residues transfer to the animal commodities (e.g., cattle, goats, and sheep) that humans consume. EPA examined the potential for the transfer to such human foods of OP residues from animal feeds and concludes that residue transfer generally does not occur, or if it does, the transfer is minimal. EPA concludes that OPs applied to animal feed crops (such as forage, fodder, and hays) will not be present to any significant extent in human food, and such residues will make, at most, a negligible contribution to the OP cumulative risk assessment. As discussed in the previous **Federal Register** notice (May 22, 2002), that reassessed other OP non-contributing animal feed tolerances, animal feeding and metabolism studies indicate that residue transfer to foods that humans eat will be minimal, and residues of OPs were detected only very rarely in meats, poultry, milk, and eggs, and only at very low levels. Therefore, the four diazinon tolerances for animal meat commodities listed in List 1, and the four diazinon tolerances for animal feeds listed in List 2 are considered reassessed. It is important to note that these animal feed tolerances are solely for animal feeds, i.e, the tolerances do not include commodities that are also consumed by humans.

List 1.—Diazinon Animal Commodity Tolerances (40 CFR part 180.153)

Cattle, fat, (pre-S appli)
Sheep, fat, (pre-S appli)
Sheep, meat byproducts (fat basis), (pre-S appli)
Sheep, meat (fat basis), (pre-S appli)

List 2.—Diazinon Animal Feed Tolerances (40 CFR part 180.153)

Almond, hulls
Animal feed
Peavines
Peasvine hay

C. Tolerances With No and Less Than 1% Residue Detections in PDP

EPA has determined that 18 diazinon tolerances, in Lists 3 and 4, are reassessed at this time because they make, at most, a minimal or negligible contribution to OP risk. The Agency examined the monitoring data being used in the OP CRA and found that pesticide residue was not detected in the samples analyzed for certain OP/crop combination, including the parent chemical and the degradates that were tested. In addition, for certain other OP/crop combinations, residues were detected only in an insignificant number of the samples (less than 1%) that were analyzed. The revised OP CRA indicates that relatively few pesticide/crop combinations account for the vast majority of exposure. These tolerances are not among those pesticide/crop combinations that are major contributors to risk.

The monitoring data being used in the OP cumulative assessment, USDA's PDP data, are the Agency's preferred data for risk assessment. The number of samples analyzed in the PDP for these food commodity/diazinon combinations ranged from 275 to 2,400 samples. USDA's PDP program has been collecting data on pesticide residues found on foods since 1991, primarily for purposes of estimating dietary exposure to pesticides. For several years, EPA has routinely used the PDP data base in developing assessments of dietary risk. The PDP's sampling procedures were designed to capture actual residues of the pesticide and selected metabolites in the food supply as close as possible to the time of consumption. Data collected close to actual consumption, such as PDP data, depicts a more realistic estimate of exposure, i.e., residues that could be encountered by consumers. The real-world nature of PDP data makes it preferable for the purposes of this assessment than pesticide field trials, which are another data source available to the Agency. Field trial data are designed to test for residues under exaggerated application scenarios, and are primarily used in establishing tolerances.

The PDP is designed to focus on foods highly consumed by children and to reflect foods typically available throughout the year. PDP's commodity testing profile includes not only fresh fruits and vegetables, but also canned and frozen fruits/vegetables, fruit juices, whole milk, wheat, soybeans, oats, corn

syrup, peanut butter, rice, poultry, beef, and drinking water. The PDP generally collects foods at wholesale distribution centers and stores them frozen until analysis. Foods are washed and inedible portions are removed before analysis, but these foods are not further cooked or processed. A complete description of the PDP and all data through 1999 are available on the internet at www.ams.usda.gov/science/pdp.

PDP data are not available for all food commodities with current OP registrations, including a limited number of food commodity tolerances that are listed in this notice. When PDP data are not available for a commodity, EPA uses data when it is appropriate to do so from commodities that are measured by PDP to serve as surrogate data sources. This well established practice of using surrogate, or "translated," data is based upon the concept that families of commodities with similar cultural practices and insect pests are likely to have similar pesticide use patterns. For example, data on peaches can be used as surrogate data for apricots. The practice of translating data from tested sources to similar situations that have not been directly tested has been used for some time by EPA in the development of pesticide-specific dietary exposure assessments when monitoring data are unavailable. The methods of translation, specifically, what commodities may be used to represent other commodities, have been made public. EPA is using translated data where appropriate for the purposes of the OP CRA and tolerance reassessment as discussed in this notice.

EPA has examined the PDP data that is being used for the OP CRA and found that residues of diazinon or any tested metabolite were reported in no samples analyzed for 6 diazinon tolerances listed in List 3, below, and in less than 1% of the samples analyzed for 12 diazinon tolerances listed in List 4, below. As a result, EPA has concluded that these tolerances make, at most, a negligible or minimal contribution to the cumulative risk from OP pesticides, and, therefore, these tolerances are considered reassessed.

List 3.—Diazinon Tolerances With No Detections in PDP Samples (40 CFR part 180.153)

Banana
Banana, pulp (no peel)
Citrus
Nectarine
Pineapple
Vegetable, brassica, leafy, group

List 4.—Diazinon Tolerances With Detection in Less Than 1% of PDP Samples (40 CFR part 180.153)

Apple
Cherry
Cucumber
Grape
Melon
Pea with pods (determined on pea after removing any shell present when marketed)
Potato
Potato, sweet
Squash, summer
Squash, winter
Strawberry
Tomato

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 20, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–22237 Filed 9–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0167; FRL–7190–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPPT–2002–0167, must be received on or before October 4, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0167 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Adam Heyward, Regulatory Management Branch II, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6422; e-mail address: heyward.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket ID number OPPT–2002–0167. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well

as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0167 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPT–2002–0167. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

August 22, 2002.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Enviro Systems Inc. and represents the view of Enviro Systems Inc. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Enviro Systems, Inc.

PP 1F6346

EPA has received a pesticide petition (1F6346) from Enviro Systems, Inc., 2055 Gateway Place, Suite 220, San Jose, CA 95110 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for P-chloro-m-xylenol (PCMX). PCMX an aqueous solution, is to be used on food processing equipment, utensils and other food-contact articles, beverage containers including milk bottles or containers and/or equipment. In addition, this solution may be used on food-contact surfaces in public eating places. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* See EcoTru® Residue study, July 26, 2001.

2. *Magnitude of residues.* See EcoTru® Residue study, July 26, 2001. .41 mg. per square centimeter.

B. Toxicological Profile

1. *Acute toxicity.* Studies indicate at concentration of 0.2% of PCMX that EcoTru® is assigned a Toxicity Category IV on dermal, ocular, oral, and inhalation.

2. *Genotoxicity.* The salmonella mutagenesis study indicated no mutagenesis.

3. *Reproductive and developmental toxicity.* Studies submitted indicate at much greater concentration levels, no reproductive or developmental toxicity.

4. *Subchronic toxicity.* EcoTru® has only a 0.2% concentration of the active ingredient PCMX. In a study conducted by the North American Contact Dermatitis Group, incidents of skin sensitization among 1,752 dermatitis patients exposed to 1% chloroxylenol was only 13 reactors, less than 1%. The concentration of PCMX in the registered product EcoTru® is substantially less demonstrating that exposure would be minimal.

5. *Chronic toxicity.* EcoTru® has only a 0.2% concentration of the active ingredient PCMX. In a study conducted by the North American Contact Dermatitis Group, incidents of skin sensitization among 1,752 dermatitis patients exposed to 1% chloroxylenol was only 13 reactors, less than 1%. The concentration of PCMX in the registered product EcoTru® is substantially less demonstrating that exposure would be minimal.

6. *Metabolite toxicology.* The material is excreted as glucuronate or sulfate conjugate; these are not toxic. Since the pharmaco-kinetic studies have shown complete excretion of radioactive PCMX at 24 hours, there is little chance of accumulation in the body from either topical or oral administration. PCMX is rapidly metabolized with a half-life in dogs and rats of approximately 1 hour. It is completely excreted in the urine. These studies were in dosages far in excess of the concentration level of PCMX in EcoTru®.

7. *Endocrine disruption.* Acute toxicology studies showed no endocrine disruption. The compound chloroxylenol does not have estrogen or steroid-like activity.

C. Aggregate Exposure

1. *Dietary exposure.* PCMX, especially at the low concentration level as in EcoTru®, is not persistent nor mobile or volatile. The product is in liquid form directed at hard surfaces and because of the characteristics of the molecule, there is no evidence of dietary exposure. Past studies demonstrate no evidence of chronic and/or acute risk of aggregate exposure for the general population, infants or children.

i. *Food.* As indicated above, with the toxicology studies demonstrating no dermal, ocular, oral or inhalation irritation and the residue level is trivial, there should be insignificant aggregate exposure to food.

ii. *Drinking water.* The chemical has not been detected in ground or surface water nor would it likely pass through primary or secondary drinking water treatment into finished water. Registrant is unaware of any states conducting water-monitoring programs for this chemical.

2. *Other exposures.* Other non-pesticidal uses of PCMX have been in soaps, cosmetics, toiletries, and such pharmaceutical products as athlete's foot cream, acne cream, and surgical scrub products. These products have much higher concentration levels of PCMX than EcoTru. [See FDA docket 75N–O183, 1986].

D. Cumulative Effects

PCMX increases the permeability of cell membranes. The activity at the cell membrane leads to death of the microbe. The microgram amounts of PCMX in EcoTru® are trivial in comparison to the amounts used in the studies. Most of the studies used from 1-3% concentration of PCMX whereas EcoTru® has a 0.2% concentration of the chemical, thereby even reducing the likelihood of cumulative effects. There is no evidence of harmful effects of such low concentrations of PCMX over time.

E. Safety Determination

1. *U.S. population.* As set forth above, there is no evidence of harmful effects on the U.S. population. PCMX has been in products for decades in the United States amid as much larger concentrations than with EcoTru® without reports of harm.

2. *Infants and children.* The studies have indicated that no harmful effects on infants and children would occur with such low concentrations of PCMX, whether ingested or applied topically. See Safety Evaluation of PCMX, by Walter L Guess, Ph.D. in FDA docket No.75–0183 1986.

[FR Doc. 02–22235 Filed 9–3–02; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

August 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0905.

Title: Part 18, Regulations for RF Lighting Devices, Section 18.307, ET Docket No. 98–42.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; and Business or other for-profit entities.

Number of Respondents: 30.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 30 hours.

Total Annual Costs: $2,250.

Needs and Uses: As part of the third party notification requirements of 47 CFR section 18.307 of FCC Rules governing radio frequency (RF) lighting devices, manufacturers of RF lighting

devices must provide an advisory statement either on the product packaging or with other user documentation, similar to the following: This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or critical navigational or communications equipment operating between 0.45–30 MHz.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22507 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 26, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0636.

Title: Equipment Authorization—Declaration of Compliance, Parts 2 and 15.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,000.

Estimated Time per Response: 19 hours (avg.).

Frequency of Response: Recordkeeping; Single reporting requirement.

Total Annual Burden: 76,000 hours.

Total Estimated Cost: $1,200,000.

Needs and Uses: The equipment authorization procedure requires the manufacturer or equipment supplier to test the product to ensure compliance with technical standards for limiting radio frequency emissions and to include a declaration of compliance (DoC) with the standards in the literature furnished with the equipment. Testing and compliance documentation aid in controlling potential interference to radio communications. The test data may be used to investigate complaints of harmful interference; to determine that the equipment marketed complies with the applicable FCC; and to insure that the operation of the equipment is consistent with the documented test results. FCC rules require the responsible party to make the statement of compliance and supporting technical data available to the Commission upon request. The FCC rules also authorize personal computers based on tests and approval of their individual components, without further testing of the completed assembly.

OMB Control Number: 3060–0703.

Title: Determining Costs of Regulated Cable Equipment and Installation, FCC Form 1205.

Form Number: FCC Form 1205.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 4,000.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total annual burden: 50,800 hours.

Total Annual Costs: $900,000.

Needs and Uses: Pursuant to 47 CFR Section 76.923, cable operators must keep records and file FCC Form 1205 with the local franchise authority (LFA) to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the FCC rules. The LFA uses the information derived from FCC Form 1205 filings to review equipment and installation rates.

OMB Control Number: 3060–0573.

Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, FCC Form 394.

Form Number: FCC Form 394.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 2,000.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 7,000 hours.

Total Annual Costs: $377,000.

Needs and Uses: Cable operators use FCC Form 394 to apply to the local franchise authority (LFA) for approval to assign or transfer control of a cable television system. With the information provided by Form 394, LFAs can restrict profiteering transactions and other transfers that are likely to have an adverse effect on cable rates or service in the franchise area.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22508 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 27, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0419.

Title: Syndicated Exclusivity and Network Non-Duplication Rights.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 5,555.

Estimated Time per Response: 0.5 to 2.0 hours.

Frequency of Response: One-time reporting requirements; Third party disclosure.

Total Annual Burden: 182,552 hours.

Total Annual Costs: $192,000.

Needs and Uses: Commission rules require television stations, broadcast television stations, and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought within prescribed limitations and terms of contractual agreements. These various notification and disclosure requirements are to protect broadcasters who purchase the exclusive rights to transmit syndicated programming in their recognized markets.

OMB Control Number: 3060–0960.

Title: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 1,407.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Costs: None.

Needs and Uses: On October 27, 2000, the Commission adopted rules to implement the network non-duplication, syndicated exclusivity, and sports blackout provisions of the Satellite Home Viewer Improvement Act of 1999. The various notification and disclosure requirements are intended to protect exclusive rights negotiated between broadcasters, distributors, and rights holders for transmission of network, syndicated, and sports programming in the broadcaster's recognized market area.

OMB Control Number: 3060–1002.

Title: Cable Horizontal and Vertical Ownership Information Collection.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 146.

Estimated Time per Response: 30 mins. (0.5 hrs.).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 162 hours.

Total Annual Costs: None.

Needs and Uses: Under Section 613(f) of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the FCC is directed to establish reasonable limits on the number of subscribers that may be reached through cable operators' owned or affiliated cable systems and on the number of channels that can be occupied by cable operators' owned or affiliated programming networks. This information collection will assist the Commission in its rulemaking proceeding revising these rules consistent with a court remand and reversal of previous rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–22509 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 23, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0075.

Title: Application for Consent to Assign Construction Permit or License for TV or FM Translator Station or Low Power Television Station or to Transfer Control of Entity Holding TV or FM Translator or Low Power Television Station.

Form No.: FCC Form 345.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal governments.

Number of Respondents: 320.

Estimated Time Per Response: 8 hours (1 hour applicant burden; 7 hours contract attorney).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 320 hours.

Total Annual Cost: $516,140.

Needs and Uses: Filing of the FCC Form 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control of corporate licensee or permittee for an FM or TV translator station, or low power TV station. This information collection also includes a third party disclosure requirement of Section 73.3580. The form has been revised to include: (1) Agreements for sale/transfer of station must be submitted to the Commission; (2) the identification of the primary station proposed to be rebroadcast; and (3) adding the FCC Registration Number (FRN).

The data is used by FCC staff to determine if the applicant meets the basic statutory requirements to operate the station.

OMB Control No.: 3060–0072.

Title: Airborne Mobile Radio Telephone License Application.

Form No.: FCC Form 409.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 260.

Estimated Time Per Response: .084 hours or 5 minutes.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 22 hours.

Total Annual Cost: $13,000.

Needs and Uses: The FCC Form 409 is used when applying for authority to operate an airborne mobile radio telephone by individual users who intend to become subscribers to a common carrier service. The form is also used for modification and renewal of such licenses. The FCC Form 409 reporting requirement is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22505 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 27, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 4, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0706.

Title: Cable Act Reform.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 950.

Estimated Time per Response: 1 to 8 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,900 hours.

Total Annual Costs: None.

Needs and Uses: On March 29, 1999, the FCC released a Report and Order (R&O), FCC 99–57, which further amended the Commission's cable television rules pursuant to the Telecommunications Act of 1996. This R&O accounted for various requirements in FCC rules not already accounted for in the initial and final rules. The regulations serve a variety of purposes for subscribers, cable operators, franchising authorities, and the FCC, *i.e.*, 47 CFR section 76.952 requires cable operators to include the local franchising authority LFA) contact information in a subscriber's monthly billing statements; 47 CFR section 76.990 requires a cable operator to certify in writing to the LFA that it qualifies as a "small cable operator;" and 47 CFR 76.1404 requires a local exchange carrier to file contract information with the FCC to determine whether its use of a cable operator's facilities is reasonably limited in scope and duration.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number(s): FCC 854 and FCC 854R.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 4,500.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 6,750 hours.

Total Annual Costs: $182,880.

Needs and Uses: Owners of wire or radio communications towers with antenna structures use FCC Form 854 to register their structures within the United States, to notify the FCC when a structure has been built, to make changes to an existing registered structure, or to notify the FCC when a structure is dismantled. 47 CFR part 17 and sections 303(q) and 503(b)(5) of the Communications Act, as amended, authorize the FCC to require the painting and/or illumination of radio towers where there is a reasonable possibility that the antenna structure may cause a hazard to air navigation. The FCC sends antenna structure owner the FCC Form 854R to verify that the

owner's registration has been completed. The antenna owner must provide a copy of FCC Form 854R to each tenant of the antenna structure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22506 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2572]

Petitions for Reconsideration of Action in Rulemaking Proceeding

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by September 19, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of 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 (WT Docket No. 02–8)

Number of Petitions filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–22550 Filed 9–3–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Cerro Grande Arbitrator and Cerro Grande Claimant Questionnaires.

Type of Information Collection: New Collection.

OMB Number: 3067–New.

Abstract: The questionnaires will be used by the staff in the Alternative Dispute Resolution (ADR) Office in order to gather information on how satisfied arbitrators and claimants are with the arbitration process currently in place. The respondents filling out the questionnaires will have the opportunity to provide feedback to the ADR office. This will enable the ADR program to increase productivity, develop new program strategies, decrease paperwork, and assist with reviewing cases for fair and equal treatment.

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: 428.

Estimated Time per Respondent: 15 minutes per questionnaire.

Estimated Total Annual Burden Hours: 215 hours.

Frequency of Response: Annually and On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625 or facsimile number (202) 646–3347, or e-mail *InformationCollection@fema.gov.*

Dated: August 26, 2002.

Reginald Trujillo,

Branch Chief, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate.

[FR Doc. 02–22431 Filed 9–3–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: August 16, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Jim Wells County for Public Assistance (already designated for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174).

Hays County for Categories C through G (already designated for Category A (debris removal) and Category B (emergency protective measures) under the Public Assistance program and Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–22429 Filed 9–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 14 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1425–DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 4, 2002:

Jones County for Public Assistance.

Bee County for Individual Assistance, including direct Federal assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–22430 Filed 9–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: October 7–8, 2002

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time:

October 7, 2002, 10:30 a.m.–5 p.m.

October 8, 2002, 8:30 a.m.–5 p.m.

Proposed Agenda: October 7–8, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 30, 2002.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: August 27, 2002.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 02–22428 Filed 9–3–02; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 8:30 a.m.–5:30 p.m. September 10, 2002, 8:30 a.m.–4:00 p.m. September 11, 2002.

Place: Boston Park Plaza Hotel. 64 Arlington Street, Boston, Massachusetts 02116–3912, Phone: (617) 426–2000.

Status: Open.

Purpose: The purpose of this meeting of the Subcommittee on Privacy and Confidentiality is to gather information on implementation plans for the final regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996. The regulation and further information about it can be found in the Web site of the Office for Civil Rights at *http://www.hhs.gov/ocr/hipaa/.*

The meeting will seek information from invited panels of experts from the industry about implementation plans and practical issues identified so far in implementation of the regulation, and suggestions about possible solutions for such issues. The Subcommittee particularly seeks detailed information about the following: (1) Technical assistance plans and needs, (2) outreach, education and training efforts, (3) compliance resources, (4) best practices, (5) public-private partnerships, (6) State preemption analyses, and (7) the quality of vendors and consulting organizations. The panels will include representatives from various sectors of the healthcare industry, including small providers, health plans, and State agencies.

In addition to the panels that will be invited to address these issues, members of the public who would like to make a brief (3 minutes or less) oral comment on one or more of the specified issues during the meeting will be placed on the agenda as time permits. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by e-mail at *mrawlinson@cdc.gov*, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782 by August 30, 2002. Additional information about the meeting will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shortly before the meeting date.

Contact Person for More Information: Substantive program information may be obtained from Stephanie Kaminsky, J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Civil Rights, Department of Health & Human Services, JFK Bldg., Government Center Rm. 1825, Boston, MA 02203, telephone 617–565–1352; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov.*

Dated: August 27, 2002.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–22416 Filed 9–3–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–02–74]

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) 498–1210.

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. National Center for Environmental Health (NCEH) is requesting an emergency clearance from the Office of Management and Budget (OMB) to collect data under the Paperwork Reduction Act. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice. We are requesting that OMB respond to CDC within 21 days after receipt of the package.

Proposed Project

Implementation of the National Cooperative Inner-City Asthma Intervention in Inner-City Poor Children treated through Managed Care Setting—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

The Inner-City Asthma Intervention (ICAI) program has implemented the National Cooperative Inner-City Asthma Study (NCICAS), a multi-faceted, multi-modal intervention designed to address a wide range of problems of the child with asthma and his or her family. NCICAS demonstrated that an individually tailored intervention carried out by masters-level social workers trained in asthma management can reduce asthma symptoms among children in the inner city. The ICAI has been implemented in 23 urban areas to provide asthma education to poor, inner-city children aged 6–12 years with moderate to severe asthma and their families. This asthma intervention program is currently in year 2 of a 4 year contract period. An asthma counselor (master-level social worker) is employed at each site to tailor the one year asthma intervention to the needs of the individual child and the child's family. Each site enrolls 80 children in the intervention yearly through physician referral. The asthma counselor documents process variables including number of children enrolled in the intervention, retention rate, number of children and families completing key intervention components, and a narrative summary of lessons learned in conducting the intervention. This information is submitted quarterly to the contractor.

At the end of the four year project, this information will be summarized to determine the clinics' success in implementing the intervention protocol. There is no cost to the respondents other than their time. Time burden for response to the report may vary, but the average time to respond is 1 hour.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)	Total burden (in hours)
Asthma Counselor	23	4	1	92
Total				92

Dated: August 27, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–22432 Filed 9–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02031]

Improving Effectiveness of the Tuberculosis Prevention and Control Program in Latvia; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a sole source cooperative agreement for the National Tuberculosis Control Program (NTP), Ministry of Health of the Government of Latvia.

The purpose of this program is to provide education and technical assistance to improve the quality, efficiency, and effectiveness of programs for the prevention and control of tuberculosis (TB) in Latvia.

B. Eligible Applicants

Assistance will be provided only to the National Tuberculosis Control Program (NTP), Ministry of Health of the Government of Latvia. The NTP, Ministry of Health of the Government of Latvia is the most appropriate and qualified agency to conduct the activities under this cooperative agreement for the following reasons:

1. The NTP is uniquely positioned, in terms of legal authority, ability, track record, and credibility in Latvia to develop and implement TB control activities in both public sites throughout the country.

2. The NTP is currently involved in TB treatment services in Latvia, enabling it to immediately become

engaged in the activities listed in this announcement.

3. The purpose of the announcement is to utilize and build upon existing framework of TB control activities that the NTP has developed or initiated.

4. The NTP has been mandated by the Ministry of Health in Latvia to coordinate and implement TB treatment and control activities including Multi Drug Resistent TB (MDR–TB) within the country.

C. Funds

Approximately $105,000 is being awarded in FY 2002. The award will be made by September 1, 2002, for a 12-month budget period within a project period of up to five years.

D. Where to Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Angelia D. Hill, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office,
Centers for Disease Control and Prevention, 2920 Brandywine Road, MS E–09, Atlanta, GA 30341–4146, Telephone: (770) 488–2785, FAX: (770) 488–2688, E-mail: *aph8@cdc.gov.*

Program Guidance may be obtained from: Michael Qualls, Deputy Associate Director, International Activities, Division of Tuberculosis Elimination, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road Mailstop E–10, Atlanta, GA 30333, Telephone 404–639–8488, e-mail address: *muq1@cdc.gov.*

Dated: August 27, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control & Prevention.

[FR Doc. 02–22464 Filed 9–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science and Regulation of Biological Products: From a Rich History to a Challenging Future; Public Symposium; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public symposium; amendment.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of public symposium entitled "Science and Regulation of Biological Products: From a Rich History to a Challenging Future." The public symposium was announced in the **Federal Register** of July 17, 2002 (67 FR 46993). The purpose of the symposium is to commemorate the 100th anniversary of the enactment of the Biologics Control Act, the first Federal law regulating biological products. The amendment is being made to reflect a change in the building location. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Gail Sherman, Center for Biologics Evaluation and Research (HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, or e-mail: *Sherman@cber.fda.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 17, 2002, FDA announced that a public symposium entitled "Science and Regulation of Biological Products: From a Rich History to a Challenging Future" would be held on September 23 and 24, 2002, at the National Institutes of Health (NIH), Natcher Conference Center, Bldg. 45, 45 Center Dr., Bethesda, MD. On page 46993, in the first column, the *Location* section of this public symposium is amended to read as follows:

Location: The public symposium will be held at the National Institutes of Health (NIH), Warren Grant Magnuson Clinical Center, Bldg. 10, 10 Center Dr., Bethesda, MD 20892.

Dated: August 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–22409 Filed 9–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0368]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products; Draft Guidance for Industry on "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing" (VICH GL31); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#147) entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing" (VICH GL31). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The objective of this draft guidance is to establish the minimum recommendations for an internationally harmonized 90-day repeat-dose testing strategy for identifying target organ toxicity and the no-observed adverse effect level (NOAEL) for toxicity of veterinary drug residues in human food based upon repeated dose 90-day toxicity studies for identifying target organ toxicity.

DATES: Submit written or electronic comments on the draft guidance by October 4, 2002 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance 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.* Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the

international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Toxicity Testing

The VICH Steering Committee held a meeting in April 2002, and agreed that the draft guidance document entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing" (VICH GL31) should be made available for public comment.

A variety of toxicological evaluations are performed to establish the safety of veterinary drug residues in human food. The objective of this draft guidance is to establish the minimum recommendations for an internationally harmonized 90-day repeat-dose testing strategy for identifying target organ toxicity and the NOAEL for toxicity of veterinary drug residues in human food based upon repeated dose 90-day toxicity studies for identifying target organ toxicity.

FDA and the VICH will consider comments about the draft guidance document. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a final guidance.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should."

The draft guidance represents the agency's current thinking on establishing the safety of veterinary drug residues in human food in a variety of toxicological evaluations. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. 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. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments.* Once on this Internet site, select "[insert docket number] "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing" (VICH GL31) and follow the directions.

Copies of the draft guidance entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Repeat-Dose (90-Day) Toxicity Testing" (VICH GL31) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm.*

Dated: August 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–22408 Filed 9–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0326]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products; Draft Guidance for Industry on "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing" (VICH GL33); Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#149) entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing" (VICH GL33). This draft guidance has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance outlines a testing approach to assure human food safety following the consumption of food products derived from animals treated with veterinary drugs.

DATES: Submit written or electronic comments on the draft guidance by October 4, 2002 to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance 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*. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from the industry in Australia/ New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on General Testing

The VICH Steering Committee held a meeting in April 2002, and agreed that the draft guidance document entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing" (VICH GL33) should be made available for public comment.

Existing toxicological testing recommendations for veterinary drugs have evolved from the toxicological tests for human medicines, food additives and pesticides. The draft guidance was developed to include tests particularly relevant to the identification of a no-observable adverse effect level for veterinary drugs. The scope of this draft guidance is to identify: (1) Basic tests recommended for all new animal drugs used in food-producing animals in order to assess the safety of drug residues present in human food, (2) additional tests recommended based on specific toxicological concerns associated with the structure, class, mode of action, etc., of the drug and (3) special tests which might be useful in the evaluation of the relevance or the interpretation of data obtained in the basic or additional tests.

FDA and the VICH will consider comments about the draft guidance document. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a final guidance.

III. Significance of Guidance

This draft document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated a "guidance" rather than a "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should."

The draft guidance represents the agency's current thinking to establish the safety of veterinary drug residues in human food in a variety of toxicological evaluations. This guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written or electronic comments should be submitted to the Dockets Management Branch (address above). Submit written or electronic comments by October 4, 2002, to ensure adequate consideration in preparation of the final guidance. 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. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select "[insert docket number]" "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing" (VICH GL33) and follow the directions.

Copies of the draft guidance entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: General Approach to Testing" (VICH GL33) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: August 27, 2002.
Margaret M. Dotzel,
Associate Commissioner for Policy.
[FR Doc. 02–22406 Filed 9–3–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0369]

International Cooperation on Harmonisation of Technical Requirements for Approval of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing (VICH GL32); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance document for industry (ι148) entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing" (VICH GL32). This draft guidance document has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance document provides harmonized guidance on the core recommendation for a developmental toxicity study for the safety evaluation of veterinary drug residues in human food.

DATES: Submit written or electronic comments on the draft guidance document by October 4, 2002 to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance 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*. Comments should be identified with the full title of the draft guidance document and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Louis T. Mulligan, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6984, e-mail: *lmulliga@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical recommendations for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical recommendations for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from the: European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; U.S. FDA; U.S. Department of Agriculture; Animal Health Institute; Japanese Veterinary Pharmaceutical Association; Japanese Association of Veterinary Biologics; and Japanese Ministry of Agriculture, Forestry, and Fisheries.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand and one representative from industry in Australia/ New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Toxicity Testing

The VICH Steering Committee held a meeting in April 2002, and agreed that the draft guidance document entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing" (VICH GL32) should be made available for public comment.

This draft guidance document provides guidance for developmental toxicity testing for those veterinary medicinal products used in food-producing animals. The objective of this draft guidance document is to recommend that developmental toxicity assessment is performed according to an internationally harmonized guidance. This draft guidance describes testing designed to provide information concerning the effects on the pregnant animal and on the developing organism following prenatal exposure.

FDA and the VICH will consider comments about the draft guidance document. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidance and publish it as a final guidance.

III. Significance of Guidance

This draft guidance document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." Because guidance documents are not binding, unless specifically supported by statute or regulation, mandatory words such as "must," "shall," and "will" in the original VICH documents have been substituted with "should."

The draft guidance document represents the agency's current thinking on developmental toxicity testing for those veterinary medicinal products used in food-producing animals. This draft guidance document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the

requirements of applicable statutes and regulations.

IV. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written or electronic comments regarding this draft guidance document. Written or electronic comments should be submitted to the Dockets Management Branch (see **ADDRESSES**). Submit written or electronic comments by October 4, 2002 to ensure adequate consideration in preparation of the final guidance. 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. A copy of the draft guidance 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.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. On the Internet site, select "[insert docket number] 'Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing' " (VICH GL32) and follow the directions.

Copies of the draft guidance entitled "Studies to Evaluate the Safety of Residues of Veterinary Drugs in Human Food: Developmental Toxicity Testing" (VICH GL32) may be obtained on the Internet from the CVM homepage at *http://www.fda.gov/cvm*.

Dated: August 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–22407 Filed 9–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; an Evaluation of the National Institute Science Enrichment Program (SEP) Parent Survey

SUMMARY: 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 National Cancer Institute (NCI), the National Institutes of Health (NIH) will published periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed collection: Title: An Evaluation of the NCI Science Enrichment Program (SEP) Parent Survey. *Type of Information Collection Request:* Extension of OMB No. 0925–0473, Expiration Date: 09/30/2002. *Need and Use of Information Collection:* This survey is one component of a larger evaluation that will assess the effectiveness of the NCI SEP in making progress toward its goals of: (1) Encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program is a 5 to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University. The 5-year evaluation is designed as a controlled, longitudinal study, consisting of the five SEP cohorts and three cohorts of control group students who do not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promote or limit the program's effectiveness, the extent to which the program has been implemented as planned, how much the two regional programs vary, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* Annually. *Affected Public:* Individuals or households and Federal Governments. *Type of Respondents:* Parents of high school students participating in the program. The total annualized cost to respondents is $200.00. The annual reporting burden is as follows:

A.12–1.—ESTIMATE OF HOUR BURDEN: PARENT SURVEY

Type of respondents	Average number of respondents/Yr.	Frequency of response	Average time per response	Average annual hour burden
Parents of SEP Students	120	1	0.167	20
Total	120			20

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8680, or e-mail your request, including your address to: *fj12i@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: August 27, 2002.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–22471 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 10, 2002.

Open: 8:30 a.m. to 12 p.m.

Agenda: Report of the Director on updates and overview of new FIC initiatives and a presentation on Intellectual Property and Better Health: The approach of the Centre for Management of IP in Health R&D (MIHR).

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive, MSC 2220, Bethesda, MD 20892, 301–496–2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22467 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: October 28–29, 2002.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288, *prengerv@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22470 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Immune Tolerized Stem Cell Islet Allograft".

Date: October 8, 2002.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Dr, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–496–2550, *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22466 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Treating Alcohol Health Disparities.

Date: September 6, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, U01 Cooperative Agreements for Exploratory development Grants for Minority Institutions.

Date: September 12, 2002.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Dorita Sewell, PhD., Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Boulevard, Suite 409, MD 20892, 301–443–2890, *dsewell@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientist and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22468 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interventions for Suicidal Youths.

Date: September 23, 2002.

Time: 2 to 4.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: October 8–9, 2002.

Time: 9 to 5.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 27, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–22469 Filed 9–3–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Cancellation of a Fiscal Year (FY) 2000 Funding Opportunities Notice

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Cancellation of future application receipt dates under SAMHSA/CSAT Community Action Grants for Service Systems Change Program (PA 00–002).

SUMMARY: This notice is to inform the public that the SAMHSA/CSAT program announcement, PA 00–002–Community Action Grants for Service Systems Change, is being cancelled. Effective immediately, no applications will be accepted under this announcement.

The notice of funding opportunities under the Community Action Grants for Service Systems Change was published in the **Federal Register** on February 17, 2000 (Vol. 65, Number 33, pages 8184–8186). A subsequent modification notice for this program was published in the **Federal Register** on April 27, 2001.

Information related to this notice may be obtained from: Tom Edwards, Division of Services Improvement, CSAT/SAMHSA, Tele: 301–443–8453, e-mail: *tedwards@samhsa.gov.*

Dated: August 28, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–22472 Filed 9–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–22]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program—HUD and the United States Department of Agriculture (USDA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the USDA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with USDA's debtor files. In addition to HUD's data, the CAIVRS database includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or USDA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the USDA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin 30 days after publication of this notice in the **Federal Register** unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: October 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street SW, Room P8001, Washington, DC 20410, telephone number (202) 708–2374. (This is not a toll-free telephone number.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Joyce Baumgartner, Debt/Credit Management Coordinator, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, DC 20250, telephone number (202) 720–1168. (This is not a toll-free number.)

Reporting of Matching Program: In accordance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The matching program will be conducted pursuant to Pub. L. 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised January 1993), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to be Met by the Matching Program: The matching program will allow USDA access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to USDA's debtor data for prescreening purposes.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, *Accounting Records.* The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The USDA will provide HUD with debtor files contained in its system of records entitled, Applicant/Borrower or Grantee File (USDA/FmHA–1). HUD is maintaining USDA's records only as a ministerial action on behalf of USDA, not as a part of HUD's HUD/DEPT–2 system of records. USDA's data contain information on individuals who have defaulted on their guaranteed loans. The USDA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for USDA's data.

Notice Procedures: HUD and the USDA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the USDA will also publish notices concerning routine use disclosures in

the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the Match: Matching is expected to begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: August 16, 2002.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 02–22528 Filed 9–3–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of the Proposed Appointment of Cloyce V. Choney to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide the public notice of a proposed appointment and allow for a comment period. Notice is hereby given of the proposed appointment of Cloyce V. Choney as an associate member of the National Indian Gaming Commission.

DATES: Comments must be received before or on October 4, 2002.

ADDRESSES: Comments should be submitted to the Director, Office of Executive Secretariat, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moll, Assistant Solicitor, Division of General Law, Branch of General Legal Services, United States Department of the Interior, 1849 C Street, NW., Mail Stop 6531, Washington, DC 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* establishes the National Indian Gaming Commission (Commission), composed of three full-time members; a chairman and two associate members. 25 U.S.C. 2704(b). Commission members serve for a term of three years. 25 U.S.C. 2704(b)(2)(4)(A). The chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(A). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary is required to "publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and * * * allow a period of not less than thirty days for receipt of public comment." 25 U.S.C. 2704(b)(2)(B). Notice is hereby given of the proposed appointment of Cloyce V. Choney as an associate member of the Commission for a term of three years.

Cloyce V. Choney is well qualified to serve as a member of the Commission. From 1976 to 2001, Mr. Choney served as a Special Agent for the Federal Bureau of Investigation. During this time he handled a variety of cases involving civil rights, fraud, organized and white collar crime, and bank robbery investigation. He also served as Chair of the Native American/Alaska People Advisory Committee and was awarded several Federal Bureau of Investigation commendations, including the Director's Award for Excellence in 2001. In 2002, Mr. Choney became the Chief Executive Officer for Indian Territory Investigations. In that capacity, Mr. Choney is responsible for business development, reporting, and supervision of day-to-day activities related to the company's function of pre-employment background investigations. Between 1969 and 1975, Mr. Choney served in the United States Army, where he earned the rank of Captain. Mr. Choney has been a member of the National Native American Law Enforcement Association, and he served as its president from 1996–1997.

Mr. Choney is a member of the Comanche Nation of Oklahoma. He is also a member of the Kiowa Black Leggings Society and the Comanche War Scouts. He received a Bachelor of Science in Military Science from Oklahoma State University in 1968.

Cloyce V. Choney does not appear to have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B).

Any person wishing to submit comments on this proposed appointment may submit written comments to the address listed above. Comments must be received by October 4, 2002.

Dated: August 28, 2002.

Roderick Walston,

Deputy Solicitor.

[FR Doc. 02–22412 Filed 9–3–02; 8:45 am]

BILLING CODE 7565–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Appointment of Nelson W. Westrin to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide the public notice of a proposed appointment and allow for a comment period. Notice is hereby given of the proposed appointment of Nelson W. Westrin as an associate member of the National Indian Gaming Commission.

DATES: Comments must be received before or on October 4, 2002.

ADDRESSES: Submit comments to the Director, Office of Executive Secretariat, United States Department of the Interior, 1849 C Street, NW, Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moll, Assistant Solicitor, Division of General Law, Branch of

General Legal Services, United States Department of the Interior, 1849 C Street, NW, Mail Stop 6531, Washington, DC 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*, establishes the National Indian Gaming Commission (Commission), composed of three full-time members; a chairman and associate members. 25 U.S.C . 2704(b). Commission members serve for a term of 3 years. 25 U.S.C. 2704(b)(2)(4)(A). The chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(A). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary is required to "publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and * * * allow a period of not less than thirty days for receipt of public comment." 25 U.S.C. 2704(b)(2)(B). Notice is hereby given of the proposed appointment of Nelson W. Westrin as an associate member of the Commission for a term of three years.

Nelson W. Westrin is well qualified to serve as a member of the Commission. He has served as the first Executive Director of the Michigan Gaming Control Board since 1996, a position to which he was appointed by Governor John M. Engler. In this position, Mr. Westrin was responsible for developing, implementing, organizing, and managing every facet of the State agency. He worked closely with tribal officials while carrying out the State's oversight of Native American casino gaming operations in Michigan. From 1993 to 1997, Mr. Westrin served as the Racing Commissioner for the State of Michigan. Mr. Westrin was the Assistant Attorney General for the State of Michigan from 1977 to 1993, and from 1984 to 1993 he was assigned to the Lottery and Racing Division. Between 1974 and 1977, Mr. Westrin served as the Assistant Prosecuting Attorney for Ingham County, Michigan.

Mr. Westrin received his Bachelor of Arts degree from Michigan State University in 1969. He holds a Juris Doctor from the Detroit College of Law, which was awarded in 1974.

Nelson W. Westrin does not appear to have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B).

Any person wishing to submit comments on this proposed appointment may submit written comments to the address listed above. Comments must be received by October 4, 2002.

Dated: August 28, 2002.

Roderick Walston,

Deputy Solicitor.

[FR Doc. 02–22413 Filed 9–3–02; 8:45 am]

BILLING CODE 7565–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Comprehensive Conservation Plan and Summary for Antioch Dunes National Wildlife Refuge, Contra Costa County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and a Summary for Antioch Dunes National Wildlife Refuge (Refuge) are available for distribution. The CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and in accordance with the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Refuge for the next 15 years. The compatibility determinations for environmental education, interpretation, wildlife observation, and photography, and research are also available with the CCP.

DATES: The Final CCP is available now. The finding of no significant impact (FONSI) was signed on July 29, 2002. Implementation of the plan began after the FONSI was signed.

ADDRESSES: Copies of the Final CCP or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Attn: Leslie Lew, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825. Copies of the plan may be viewed at this address or at the San Francisco Bay NWR Complex Headquarters, #1 Marshlands Road, Fremont, California. The Final CCP will also be available online for viewing and downloading at *http://pacific.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Leslie Lew, U.S. Fish and Wildlife Service, California/Nevada Refuge Planning Office, Room W–1916, 2800 Cottage Way, Sacramento, California, 95825; 916–414–6500; fax 916–414–6512.

SUPPLEMENTARY INFORMATION:

Background

The Refuge was the first National Wildlife Refuge in the country established to protect endangered plants and insects. Created in 1980 by the U.S. Fish and Wildlife Service (Service), this riverside refuge provides protection and critical habitat for three endangered species; Lange's metalmark butterfly (Apodemia mormo langei) (Lange's), Contra Costa wallflower (Erysimum capitatum ssp. angustatum) (wallflower), and Antioch Dunes evening primrose (Oenothera deltoides ssp. howeellii) (primrose). The Refuge, 55-acres of former dunes, in addition to an adjacent 12 acres of Pacific Gas and Electric Company (PG&E) land, is an isolated patch of what was once a larger dune system that hosted a unique assemblage of plants, insects, and reptiles. The Refuge staff is based in the San Francisco Bay National Wildlife Refuge Complex office in Fremont, California.

The availability of the Draft CCP/Environmental Assessment (EA) for 30-day public review and comment was noticed in the **Federal Register** on Friday, November 2, 2001 in Volume 66, Number 213. The Draft CCP/EA identified and evaluated four alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative—current Refuge management would continue. Alternative B emphasized restoring and managing the Refuge to pre-industrial natural conditions (oak woodland on sandy soils) with limited and controlled public access. Alternative C emphasized managing the Refuge as a mosaic of dune habitat at varying successional stages with unrestricted public access. Alternative D was very similar to Alternative C with the exception that public use would be limited and controlled. The Service received 9 comment letters on the Draft CCP. The comments received were incorporated into the CCP and are responded to in an appendix to the CCP. Alternative D was selected as the Service's preferred alternative for a CCP.

With the Refuge management program described in the Final CCP, nonnative weeds will continue to be controlled using land weeding, herbicides, and prescribed fire. The Service would create a cycle of disturbance by scraping the soil in a mosaic pattern. In addition, the Service will plan to construct additional dunes using imported sand in the areas that currently do not provide good habitat for endangered species. The Refuge's outplanting program would be expanded to include other native plant species, especially

plants that are either locally significant and/or were historically present. The Service will continue monitoring the primrose, wallflower, and Lange's populations and encouraging research on the Refuge. With funding, additional studies will be undertaken to assess the effects of management actions on other plants and animals, including reptiles and invertebrates, at the Refuge. Nonnative weeds such as Ailanthus and Oleander would be removed from the river shore to the extent possible and be replaced with native species. Parts of the river bank would be allowed to erode so that the endangered plants could colonize them. Refuge staff would explore other opportunities for dune and riparian habitat protection and restoration in the vicinity of the Refuge. The CCP directs that the Refuge be open to restricted and controlled public access as staff and funding permit. Environmental education, interpretation, wildlife observation, and photography would be allowed on the Refuge with visitors accompanied by Refuge staff or Refuge volunteers. Regularly scheduled tours of the Refuge would be conducted by Refuge staff. An outreach program would be developed to help expand the Refuge's presence and support in the community. Interpretive programs and facilities would be developed, including an automobile pull-out with an interpretive kiosk. The Service would also promote the Refuge with teachers and develop an educator-led curriculum for Refuge resources.

Dated: August 23, 2002.

Daniel S. Walsworth,

Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 02–22433 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–ER–24 1A]

OMB Approval Number 1004–0188; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43900) requesting comment on this information collection. The comment period ended on October 22, 2001. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration you comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0188), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Rights-of-Way, 43 CFR 2800 and 2880.

OMB Approval Number: 1004–0188.

Bureau Form Number: No Form.

Abstract: We use the information to issue rights-of-way grants to use a specific piece of the public lands for certain projects, such as roads, pipelines, transmission lines, and communication sites.

Frequency: Once.

Description of Respondents: Individuals, partnerships, corporations, associations or other business entity and any Federal, State or local governmental entity including municipal corporations seeking to obtain a rights-of-way grant.

Estimated Completion Time: 25 hours.

Annual Reposnses: 5,066.

Average Application Fee per Response: $368.

Annual Burdn Hours: 126,650.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 11, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–22517 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–ER–24 1A]

OMB Approval Number 1004–0189; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 9, 2001, the BLM published a notice in the **Federal Register** (66 FR 41882) requesting comment on the proposed collection. The comment period ended on October 9, 2001. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0189), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, Standard Form 299.

OMB Approval Number: 1004–0189.

Bureau Form Number: SF–299.

Abstract: We use the information we collect to issue rights-of-way grants to use a specific piece of the public lands for certain projects, such as roads, pipelines, transmission lines, and communication sites.

Frequency: Once.

Description of Respondents: Individuals, partnerships, corporations, associations or other business entity and any Federal, State or local governmental entity including municipal corporations seeking to obtain a rights-of-way grant.

Estimated Completion Time: 25 hours.

Annual Responses: 5,066.

Average Application Fee Per Response: $368.

Annual Burden Hours: 126,650.

Bureau Clearance Officer: Michael H. Schwartz, (202) 452–5033.

Dated: July 4, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–22518 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–24 1A]

OMB Approval Number 1004–0190; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted an extension of a currently approved collection to collect the information listed below to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 24, 2001, the BLM published a notice in the **Federal Register** (66 FR 44642) requesting comment on this information collection. The comment period ended on October 23, 2001. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0190), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information we collect; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Indian Allotments (43 CFR 2530).

OMB Approval Number: 1004–0190.

Bureau Form Number: 2530–1.

Abstract: We use the information to:

(1) Issue Indian allotments to applicants seeking to settle upon and develop certain public lands of the United States; and

(2) Determine if an allottee is eligible to receive a trust patent (title) to the lands covered by the Indian allotment.

The regulations in 43 CFR 2530 establish guidelines and procedures for the orderly and timely processing of applications for Indian allotments.

Frequency: Once.

Description of Respondents: Individuals who are members of, or eligible for membership in, an Indian tribe recognized by BIA.

Estimated Completion Time: 2 hours.

Annual Responses: 6.

Application Fee per Response: $100 (Proposed).

Annual Burden Hours: 12.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: June 17, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–22519 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Navajo Unit, Colorado River Storage Project, New Mexico and Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Navajo Reservoir Operations Draft Environmental Impact Statement, INT–DES–02–35.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a Draft Environmental Impact Statement (DEIS) on the operations of the Navajo Unit (Navajo Dam and Reservoir) of the Colorado River Storage Project (CRSP).

The DEIS describes the environmental impacts of alternatives to operate Navajo Dam and Reservoir to implement the flow recommendations provided by the San Juan River Basin Recovery Implementation Program (Recovery Program). The purpose of the proposed federal action is to provide sufficient releases of water at times, quantities, and durations necessary to conserve the two endangered fish species, the razorback sucker and Colorado pikeminnow (formerly Colorado squawfish), and their designated critical habitat in the San Juan River downstream from Farmington, New Mexico. Reclamation would maintain the authorized purposes of the Navajo Unit which include enabling future water development to proceed in the San Juan River Basin in compliance with applicable laws, compacts, court decrees, and Indian trust responsibilities.

The DEIS describes and analyzes three alternatives. Under the first alternative (No Action Alternative), which describes historical operations of Navajo Reservoir from 1973 to 1991, the flow recommendations would not be met. Under the second alternative (250/5000 Alternative) (Flow Recommendations), Reclamation would implement the flow recommendations by modifying the operations of Navajo Reservoir to provide sufficient releases of water to conserve the endangered fish and their designated critical habitat. The

third alternative (500/5000 Alternative) considered in the DEIS would not fully meet the flow recommendations.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the DEIS are due by November 4, 2002, and should be submitted to Ken Beck at the address given below. Public hearings will be held during the month of October in New Mexico, Colorado, and Utah. The public hearings schedule is as follows:

- October 1, 2002, 6 to 9 p.m., Farmington Civic Center, 200 West Arrington, Farmington, New Mexico.
- October 2, 2002, 6 to 9 p.m., Doubletree Hotel, 501 Camino Del Rio, Durango, Colorado.
- October 3, 2002, 6 to 9 p.m., Community Center, 190 North Third East, Bluff, Utah.

ADDRESSES: Written comments on the DEIS and requests for copies should be addressed to Ken Beck, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301; telephone (970) 385–6558; faxogram (970) 385–6539; e-mail: *navcomments@uc.usbr.gov*. The DEIS is also available on Reclamation's Web site at *http://www.uc.usbr.gov* (click on Environmental Documents).

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Copies of the DEIS are also available for public review and inspection at the following locations:

- Bureau of Reclamation, Main Interior, Room 7060–MIB, 1849 C Street, NW, Washington, DC 20240–0001
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225–0007
- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102
- Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301
- Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506
- New Mexico State, Local Government Division, Attention: Ken Hughes, Bataan Memorial Building, Room 201, Santa Fe, New Mexico 87503

Libraries

Cortez Public Library, Cortez, Colorado
Denver Public Library, Denver, Colorado
Durango Public Library, Durango, Colorado
Fort Lewis College Library, Durango, Colorado
Albuquerque Public Library, Albuquerque, New Mexico
Bloomfield Library, Bloomfield, New Mexico
Farmington Public Library, Farmington, New Mexico
San Juan College Library, Farmington, New Mexico
Dine' College Library, Shiprock, New Mexico

FOR FURTHER INFORMATION CONTACT: Ken Beck, Bureau of Reclamation, 835 East Second Avenue, Suite 400, Durango, Colorado 81301, telephone (970) 385–6558.

SUPPLEMENTARY INFORMATION: The Navajo Unit was authorized by Congress in 1956 as one of four key features of the CRSP intended to develop the water resources of the Upper Colorado River Basin and is operated in accordance with the CRSP Act and applicable Reclamation and other federal laws.

After completion of the Navajo Unit in December 1962, the focus of the criteria for releasing water from Navajo Dam was primarily on meeting irrigation needs, providing flood control, maintaining stable river flows, and providing a recreation pool in Navajo Reservoir. Over the last decade, however, the focus of the criteria and associated patterns for releasing water from the Navajo Unit was modified to accommodate endangered fish research and recovery efforts in the San Juan River due to Endangered Species Act (ESA) consultations.

Formal consultation under the ESA on the Navajo Unit was requested by Reclamation in 1991. At that time, Reclamation committed to operate Navajo Dam in concert with ongoing research to determine hydrologic conditions beneficial to endangered fish and in a manner most consistent with endangered fish recovery. In a 1991 response to Reclamation, the Fish and Wildlife Service concurred that the consultation process should be initiated and that the consultation period for the operations of the Navajo Unit be extended while research on the San Juan River was conducted.

Under the direction of the Recovery Program, Navajo Dam releases were evaluated from 1992 to 1998. At the completion of the research period, the Recovery Program completed the *Flow Recommendations for the San Juan River (Holden, 1999)*. The recommendations included suggested Navajo Dam operating rules for various hydrologic conditions and levels of water development in the San Juan River Basin. Applying these rules would allow the flow recommendations to be met and water development to proceed consistent with the ESA and other applicable laws.

Proposed Federal Action

Reclamation proposes to operate Navajo Dam and Reservoir to implement ESA-related flow recommendations on the San Juan River in a manner which allows for both current and certain future water depletions, which have obtained appropriate environmental compliance but are not yet exercised, to proceed.

This change in reservoir operation would assist in conserving endangered fish in the San Juan River downstream from Farmington, New Mexico, and in enabling water development to proceed in the San Juan River Basin in compliance with applicable laws, compacts, court decrees, and American Indian trust responsibilities. To accomplish this action, Reclamation would operate Navajo Dam to meet the authorized project purposes while modifying reservoir release patterns to meet flow recommendations designed to maintain or improve habitat for the razorback sucker and Colorado pikeminnow.

Hearing Process Information

Oral comments at the hearings will be limited to five minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. All comments will be formally recorded. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the hearing/administrative record.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings should be received by Reclamation's Western Colorado Area Office in Durango at the address given

above no later than November 4, 2002, for inclusion in the hearing/administrative record. Under the NEPA process, written and oral comments, received by the due date, are given the same consideration.

Dated: August 5, 2002.

Rick L. Gold,

Regional Director.

[FR Doc. 02–22542 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0092 and 1029–0107

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR 745, State-Federal cooperative agreements; and 30 CFR part 887, Subsidence Insurance Program Grants. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 4, 2002 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 745, State-Federal cooperative agreements; and 30 CFR part 887, Subsidence insurance program grants. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of information are 1029–0092 for Part 745, and 1029–0107 for Part 887.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on May 1, 2002 (67 FR 21729). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities on Federal lands.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments that regulates coal operations.

Total Annual Responses: 12.

Total Annual Burden Hours: 454.

Title: Subsidence Insurance Program Grants—30 CFR 887.

OMB Control Number: 1029–0107.

Summary: States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining State and Indian Tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSM.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: States and Indian tribes with approved coal reclamation plans.

Total Annual Responses: 1.

Total Annual Burden Hours: 8.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB Control number 1029–0092 for part 745, and 1029–0107 for part 887 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtrelease@smre.gov*.

Dated: July 25, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–22410 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0027 and 1029–0036

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR parts 740 and 780 which relate to surface coal mining and reclamation operations on Federal lands, and Surface mining permit applications—minimum requirements for reclamation and operation plans, respectively. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 4, 2002, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 740, Surface Coal Mining and Reclamation Operations on Federal Lands, and 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of information are 1029–0027 for part 740, and 1029–0036 for Part 780. As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on May 1, 2002 (67 FR 21729). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Applications for surface coal mine permits on Federal lands.

Total Annual Responses: 36.

Total Annual Burden Hours: 2,433.

Title: 30 CFR part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan.

OMB Control Number: 1029–0036.

Summary: Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits.

Total Annual Responses: 325.

Total Annual Burden Hours: 186,556.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

Dated: July 2, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–22411 Filed 9–3–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–026]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 6, 2002 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–348–349 and 731–TA–615–616 (Review)(Remand)(Corrosion-Resistant Carbon Steel Flat Products from France and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' views on remand to the Court of International Trade on or before September 18, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 30, 2002

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–22595 Filed 8–30–02; 11:32 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed consent decree in *United States* v. *JoAnne T. Pollio, as Executrix of the Estate of Richard S. Pollio, et al.*, Civ. No. 3:00CV02451 (GLG), was lodged with the United States District Court for the District of New Jersey on August 5, 2002, ("Consent Decree"). The Consent Decree will resolve the claims brought against two parties and certain real property by the United States on behalf of the United States Environmental Protection Agency ("EPA") under Sections 107(a), 107(l) and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§ 9607(a), 9607(l) and 9613, to recover costs incurred by the United States in connection with the Somers Industrial Finishing Corporation Superfund Site ("Site"), located in the Town of Somers, Tolland County, Connecticut. The Consent Decree requires that the settling parties pay $106,000 in reimbursement of past response costs; perform certain maintenance activities at the Site; record a deed notice; and market the Site, providing EPA with the net sale proceeds.

The Department of Justice will receive, for a period of thirty (30) days

from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *JoAnne T. Pollio, as Executrix of Estate of Richard S. Pollio, et al.*, DOJ Ref. #90–11–3–07339.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Connecticut, Connecticut Financial Center, 157 Church St, 23d Floor, New Haven, Connecticut 06510 (contact Assistant United States Attorney, John Hughes); and the Region I Office of the Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Senior Enforcement Counsel, Lloyd Selbst). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.00 (25 cents per page reproduction costs) for the Consent, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–22445 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 283–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), notice is given that the Office of Justice Programs (OJP), Department of Justice proposes to establish a new system of records for maintaining general information on individuals who are killed or injured in acts of international terrorism. The system of records is entitled "Victims of International Terrorism Compensation and Assistance Program (OJP–014)." The primary purpose for establishing the system of records is to provide compensation and assistance to victims of international terrorism and to enable the Department to track other forms of information and assistance provided to international terrorism victims by the Office for Victims of Crime (OVC). OVC is directed to pay compensation to international terrorism victims by provisions contained in the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 106–386, Div C, § 2003(c)(1), 114 Stat. 1464,1544), which amended the Victims of Crime Act ("VOCA") (42 U.S.C. 10601 *et seq.*). The term "victim" means "a person who—(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or about December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and (ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States government." [42 U.S.C. 10603c(3)(A) (i) and (ii)].

The Department proposes to establish the system to reflect the broad scope of compensation and assistance provided to victims of terrorism, including but not limited to assistance with emergency travel, shipment of victim remains and belongings, medical expenses, mental health counseling, travel for criminal justice proceedings, and notification of important case events and available resources.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given 30 days in which to comment on any proposed routine uses of information collected and maintained in the system of records. Any comments may be submitted in writing to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by October 4, 2002.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget implementing regulations, the Department of Justice has provided a report on the establishment of this system of records to the Office of Management and Budget and the Congress.

A system description is set forth below.

Dated: August 23, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OJP–014

SYSTEM NAME:

Victims of International Terrorism Compensation and Assistance Program.

SYSTEM LOCATION:

Records will be kept at the Office for Victims of Crime (OVC), Office of Justice Programs (OJP), 810 Seventh Street, NW., Washington, DC 20531, or at locations of authorized contractors. OVC will have access to any/all data base(s) established by an OVC contractor and the data base(s) will be maintained internally or placed on the OJP/OVC server.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants seeking benefits under the program, individuals filing claims on behalf of claimants, and individuals referenced in claims or related documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include: Claim forms filed by or on behalf of claimants seeking benefits under the program; records from telephone contacts or inquiries; documents submitted in support of the claims; medical, personal, employment, financial, and other records obtained or generated to process claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under the Victims of Crime Act ("VOCA"), 42 U.S.C. 10601 *et seq.*; § 10604 (Administrative provisions).

PURPOSE OF RECORDS MAINTAINED IN THE SYSTEM:

Information contained in this system may be used to determine and record eligibility of claimants under the Victims of Crime Act, as amended, and any compensation or assistance provided under the Act, and to track claim status. For individuals who are eligible, see 42 U.S.C. 10603c(3)(A): The term "victim" means "a person who—(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and (ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States Government." [42 U.S.C. 10603c(3)(A) (i) and (ii)].

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, or any information derived therefrom, may be disclosed as follows:

A. To appropriate Federal, State and local agencies to coordinate benefits paid under similar programs;

B. To Federal, State and local agencies to verify and certify eligibility for benefits;

C. In a proceeding before a court, grand jury, or administrative or

regulatory body when the records are determined by the Department of Justice to be arguably relevant to the proceeding;

D. To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

F. Limited information may be disclosed to relief organizations/agencies, as appropriate for acts of international terrorism.

G. To foreign compensation programs and/or foreign governments to coordinate payment of benefits and/or to ensure no duplication of payments.

H. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an OJP function related to this system of records.

I. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether Federal, State, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order.

J. To a Federal, State, local, or tribal agency or entity that requires information relevant to a decision concerning the letting of a license or permit, the issuance of a grant or benefit, or other need for the information in performance of official duties.

K. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)) for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.

L. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

M. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on a master index, in folders, and in an automated system.

RETRIEVABILITY:

Data is retrieved by name and address of claimant, name and address of deceased or injured victim, by terrorism incident, by type of service provider/service rendered to victim, by nationality (Foreign Service National (FSN) vs. U.S. National), by social security number, by date of birth, and individual case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Electronic record retention is also protected by "firewalls." Operational access to information maintained on a dedicated computer system, is controlled by levels of security provided by password keys to prevent unauthorized entry, and audit trail of accessed information. Access to manual files is limited to personnel who have a need for files to perform official duties and is safeguarded in locked file cabinets. All files are maintained in a secure building.

RETENTION AND DISPOSAL:

Files are retained on hard copy and on a computer database. All claim files and automated data pertaining to a claim are destroyed 10 years after the date the claim has been fully processed and/or payment made, as approved by the National Archives and Records Administration (NARA). Automated data is retained in its most current form only, however, and as information is updated, outdated information is deleted. A schedule is pending approval with NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Terrorism and International Victims Unit, Office for Victims of Crime, Office of Justice Programs, 810 7th Street, NW, Washington, DC, 20531.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be addressed to the system manager listed above c/o FOI/PA Personnel.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Freedom of Information/Privacy Act Request". The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, state clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including investigating agency, employing agency, beneficiaries, educational institutions, physicians, hospitals, official state and Federal documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–22458 Filed 9–4–02; 8:45 am]
BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 284–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to establish and publish a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) have been published.

This system of records is entitled:

Human Resources File Manager System, JUSTICE/INS–034

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by October 4, 2002. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: August 23, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–034

SYSTEM NAME:

Human Resources Management System (HRMS)

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Administrative Centers at the following locations:

Burlington, Vermont, 70 Kimball Avenue, South Burlington, Vermont, 05403–6813;

Dallas, Texas, 1460 Prudential Drive, Dallas, Texas 75235; and Laguna Niguel, California, 24000 Avila Road, Laguna Niguel, California 92677.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees of the INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system contain standard personal data such as the social security number, name of employee, date of birth, and official start date. This data acts as a "pointer" to tracking the location of each employee's Official Personnel Folder (OPF), Employee Performance Folder (EPF), Payroll Folder (PAY) and/or Medical Folder (EMF). Also included in this system is the status of the employee (*i.e.*, whether the individual has separated from service or is still active) and whether the file has been destroyed, missing and/or lost.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1104 and 4305 and Executive Order 9830.

PURPOSE:

The system is used by the Human Resource Staff of each Administrative Center in INS to track the location of all personnel related files (*i.e.*, the OPF, EPF, PAY and EMF).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and National Archives and Records Administration in record management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

E. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic media (*i.e.*, standard computer hard drive).

RETRIEVABILITY:

Various combinations of social security number, name, or birth date of the individual on whom they are maintained retrieve the records.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to the automated system is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 20.

SYSTEM MANAGER AND ADDRESS:

The system administrator at each of the Administrative Center locations cited in "System Location."

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the respective system manager listed above.

RECORD ACCESS PROCEDURES:

Requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include a description of the general subject matter and if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.2(b)), and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in this record should direct his or her request to the INS office where the record is maintained or if unknown to the INS FOIA/PA Officer at 425 I Street NW., Washington DC 20536. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is a result of personnel and payroll history documents that have been supplied by employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–22459 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aerospace Vehicle Systems Institute ("AVSI")

Notice is hereby given that, on July 8, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Aerospace Vehicle Systems Institute ("AVSI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its production status. The notifications were filed for the purpose

of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the AVSI Cooperative intends to undertake the following joint research projects:

"Fuel Cell Auxiliary Power Unit for Transport Aircraft"—To study the feasibility for fuel cell auxiliary power units (APUs) considering weight, size, and power generation, certification issues, and existing background work that may apply to fuel cell APUs for future transport aircraft. This study will assess the potential for increased reliability, efficiency, and economy with adoption of new technology and accelerated entry of this technology into the aircraft industry.

"Electronic Lighting/display Simulation (ELSIM)"—to improve electronic simulation capability of the flight deck and its components by procuring ASAP 7.0 optical modeling software and Rhino 2.0 NURBS modeling software, optical properties download, development of e-prototyping practices and conducting software training.

"Certification guidelines for the Integration of Wireless Communications for Aircraft"—develop a technology roadmap for the application of commercial off-the-shelf wireless communications systems onboard aircraft for non-essential and essential systems. Begin discussions with regulatory agencies to identify roadblocks and technology needs for the development of such systems.

"Micro Electro-Optical Sensors for Commercial Airplane Applications"—investigate the feasibility, gather recommendations and produce a technology development road map for applying micro electro-optical technology to commercial aircraft systems.

"Supplier-Side Collaboration Recommendations/Requirements"—to determine, collect and aggregate recommendations and requirements from the systems/component suppliers within aerospace industry for an electronic collaboration capability. Relate this set of recommendations/requirements to various original equipment manufacturers to ensure efficient connectivity and applications.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and the Aerospace Vehicle Systems Institute ("AVSI") Cooperative intends to file additional written notification disclosing all changes in membership.

On November 18, 1998, the AVSI Cooperative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the ACT on February 18, 1999 (64 FR 8123).

The last notification was filed with the Department on March 14, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 18, 2002 (67 FR 19252).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22452 Filed 9–03–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on July 10, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amoisonic Electronics Co., Ltd., Xiamen, PEOPLE'S REPUBLIC OF CHINA; Anam Electronics Co., Ltd., Ansan-City, Kyungki-Do, REPUBLIC OF KOREA; Aralion Inc., Songpa-Gu, Seoul, REPUBLIC OF KOREA; Datapulse Technology Limited, Singapore, SINGAPORE; Digital & Digital, Inc., Gangnam-gu, Seoul, REPUBLIC OF KOREA; Hanbit System Co., Ltd., Kwangmyong-city, Kyonggi-Do, REPUBLIC OF KOREA; Jeil Records Company Limited, Hwangju-Si, Kyoungki-Do, REPUBLIC OF KOREA; JVC Lite-On IT Manufacture and Sales, Limited, Hong Kong, HONG KONG—CHINA; Kenlex Industrial Limited, Kowloon, HONG KONG—CHINA; Link Concept Technology Ltd., Kowloon, HONG KONG—CHINA; Lite-On IT Corp., Hsinchu, TAIWAN; Macro Image Technology, Inc., Songpa-gu, Seoul, REPUBLIC OF KOREA; Musion Co., Ltd., Gangnam-Gu, Seoul, REPUBLIC OF KOREA; National Semiconductor Corporation, Fremont, CA; Nova Electronic Co., Ltd., Dongjak-Gu, Seoul, REPUBLIC OF KOREA; Pozzoli Spa, Inzago, Milan, ITALY; Prochips Technology, Kuro-Gu, Seoul, REPUBLIC OF KOREA; Rohm Co., Ltd., Ukyo-ku, Kyoto, JAPAN; Sanshin Electronics Co., Ltd., Minato-ku, Tokyo, JAPAN; Shinwa Industries (China) Ltd., Huizhou City, Guang Dong, PEOPLE'S REPUBLIC OF CHINA; and Yuan High-Tech Development Co., Taipei, TAIWAN have been added as parties to this venture.

Also, A&R Cambridge Limited, Cambridge, Cambridgeshire, UNITED KINGDOM; AD Device Corporation, Minato-Ku, Tokyo, JAPAN; AniMeta Systems, Inc., Taipei, TAIWAN; Duplico 2000, S.L., Rubi, Barcelona, SPAIN; Eltech Electronics Technology (M) Sdn Bhd, Singapore, SINGAPORE; Iavix Technology Co., Ltd., Taipei, TAIWAN; Iomega Corporation, Roy, UT; Kanematsu Corporation, Tokyo, JAPAN; Linux Technology, Ltd., Taipei, TAIWAN; Lite-On Technology Corp., Taipei, TAIWAN; MRT Technology, City of Industry, CA; NewSoft Technology Corp., Taipei, TAIWAN; nReady Netware Limited, Quarry Bay, HONG KONG—CHINA; Princo Corporation, Hsin-Chu, TAIWAN; ShenZhen WED Development Co., Ltd., Shenzhen, Guangdong, PEOPLE'S REPUBLIC OF CHINA; SM Summit Holdings Limited, Singapore, SINGAPORE; Societe Nouvelle Areacem (S.N.A.), Tourouvre, FRANCE; Unidisc Technology Co., Ltd., HsinTien City, Taipei Hsien, TAIWAN; Videon Central, Inc., State College, PA; and Zenix Electronics Limited, Tsimshatsui, Kowloon, HONG KONG—CHINA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD Copy Control Association ("DVD CCA") intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD Copy Control Association ("DVD CCA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on April 12, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 29, 2002 (67 FR 37440).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22450 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Frame Relay Forum

Notice is hereby given that, on July 18, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hammerhead Technologies, Menlo Park, CA; and USCG Command Control Engineering, Portsmouth, VA have been added as parties to this venture.

Also, ACACIA, Saint-Peray, *France*; ADTRAN, Huntsville, AL; ASC, Vienna, VA; BT, Ipswich, *United Kingdom*; Clarent Corporation Littleton, CO; INTELSAT, Washington, DC; Kentrox, LLC, Portland, OR; Larscom, Research Triangle Park, NC; max.mobil Telekommunikation Services, Vienna, *Austria*; Memotec Communications, Montreal, Quebec, *Canada*; NSI Communications, Ville St.-Laurent, Quebec, *Canada*; Paradyne, Largo, FL; Qwest Communications, Denver, CO; Tele Danmark, Copenhagen, DENMARK; and Verilink, Huntsville, AL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on October 5, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 5, 2001 (66 FR 63258).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22448 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc., an Arizona non-profit corporation, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ericsson Radio Systems AB, Stockholm, SWEDEN and Nihon Superior Co., Ltd, Suita, JAPAN have been added as parties to this venture. Also, ChipPac Inc., Santa Clara, CA and Flip Chip Technologies, Phoenix, AZ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1999, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on September 13, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 15, 2001 (66 FR 52452).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22451 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on August 2, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, VXI Technology, Irvine, CA has been added as a party to this venture. Also, C&H Technologies, Round Rock, TX; Lucent Technologies, Murray Hill, NJ; and PX Instrument Technology, Bray, County Wicklow, Ireland have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on May 13, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2002 (67 FR 41482).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22455 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Wireless Internet Forum

Notice is hereby given that, on July 18, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Mobile Wireless Internet Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the

recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Industrial Technology Research Institute, Chutung, Hsinchu, Taiwan; Kooconsult Limited, Cape Coast, Central, Ghana; Mindwings, Milpitas, CA; National Tsing Hua University, Hsinchu, Taiwan; Si-Tech Information Technology, Ltd., Beijing, People's Republic of China; Turkcell, Kartal, Turkey; and ZTE Corporation, Shenzhen, People's Republic of China have been added as parties to this venture.

Also, ADC Telecommunications, Minneapolis, MN; Aepona Telecoms, Belfast, United Kingdom; Avian Communications, Marlborough, MA; Cimi Networks, Littleton, MA; Commworks, a 3Com Company, Rolling Meadows, IL; Compaq Computer Corporation, Omaha, NE; Converse Networks Systems, Wakefield, MA; Contela, Sungnamsi, Republic of Korea; Convergys Corporation, Cincinnati, OH; Fujitsu, Kawasaki, Japan; Genista, Tokyo, Japan; Gtran, Westlake Village, CA; Halfdome Systems, Milpitas, CA; Hitachi, Yokohama, Japan; IBM Corporation, White Plains, NY; inOvate Communications Group, San Ramon, CA; Interwave Communications, Menlo Park, CA; KWISF, Daejeon City, Republic of Korea; Lacuna Network Technologies, Bethesda, MD; Lucent, Naperville, IL; Malibu Networks, El Dorado Hills, CA; Marconi Communications, Coventry, New Century Park, United Kingdom; Megistro Systems, Germantown, MD; Motorola, Schaumburt, IL; Mspect, Sunnyvale, CA; NARUS, Inc., Palo Alto, CA; NetMotion Wireless, Seattle, WA; OKI Electric Industry, Tokyo, Japan; Openwave, Temple Terrace, FL; Packet Machine, Tel Aviv, Israel; Partner Communications, Rosh Ha'ayin, Israel; Siemens, Munich, Germany; SK Telecom, Sungnam City, Kyunggi-do, Republic of Korea; SkyTel Communications, Jackson, MS; Sonera Corporation, Sonera, Finland; Sony, Tokyo, Japan; Strix Systems, Westlake Village, CA; Tahoe Networks, Los Altos, CA; Tait Electronics, Ltd., Christchurch, New Zealand; Tekelec, Morrisville, NC; Telefonica Moviles, Madrid, Spain; TIW, Montreal, Quebec, Canada; Transcept, Manchester, NH; Trillium Digital Systems, Los Angeles, CA; Verizon Wireless, Walnut Creek, CA; VoiceStream Wireless, Carlsbad, CA; Winphoria Networks, Tewksbury, MA; and Zhone, Oakland, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Wireless Internet Forum intends to file additional written notification disclosing all changes in membership.

On May 25, 2000, Mobile Wireless Internet Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (65 FR 49264).

The last notification was filed with the Department on August 16, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49043).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22453 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Open Mobile Alliance

Notice is hereby given that, on July 5, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Mobile Alliance ("OMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, China Mobile Communications Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; LG Electronics Inc., Seoul, REPUBLIC OF KOREA; Macromedia, Inc., San Francisco, CA; Philips Electronics, Eindhoven, THE NETHERLANDS; STMicroelectronics, Geneva, SWITZERLAND; T-Motion PLC, London, UNITED KINGDOM; and Websoft International Inc., Tokyo, JAPAN have been added as parties to this venture. SoftQuad Software Ltd., Burnaby, British Columbia, CANADA has changed its name to Corel Corporation. Materna Information & Communications, Dortmund, GERMANY has changed its name to Materna GmbH Information & communications. Orange Personal, Bristol, UNITED KINGDOM has changed its name to Orange SA. Philips Consumer, LeMans Cedex, FRANCE has changed its name to Philips France, and One 2 One, Borehamwood, Hertfordshire, UNITED KINGDOM has changed its name to T-Mobile UK.

The following companies had their memberships cancelled: AlterEgo Networks, Inc., Redwood City, CA; ANAM Wireless Internet Solutions, Dublin, IRELAND; Brience, Inc., San Francisco, CA; Jataayu Software Ltd., Bangalore, INDIA; KETI Korean Electronics Technology, Kyunnggi-Do, REPUBLIC OF KOREA; nGame Ltd., Cambridge, UNITED KINGDOM; Philips France, LeMans Cedex, FRANCE; and SingleSignOn.Net Inc., Reston, VA.

The following companies have resigned: American Express TRS Co., Inc., Jersey City, NJ; ATX Technologies, Irving, TX; Cap Gemini Ernst & Young, Paris, FRANCE; Clickmarks.com, Fremont, CA; Credit Suisse e-Business, Zurich, SWITZERLAND; dokoni, Inc., San Diego, CA; ETRI Electronic and Telecommunications, Daejeon, REPUBLIC OF KOREA; Fast Search and Transfer ASA (FAST), Oslo, NORWAY; Mahindra British Telecom Limited, Maharashtra, INDIA; Networks365Limited, Kilmacanogue, County Wicklow, IRELAND; Omnisky Corporation, San Francisco, CA; PUMATECH, Inc., San Jose, CA; Sandia Research Corporation, Las Cruces, NM; Steltor, Montreal, Quebec, CANADA; Telstra Corporation Ltd., Sydney, New South Wales, AUSTRALIA; and Trintech Group plc, Dublin, IRELAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on May 3, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 2002 (67 FR 43343).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22449 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on July 22, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dynamost, Murray Hill, NJ; Opticalis Systems, Center Valley, PA; ZTE Corporation, Shenzhen, GuangDong, People's Republic of China; Agere Systems, Murray Hill, NJ; Booz Allen Hamilton, Linthicum, MD; Larscom, Milpitas, CA; NetTest, Brondby, Denmark; Santel Networks, Newark, CA; TSRI, Deerfield, IL; Southampton Photonics, Southampton, United Kingdom; Xignal Technologies, Unterhaching, Germany; Centellax, Santa Rosa, CA; MultiWave Networks, Sunnyvale, CA; Corrigent Systems, San Jose, CA; Wavecrest Corporation, Eden Prairie, MN; and Equipe Communications, Acton, MA have been added as parties to this venture.

Also, KPN Telecom, Leidschendam, The Netherlands; Zettacom, Santa Clara; CA; Global Crossing, Madison, NJ; New Focus, San Jose, CA; Quantum Bridge, Andover, MA; AON Networks, Palo Alto, CA; Allegro Networks, San Jose, CA; Continuum Networks, Colorado Springs, CO; Gigatera, Dietikon, Switzerland; and Clearwater Networks, Los Gatos, CA have been dropped as parties to this venture.

The following members have changed their names, Zepton Networks to Infinera, Sunnyvale, CA; Blueleaf Networks to Picarro, Sunnyvale, CA; Equant to Equant Telecommunications SA, Sophia Antipolis, France; XLOptics to Transpectrum, Los Angeles, CA; Gore & Associates to W.L. Gore & Associates, Elkton, MD; Xelerated Packet Devices to Xelerated, Stockholm, Sweden; and Korea Telecom to KT Corp., Taejeon, Republic of Korea.

The following members have been involved with mergers: Astral Point, Chelmsford, MA has merged with Alcatel, Antwerpen, Belgium; Net Brahma Technologies, Bangalore, India has merged into Metro-Optix, Alan, TX; Ebone, Hoeilaart, Belgium has merged into KPNQwest, Hoeilaart, Belgium; Catamaran, San Jose, CA has merged into Infineon, San Jose, CA; and Virata, Cambridge, Cambridgeshire, United Kingdom has merged with GlobespranVirata, Cambridge, Cambridgeshire, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on March 28, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 29, 2002 (67 FR 37441).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22457 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF") Project No. 96–08

Notice is hereby given that, on July 1, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Phillips Petroleum Company ("Phillips") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Phillips Petroleum Company, Bartlesville, OK; Exxon Research and Engineering Co., Linden, NJ; Union Oil Company of California dba Unocal Corporation, Brea, CA; Stichting Grondmechanica Delft, Delft, The Netherlands; Port of Rotterdam, Rotterdam, The Netherlands; and BP Corporation North America Inc., Lisle, IL.

The nature and objectives of the venture are to evaluate, develop, apply and transfer technology and information that will assist in cost effective characterization of petroleum contaminated sites. The project will be use as a forum for: (a) Exchanging information about new technologies and frameworks, (b) promoting a greater awareness and understanding of rapid site assessment approaches and (c) advancing regulatory acceptance of the approach. The scope of this project will include identifying and transferring existing technology, and developing new technologies, in the following areas: (1) Reviewing and evaluating emerging RSA (Rapid Site Assessment) processes and tools; (2) identifying situations in which RSA tools can be cost-effectively used; (3) providing guidance for the application of RSA tools; (4) identifying emerging technology; (5) exchanging case histories highlighting practical operational experience gained, as well as analytical data and results; and (6) implementing field tests of new technology to demonstrate technical feasibility and cost-effectiveness for petroleum contaminated sites.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22447 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on August 2, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acromag, Inc., Wixom, MI; EXFO, Canier, Quebec, Canada; Gage Applied Inc., Lachine, Quebec, Canada; Invisar Inc., Chapel Hill, NC; and Viewpoint Systems Inc., Rochester, NY

have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on May 13, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 18, 2002 (67 FR 41484).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22454 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on July 26, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Boeing Company, Seattle, WA; and Mitsubishi Heavy Industries, Ltd., Nagoya, JAPAN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the participants intend to file additional written notification disclosing all changes in membership.

On October 3, 2001, Southwest Research Institute: The Consortium for NASGRO Development and Support filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 2002 (67 FR 2910).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22456 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Teranex, Inc.

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Teranex, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Teranex, Inc., Orlando, FL; and Sarnoff Corporation, Princeton, NJ. The nature and objectives of the venture are to develop and demonstrate computational approaches and real-time programmable systems for monitoring digital video quality without referencing the original source material. The newly developed technologies will have potential applications in medical diagnostics, oil and gas exploration, and other fields requiring video.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–22446 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; monthly report naturalization papers; Form N–4

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–4. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,920 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection

instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–22532 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review: Application for Posthumous Citizenship; Form N–644

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–644, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: August 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–22533 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application to Replace Alien Registration Card; Form I–90.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 376,292 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: August 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–22534 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Guam Visa Waiver Information.

SUMMARY: The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 4, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–736. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used to record an alien's application for a waiver of the nonimmigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 170,000 responses at 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,110 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 28, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–22535 Filed 9–3–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, published in the **Federal Register,** February 27, 1980 (45 FR 1279). FACOSH will meet on September 24, 2002, starting at 1:30 p.m., in Room N–3437 A/B/C/D of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The meeting will adjourn at approximately 5:00 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit photo identification to security personnel.

Agenda items will include:

1. Call to Order
2. Annual Federal Safety and Health Council Awards Ceremony and Training Meeting preparations
3. Federal Executive Institute training proposal

4. Recordkeeping guidelines
5. Federal Worker 2000 results
6. New business
7. Adjournment

Written data, views, or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by September 17, 2002, will be provided to the Federal Advisory Council members and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business September 17, 2002. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting should contact Tom Marple at the address indicated below, if special accommodations are needed.

For additional information, please contact Thomas K. Marple, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 28th day of August 2002.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 02–22525 Filed 9–3–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Exemption Application No. D–11050 *et al.*]

Prohibited Transaction Exemption 2002–42; Grant of Individual Exemptions; Provident Mutual Life Insurance Company (Provident)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Provident Mutual Life Insurance Company (Provident) Located in Berwyn, PA

[Prohibited Transaction Exemption 2002–42; Exemption Application No. D–11050]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[1] shall not apply to (1) the initial issuance, by Provident, of its common stock (Provident Shares) to the conversion agent (the Conversion Agent), as stockholder of record, on behalf of any eligible policyholder of Provident (the Eligible Member), including any Eligible Member which is an employee benefit plan (within the meaning of section 3(3) of the Act), an individual retirement annuity (within the meaning of section 408 or 408A of the Code) or a tax sheltered annuity (within the meaning of section 403(b) of the Code) (each, a Plan), including a Plan sponsored by Provident for Provident employees (a Provident Plan); or (2) the exchange, by the Conversion Agent, of Provident Shares for common stock (Sponsor Class A Shares) issued by Nationwide Financial Services, Inc., (the Sponsor), or, the receipt of cash (Cash) or policy credits (Policy Credits) by an Eligible Member, in exchange for such Eligible Member's membership interest in Provident or in connection with the merger (the Merger) between Provident and the Eagle Acquisition Corporation, a wholly-owned subsidiary of the Sponsor, in accordance with the terms of a plan of conversion (the Plan of Conversion) and merger agreement (the Merger Agreement), adopted by Provident and implemented pursuant to the Pennsylvania Insurance Company Mutual-to-Stock Conversion Act, as amended, codified at 40 P.S. sections 911–A to 929–A (the Conversion Act) and the applicable provisions of the Pennsylvania Business Corporation Law of 1998.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a Provident Plan, of Sponsor Class A Shares, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

This exemption is subject to the general conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion, including the Merger Agreement, is subject to approval, review and supervision by the Commissioner of Insurance of the Commonwealth of Pennsylvania (the Commissioner) and is implemented in accordance with procedural and substantive safeguards that are imposed

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

under the laws of the Commonwealth of Pennsylvania.

(b) The Commissioner reviews the terms of the options that are provided to Eligible Members of Provident as part of such Commissioner's review of the Plan of Conversion and Merger, and approves the Plan of Conversion and Merger following a determination that such Plan of Conversion is fair and equitable to all Eligible Members. The New York Superintendent of Insurance (the Superintendent) may object to the Plan of Conversion if he or she finds that such Plan of Conversion is not fair or equitable to all New York policyholders.

(c) As part of their separate determinations, both the Commissioner and the Superintendent concur on the terms of the Plan of Conversion.

(d) Each Eligible Member has an opportunity to vote at a special meeting to approve the Plan of Conversion and Merger after full written disclosure is given to the Eligible Member by Provident.

(e) Any determination to receive Sponsor Class A Shares, Cash, or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries that are independent of Provident and its affiliates and neither Provident nor any of its affiliates exercises any discretion or provides investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(f) After each Eligible Member is allocated a fixed component equivalent to approximately 20% of Provident Shares, additional consideration is allocated to Eligible Members based on actuarial formulas that take into account each policy's contributions to the surplus and asset valuation reserve of Provident, which formulas have been approved by the Commissioner.

(g) In the case of an Eligible Member who is entitled to receive Provident Shares only upon consummation of the Merger, such Provident Shares are exchanged for Sponsor Class A Shares, Cash or Policy Credits in accordance with an election made by such Eligible Member.

(h) In the case of a Provident Plan, the independent Plan fiduciary —

(1) Votes on whether to approve or not to approve the proposed demutualization;

(2) Elects between consideration in the form of Sponsor Class A Shares, Cash or Policy Credits on behalf of such Plans;

(3) Reviews and approves Provident's allocation of Sponsor Class A Shares, Cash or Policy Credits received for the benefit of the participants and beneficiaries of the Provident Plans;

(4) Votes on Sponsor Class A Shares that are held by the Provident Plans and disposes of such shares held by the Retirement Pension Plan for Certain Home Office, Managerial and Other Employees of Provident Mutual Life Insurance Company, which exceeds the limitation of section 407(a)(2) of the Act, as soon as it is reasonably practicable, but in no event later than six months after the effective date (the Effective Date) of the Plan of Conversion and Merger;

(5) Provides the Department with a complete and detailed final report as it relates to the Provident Plans prior to the Effective Date of the demutualization; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Provident Plans and their participants and beneficiaries.

(i) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(j) No Eligible Member pays any brokerage commissions or fees in connection with the receipt of Sponsor Class A Shares or Policy Credits or in connection with the implementation of the commission-free purchase and sale program.

(k) All of Provident's policyholder obligations remain in force and are not affected by the Plan of Conversion or Merger.

(l) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section III. Definitions

For purposes of this exemption:

(a) The term "Provident" means Provident Mutual Life Insurance Company and any of its affiliates as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Provident includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Provident. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); and

(2) Any officer, director or partner in such person.

(c) The term "Allocable Provident Shares" means the number of Provident Shares determined in accordance with Section 3.1(c) of the Merger Agreement, representing the total number of Provident Shares that will be notionally allocated to Eligible Members in accordance with the Plan of Conversion and the "Actuarial Contribution Memorandum" (for purposes of allocating among Eligible Members the consideration that is actually to be distributed to Eligible Members in the form of Sponsor Class A Shares, Cash or Policy Credits). The Actuarial Contribution Memorandum sets forth the principles, assumptions and methodologies for the calculation of the Actuarial Contribution of Eligible Policies, which is the estimated past contribution of such Eligible Policy to Provident's statutory surplus and asset valuation reserve, plus the contribution that such policy is expected to make in the future, as calculated according to the principles, assumptions and methodologies set forth in the Plan of Conversion and its exhibits.

(d) The term "Eligible Member" means the owner of an "eligible policy," as provided by the records of Provident and by its articles of incorporation and bylaws, on the adoption date of the Plan of Conversion. (An "Eligible Policy" is defined as a policy that is in force on the adoption date.) Provident and any of its subsidiaries will not be Eligible Members with respect to any policy that entitles the policyholder to receive consideration, unless the consideration is to be utilized in whole or in part for a plan or program funded by that policy for the benefit of participants or employees who have coverage under that plan or program. Provident may deem a person to be an Eligible Member in order to correct any immaterial administrative errors or oversights.

(e) With respect to the conversion of Provident from a mutual life insurance company to a stock insurance company (the Conversion), the term "Policy Credit" means consideration to be paid in the form of an increase in cash value, account value, dividend accumulations, face amount, extended term period or benefit payment, as appropriate, depending on the policy, or extension of the policy's expiration date. With respect to the Merger, the term "Policy Credit" means consideration to be paid in the form of an adjustment of policy values for certain policies under the Plan of Conversion.

(f) The "Effective Date" means the date the actual Conversion and Merger will transpire. It is expected to occur in the latter part of the third quarter in 2002, however the exact date is not known at this time.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of

proposed exemption published on June 18, 2002 at 67 FR 41506.

Written Comments

The Department received one written comment with respect to the proposed exemption. The comment, which was submitted by Provident, is intended to inform the Department of certain developments in connection with the insurer's proposed demutualization. In this regard, Provident has provided the following additional information in order to update the proposed exemption:

1. *Number of Plan Policyholders.* Representation 3 of the Summary of Facts and Representations (the Summary) states, in relevant part, that, as of December 31, 2000, Provident had over 1,050 outstanding policies and contracts held in connection with Plans. Provident explains that the number of benefit plan policyholders has been determined to be higher than the 1,050 originally estimated, and it indicates that the present estimate is approximately 3,500 benefit plan policyholders.

2. *The Commissioner's Review of the Plan of Conversion.* Representation 8 of the Summary states, in part, that the Plan of Conversion, including the Merger, must be approved by the Commissioner who will approve it if, after holding a public hearing, he or she determines that the Plan of Conversion complies with all provisions of Pennsylvania law and is fair and equitable to the company and the policyholders. Provident explains that the Commissioner approved the Plan of Conversion on July 31, 2002, pursuant to the Conversion Act, following a public hearing which was held on May 23, 2002.

3. *Consultants Hired to Assist the Commissioner.* Representation 9 of the Summary provides that the Commissioner may hire additional consultants to assist in making his determination on Provident's demutualization. Provident notes that the Commissioner has hired Stevens & Lee as legal advisers and The Blackstone Group as financial consultants.

4. *Limitation on Payment of Cash or Policy Credits.* Representation 14 of the Summary states that "[u]nder the current terms of the Merger Agreement, the amount of Cash or Policy Credits that may be paid or funded with Cash supplied by the Sponsor is limited so that no more than 20 percent of the total number of Eligible Members receiving consideration provided or funded by the Sponsor (including Eligible Members receiving Sponsor Class A Shares) will receive Cash of Policy Credits." Representation 14 also states that "the parties to the Merger have agreed to waive this limitation if the Internal Revenue Service (the Service) issues certain tax rulings." Provident explains that the Service has issued such favorable rulings.

In response to Provident's comment letter, the Department notes the foregoing clarifications and updates to the proposed exemption. For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11050) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Chiquita Processed Foods 401(k) Retirement Savings Plan (the 401(k) Plan) and the Chiquita Savings and Investment Plan (the Savings Plan; collectively the Plans) Located in New Richmond, WI and Cincinnati, OH, Respectively

[Prohibited Transaction Exemption 2002–43; Exemption Application Nos. D–11063 and D–11064]

Exemption

The restrictions of sections 406(a), 406(b) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code,[2] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective March 19, 2002, to (1) the acquisition and holding by the Plans of certain new warrants (the Warrants) to purchase new common stock (the New Common Stock) issued by Chiquita Brands International, Inc. (the Employer), a party in interest with respect to the Plans; and (2) the subsequent exercise of the Warrants, as directed by participants in the Plans.

This exemption is subject to the following conditions:

(a) The Plans had little, if any, ability to affect the negotiation or confirmation of either the Plan of Reorganization of Chiquita filed by the Employer on November 28, 2001 under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code), the First Amended Plan of Reorganization of Chiquita, subsequently filed under the Bankruptcy Code by the Employer on January 18, 2002, or the Second Amended Plan of Reorganization of Chiquita (the Second Amended POR), subsequently filed under the Bankruptcy Code by the Employer on March 7, 2002.

(b) The acquisition and holding of the Warrants did not occur until the Second Amended POR had been confirmed.

(c) The Plans acquired the Warrants automatically in connection with the Employer's bankruptcy proceedings and without any unilateral action on their part.

(d) All shareholders, including the Plans, were treated in a like manner with respect to the issuance of the Warrants.

(e) The Warrants represented less than 25 percent of the assets of either Plan.

(f) Any decision to exercise the Warrants acquired by the Plans in connection with the Employer's bankruptcy will be made by the participants in accordance with the terms of a warrant agreement, as well as in accordance with the Plan provisions for individually-directed investment of participant accounts.

(g) The Plans did not pay any fees or commissions in connection with the receipt of the Warrants, nor will the Plans pay any fees or commissions in connection with the holding or exercise of the Warrants.

(h) The trustees of the Plans will not allow participants to exercise the Warrants held by their individual accounts in the Plans unless the fair market value of the New Common Stock exceeds the exercise price of the Warrants.

EFFECTIVE DATE: This exemption is effective as of March 19, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 18, 2002 at 67 FR 41513.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

[2] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Goldman Sachs & Co. (Located in New York, NY) and its Affiliates

[Prohibited Transaction Exemption 2002–44; Application No. D–11084]

Exemption

Section I—Transactions

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[3] shall not apply as of March 22, 2002, to:

(a) The lending of securities, under certain exclusive borrowing arrangements, to:

(1) Goldman, Sachs & Co. (Goldman) and any affiliate of Goldman that, now or in the future, is a U.S. registered broker-dealer, a government securities broker or dealer or U.S. bank (together with Goldman, the "U.S. Broker-Dealers");

(2) Goldman Sachs Canada Inc., which is subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association;

(3) Goldman Sachs International and Goldman Sachs Equity Securities (U.K.), which are subject to regulation in the United Kingdom by the Financial Services Authority (the UK FSA) (formerly, the Securities and Futures Authority (the UK SFA));

(4) Goldman, Sachs & Co. oHG, which is subject to regulation in Germany by the Deutsche Bundesbank and the Federal Banking Supervisory Authority, *e.g.*, der Bundesaufsichtsamt fuür das Kreditwesen (the BAK);

(5) Goldman Sachs (Japan) Ltd., which is subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange;

(6) Goldman Sachs Australia Pty Limited, which is subject to regulation in Australia by the Australian Securities & Investments Commission (the ASIC);

(7) Goldman, Sachs & Co. Bank, which is subject to regulation in Switzerland by the Swiss Federal Banking Commission; and

(8) Any broker-dealer or bank that, now or in the future, is an affiliate of Goldman which is subject to regulation by the Ontario Securities Commission and the Investment Dealers Association in Canada, the UK FSA in the United Kingdom, the Deutsche Bundesbank and/or the BAK in Germany, the Financial Services Agency and the Tokyo Stock Exchange in Japan, the ASIC in Australia or the Swiss Federal Banking Commission in Switzerland (each such affiliated foreign broker-dealer or bank referred to as a "Foreign Borrower," and, together with the U.S. Broker-Dealers, collectively referred to as the "Borrowers"), by employee benefit plans, including commingled investment funds holding assets of such plans (Plans) with respect to which Goldman or any of its affiliates is a party in interest; and

(b) The receipt of compensation by Goldman or any of its affiliates in connection with securities lending transactions, provided that the following conditions set forth in Section II, below, are satisfied.

Section II—Conditions

(a) For each Plan, neither the Borrower nor any affiliate has or exercises discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) The party in interest dealing with the Plan is a party in interest with respect to the Plan (including a fiduciary) solely by reason of providing services to the Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act.

(c) The Borrower directly negotiates an exclusive borrowing agreement (the Borrowing Agreement) with a Plan fiduciary which is independent of the Borrower and its affiliates.

(d) The terms of each loan of securities by a Plan to a Borrower are at least as favorable to such Plan as those of a comparable arm's-length transaction between unrelated parties, taking into account the exclusive arrangement.

(e) In exchange for granting the Borrower the exclusive right to borrow certain securities, the Plan receives from the Borrower either (i) a flat fee (which may be equal to a percentage of the value of the total securities subject to the Borrowing Agreement from time to time), (ii) a periodic payment that is equal to a percentage of the value of the total balance of outstanding borrowed securities, or (iii) any combination of (i) and (ii) (collectively, the Exclusive Fee). If the Borrower pledges cash collateral, any earnings generated by such cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree with the independent fiduciary of the Plan that a percentage of the earnings on the collateral may be retained by the Plan and/or the Plan may agree to pay the Borrower a rebate fee and retain any earnings on the collateral (the Shared Earnings Compensation). If the Borrower pledges non-cash collateral, any earnings on the non-cash collateral shall be returned to the Borrower; provided that the Borrower may, but shall not be obligated to, agree to pay the Plan a lending fee (the "Lending Fee")(the Lending Fee and the Shared Earnings Compensation are referred to herein as the "Transaction Lending Fee"). The Transaction Lending Fee, if any, shall be either in addition to the Exclusive Fee or an offset against such Exclusive Fee. The Exclusive Fee and the Transaction Lending Fee may be determined in advance or pursuant to an objective formula, and may be different for different securities or different groups of securities subject to the Borrowing Agreement. Any change in the Exclusive Fee or the Transaction Lending Fee that the Borrower pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary of the Plan, except that consent is presumed where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula. Where the Exclusive Fee or the Transaction Lending Fee changes pursuant to an objective formula, the independent fiduciary of the Plan must be notified at least 24 hours in advance of such change and such independent Plan fiduciary must not object in writing to such change, prior to the effective time of such change.

(f) The Borrower may, but shall not be required to, agree to maintain a minimum balance of borrowed securities subject to the Borrowing Agreement. Such minimum balance may be a fixed U.S. dollar amount, a flat percentage of portfolio value or other percentage determined pursuant to an objective formula.

(g) By the close of business on or before the day on which the loaned securities are delivered to the Borrower, the Plan receives from the Borrower (by physical delivery, book entry in a securities depository located in the United States, wire transfer, or similar means) collateral consisting of U.S. currency, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable bank letters of credit issued by a U.S. bank other than Goldman or an affiliate of Goldman, or any combination thereof, or other collateral permitted under Prohibited Transaction Exemption 81–6 (46 FR 7527, Jan. 23 1981, as amended at 52 FR 18754, May 19, 1987) (PTE 81–6) (as amended or

[3] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

superseded)[4] having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 102 percent of the then market value of the securities lent. Such collateral will be deposited and maintained in an account which is separate from the Borrower's accounts and will be maintained with an institution other than the Borrower. For this purpose, the collateral may be held on behalf of the Plan by an affiliate of the Borrower that is the trustee or a custodian of the Plan. If maintained by an affiliate of the Borrower, the collateral will be segregated from the assets of such affiliate.

(h) If the market value of the collateral at any time falls below 100 percent (or such higher percentage as the Borrower and the independent fiduciary of the Plan may agree upon) of the market value of the loaned securities, the Borrower delivers additional collateral on the following day to bring the level of the collateral back to at least 102 percent. The level of the collateral is monitored daily by the Plan or its designee, which may be Goldman or any of its affiliates which provides custodial or directed trustee services in respect of the securities covered by the Borrowing Agreement for the Plan. The applicable Borrowing Agreement shall give the Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral.

(i) Before entering into a Borrowing Agreement, the Borrower furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement.

(j) The Borrowing Agreement contains a representation by the Borrower that, as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished statements of financial condition.

(k) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, any cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[5] had it remained the record owner of the securities.

(l) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty (except for, if the Plan has terminated its Borrowing Agreement, the return to the Borrower of a pro-rata portion of the Exclusive Fee paid by the Borrower to the Plan) whereupon the Borrower delivers securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within the lesser of five business days of written notice of termination or the customary settlement period for such securities.

(m) In the event that the Borrower fails to return securities in accordance with the Borrowing Agreement and paragraph (l) above, the Plan's remedy will be the right under the Borrowing Agreement to purchase securities identical to the borrowed securities and apply the collateral to payment of the purchase price. If the collateral is insufficient to satisfy the Borrower's obligation to return the Plan's securities, the Borrower will indemnify the Plan in the U.S. against any losses resulting from its use of the borrowed securities equal to the difference between the replacement cost of securities and the market value of the collateral on the date the loan is declared in default together with expenses incurred by the Plan plus applicable interest at a reasonable rate including reasonable attorneys fees incurred by the Plan for legal action arising out of default on the loans, or failure by the Borrower to properly indemnify the Plan.

(n) Except as otherwise provided herein, all procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTE 81–6 (as amended or superseded), as well as to applicable securities laws of the United States, Canada, the United Kingdom, Germany, Japan, Australia, or Switzerland, as appropriate.

(o) Only Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to the Borrower; provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with the Borrower, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed

[4] PTE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

[5] The Department notes the Applicants' representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that the Borrower will always put the Plan back in at least as good a position as it would have been had it not loaned securities.

for the sole purpose of making loans of securities.)

(p) Prior to any Plan's approval of the lending of its securities to the Borrower, a copy of this exemption (and the notice of pendency) is provided to the Plan, and the Borrower informs the independent fiduciary that the Borrower is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[6]

(q) The independent fiduciary of the Plan receives monthly reports with respect to the securities lending transactions, including but not limited to the information set forth in the following sentence, so that an independent Plan fiduciary may monitor such transactions with the Borrower. The monthly report will list for a specified period all outstanding or closed securities lending transactions. The report will identify for each open loan position, the securities involved, the value of the security for collateralization purposes, the current value of the collateral, the rebate or premium (if applicable) at which the security is loaned, and the number of days the security has been on loan. At the request of the Plan, such a report will be provided on a daily or weekly basis, rather than a monthly basis. Also, upon request of the Plan, the Borrower will provide the Plan with daily confirmations of securities lending transactions.

(r) In addition to the above conditions, all loans involving a Foreign Borrower must satisfy the following supplemental requirements:

(1) Such Foreign Borrower is a registered broker-dealer subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, in the United Kingdom by the UK FSA, in Germany by the Deutsche Bundesbank and the BAK, in Japan by the Financial Services Agency and the Tokyo Stock Exchange, in Australia by the ASIC, or in Switzerland by the Swiss Federal Banking Commission;

(2) Such Foreign Borrower is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides foreign broker-dealers a limited exception from United States registration requirements;

(3) All collateral is maintained in United States dollars or in U.S. dollar-denominated securities or letters of credit or such other collateral as may be permitted under PTE 81–6 (as amended or superseded);

(4) All collateral is held in the United States and the situs of the Borrowing Agreement is maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)–1; and

(5) Prior to entering into a transaction involving a Foreign Borrower, the Foreign Borrower must:

(i) Agree to submit to the jurisdiction of the United States;

(ii) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(iii) Consent to the service of process on the Process Agent; and

(iv) Agree that enforcement by a Plan of the indemnity provided by the Foreign Borrower will occur in the United States courts.

(s) Goldman or the Borrower maintains, or causes to be maintained, within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Goldman and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the Borrower shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (SEC);

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (t)(1)(ii)–(t)(1)(iv) are authorized to examine the trade secrets of Goldman or its affiliates or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) An "affiliate" of a person means:

(i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(ii) any officer, director, employee or relative (as defined in section 3(15) of the Act) of any such other person or any partner in any such person; and

(iii) any corporation or partnership of which such person is an officer, director or employee, or in which such person is a partner.

(b) The term "Foreign Borrower" or "Foreign Borrowers" means Goldman Sachs Canada Inc. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Canada by the Ontario Securities Commission and the Investment Dealers Association, Goldman Sachs International and Goldman Sachs Equity Securities (U.K.) or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in the United Kingdom by the UK FSA, Goldman, Sachs & Co. oHG or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Germany by the Deutsche Bundesbank and the BAK, Goldman Sachs (Japan) Ltd. or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Japan by the Financial Services Agency and the Tokyo Stock Exchange, Goldman Sachs Australia Pty Limited or any broker-dealer or bank, now or in the future, that

[6] The Department notes the Applicants' representation that, under the exclusive borrowing arrangements, neither the Borrower nor any of its affiliates will perform the essential functions of a securities lending agent, e.g., the Applicants will not be the fiduciary who negotiates the terms of the Borrowing Agreement on behalf of the Plan, the fiduciary who identifies the appropriate borrowers of the securities or the fiduciary who decides to lend securities pursuant to an exclusive arrangement. However, the Applicants or their affiliates may monitor the level of collateral and the value of the loaned securities.

is an affiliate of Goldman subject to regulation in Australia by the ASIC, Goldman, Sachs & Co. Bank or any broker-dealer or bank, now or in the future, that is an affiliate of Goldman subject to regulation in Switzerland by the Swiss Federal Banking Commission.

(c) The term "Borrower" includes Goldman, the U.S. Broker-Dealers, and the Foreign Borrowers.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 3, 2002 at 67 FR 44633.

EFFECTIVE DATE: This exemption is effective as of March 22, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of August, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–22540 Filed 9–3–02; 8:45 am]

BILLING CODE 4510–29–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB) intends to request approval of a revised information collection from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). The currently approved information collection is the MSPB Appeal Form, Optional Form 283 (OMB Control Number 3124–0009). That form has been revised to produce the MSPB Appeal Forms Package, MSPB Form 185. At this time, the MSPB is requesting public comments on the MSPB Appeal Forms Package, which is available for review on the MSPB Web site at *http://www.mspb.gov* on the "What's New" page.

DATES: Comments must be received on or before November 4, 2002.

ADDRESSES: Submit comments to the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M St., NW., Washington, DC 20419. Because of possible mail delays, respondents are encouraged to submit comments by e-mail to *mspb@mspb.gov* or by facsimile transmittal to (202) 653–7130.

FOR FURTHER INFORMATION CONTACT: Office of the Clerk of the Board, 1615 M Street, NW., Washington, DC 20419; telephone (202) 653–7200; facsimile (202) 653–7130; e-mail to *mspb@mspb.gov*. Persons without Internet access may request a paper copy of the MSPB Appeals Forms Package from the Office of the Clerk.

SUPPLEMENTARY INFORMATION: The current version of the MSPB Appeal Form was approved by OMB, in accordance with the requirements of the Paperwork Reduction Act, in October 1994. Since that time, the MSPB has obtained extensions of OMB approval several times; the current approval expires on December 31, 2003. (Minor revisions updating the Instructions for the Appeal Form to reflect changes in the Board's regulations were made when the form was reprinted in November 2000.)

While a number of changes were made in the October 1994 revision to update and improve the Appeal Form, it has not undergone a major revision since 1989, when it was revised to reflect enactment of the Whistleblower Protection Act (WPA). The WPA authorized a new kind of appeal—the Individual Right of Action (IRA) appeal—which a whistleblower can file with the Board after first complaining to the Office of Special Counsel and exhausting the procedures of that office. The WPA also authorized the Board to grant requests for stays of agency actions allegedly based on whistleblowing. The enactment of the WPA necessitated revisions to the Board's regulations to require the submission of information the Board needs to adjudicate whistleblower appeals and stay requests. Following the issuance of those regulations, the Appeal Form was revised to include questions asking for the required information.

Since the WPA was enacted in 1989, both the Uniformed Services Employment and Reemployment Rights Act (USERRA), in 1994, and the Veterans Employment Opportunities Act (VEOA), in 1998, have extended the Board's jurisdiction to new appealable matters. The USERRA permits a person covered by that Act to raise a claim before either the Board or the Secretary of Labor that an agency has failed or refused to provide an employment or reemployment right or benefit to which the person is entitled under the Act. The VEOA permits a preference eligible to file a complaint with the Secretary of Labor alleging that an agency has violated a law or regulation relating to veterans' preference and to subsequently file an appeal with the Board if the Secretary does not resolve the matter within 60 days. The enactment of these laws necessitated revisions to the Board's regulations to require the submission of information the Board needs to adjudicate USERRA and VEOA appeals. While the USERRA and VEOA regulations were subsequently issued, the Appeal Form has not previously been revised to include questions asking for the required information. (In the revisions to the Instructions in November 2000, certain references to USERRA and VEOA were added.)

The revised MSPB Appeal Forms Package incorporates new questions to solicit the information required for USERRA and VEOA appeals. It also adds questions related to other changes

in law and regulation. It now includes questions asking whether an appellant in a mixed case is requesting compensatory damages (authorized by the Civil Rights Act of 1991) and whether an appellant in a whistleblower case is requesting consequential damages (authorized by the 1994 MSPB reauthorization Act). Reflecting an amendment to the Board's regulations, it includes a question asking whether an appellant and agency agreed to submit their dispute to an alternative dispute resolution (ADR) process before the appeal was filed.

In addition to updating the Appeal Form to reflect these changes in law and regulation, the MSPB performed a thorough review of the form to determine whether other improvements could be made. As a result, the Appeal Forms Package now includes a specific form to ask for the information needed for retirement appeals and a form in which an appellant may raise a claim that an appealed action was the result of a prohibited personnel practice. The questions in the current form dealing with reduction-in-force (RIF) actions have been deleted because the details requested by those questions are provided in the agency file. In addition, certain modifications have been made to questions in the current form, such as providing a list of the most commonly appealed personnel actions, and there has been some combining and rearranging of questions. Finally, the Appeal Forms Package includes considerably more detailed instructions to help an appellant determine whether the Board has jurisdiction over the matter being appealed and what information must be provided.

As a result of these revisions, the Appeal Forms Package now includes questions asking for information required by all of the Board's regulations governing the content of an appeal: 5 CFR 1201.24 for appeals generally, 5 CFR 1201.153 for mixed case appeals, 5 CFR 1208.13 for USERRA appeals, 5 CFR 1208.23 for VEOA appeals, and 5 CFR 1209.6 for whistleblower appeals. It also includes questions asking for the information required for whistleblower stay requests by 5 CFR 1209.9. In addition, it includes questions that allow an appellant to raise affirmative defenses as provided by 5 CFR 1201.24(b), 1201.56(b) and (c), and 1201.151. In accordance with 5 CFR 1201.3(c), it retains questions from the current form to determine whether an appellant has raised the same matter under a negotiated grievance procedure provided by a collective bargaining agreement.

Given the comprehensive nature of the additions and revisions to the current Appeal Form, the MSPB determined that it should no longer be maintained as a lengthy single form. Instead, it has been converted to a package of forms from which an appellant (or appellant's representative) can select the forms needed for the appellant's particular appeal. Each appeal will consist of at least two forms, Form 185–1 plus one other form, and many appellants will find that only those two forms are needed to file a complete appeal.

Based on FY 2001 data, about 69 percent of appeals involve appealable personnel actions. Such appeals would be filed using Forms 185–1 and 185–2. Another 26 percent of appeals involve retirement decisions or actions, which would be filed using Forms 185–1 and 185–3. In these personnel action and retirement appeals, additional appropriate forms would be attached if the appellant raises a claim of harmful procedural error, discrimination, a prohibited personnel practice, etc. The remaining 5 percent of appeals are IRA, USERRA, and VEOA appeals, which would be filed using Form 185–1 with Form 185–5, 185–7, or 185–8, respectively. The MSPB hopes that the Appeal Forms Package will prove more useful to appellants and their representatives than the current form and that it will result in more appeals being filed on the MSPB-provided forms.

The General Services Administration (GSA) removed the MSPB Appeal Form from its Standard Form (SF) and Optional Form (OF) system several years ago because of insufficient demand. Therefore, the OF number assigned by GSA to the Appeal Form has not been retained for the Appeal Forms Package. Instead, the package has been assigned an MSPB form number, 185, and the individual forms in the package are numbered sequentially as 185–1, 185–2, etc.

In revising the current Appeal Form to create the Appeal Forms Package, the MSPB's intent was both to update and improve the form and to create a template on which an electronic appeal process could be based. The Board intends to contract for the development of a web-based application (e-Appeal) based on the Appeal Forms Package. As planned, e-Appeal will go beyond simply filling in forms on-line and transmitting them electronically to the MSPB. The process will be similar to that used in popular tax preparation software, where the user answers questions posed in an interview format and those answers are then assembled into an electronic form for transmission. This approach is especially well suited to MSPB appeals because of the need to collect different kinds of information for different types of appealable matters. Just as an appellant will need to complete and submit only the paper forms in the Appeal Forms Package that apply to his or her particular appeal, so an appellant using e-Appeal will be presented only with the questions that apply to his or her appeal.

In accordance with the requirements of the Paperwork Reduction Act of 1995, the MSPB is soliciting comments on the public reporting burden for this information collection. The reporting burden is estimated to vary from 20 minutes to one hour per response, with an average of 30 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual no. of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208, and 1209	6,300	1	6,300	.5	3,150

The estimate of 6,300 for "Annual Number of Respondents" is based on the number of appeals processed by the Board in FY 2001. It should be noted, however, that not all appellants choose to use the MSPB-provided form to file their appeals, so this number represents that maximum number of respondents, assuming that every appellant uses the forms in the Appeal Forms Package. The estimate for "Hours per Response (average)" recognizes that most

appellants will need to complete only a few (minimum, two) of the forms in the package.

In addition, the MSPB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dated: August 28, 2002.

Shannon McCarthy,

Deputy Clerk of the Board.

[FR Doc. 02–22460 Filed 9–3–02; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meeting/Teleconference

Time and Date: 12 p.m., EDT, September 26, 2002.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of these meetings will be open to the public. Those interested in participating in either the meeting or the conference call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, overview of accomplishments, planning for FY 2003, reports, new business, adjournment.

Contact Person for More Information: Joan Durocher, Attorney/Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: August 28, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–22405 Filed 9–3–02; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL WOMEN'S BUSINESS COUNCIL

Public Meeting

In accordance with 15 U.S.C—7106(b) the National Women's Business Council (NWBC) announces a forthcoming meeting. The meeting will cover action items worked on by NWBC and future projects, including, but not limited to procurement, access to capital and training. The meeting will be held September 17, 2002 at the U.S. Small Business Administration located at 409 3rd Street, SW., Washington, DC in the Eisenhower Conference Room—A, 2nd Floor from 9 a.m. to 2 p.m.

Anyone wishing to make an oral presentation to the Board must contact Gilda Presley, in writing by letter or fax no later than September 12, 2002 in order to be included on the agenda. For further information, please write or call Gilda Presley, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Telephone number (202) 205–3850, Fax number (202) 205–6825.

Kimberly Mace,

Committee Management Specialist.

[FR Doc. 02–22650 Filed 8–30–02; 3:10 pm]

BILLING CODE 6820–AB–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 9, Public Records.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Individuals requesting access to records under the Freedom of Information or Privacy Acts, or to records that are already publicly available in the NRC's Public Document Room.

6. *An estimate of the number of responses:* 11,272.

7. *The estimated number of annual respondents:* 11,272.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 2,832.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 9 establishes information collection requirements for individuals making requests for records under the Freedom of Information Act (FOIA) or Privacy Act (PA). It also contains requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests; and requests for expedited processing of requests. The information required from the public is necessary to identify the records they are requesting; to justify requests for waivers or reductions in searching or copying fees; or to justify expedited processing.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 4, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0043), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 28th day of August, 2002.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–22492 Filed 9–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 368, 416, 003, 247, 286, 333, 293, 458, 271, and 382]

Entergy Operations, Inc., Entergy Nuclear Operations, Inc., Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station; Indian Point Nuclear Station, Units 1, 2 and 3; James A. Fitzpatrick Nuclear Power Plant; Pilgrim Nuclear Power Station; River Bend Station; Vermont Yankee Nuclear Power Plant; and Waterford Steam Electric Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the Code of Federal Regulations (10 CFR) part 20, section 20.1003 for Renewed Facility Operating License No. DPR–51; Facility Operating License Nos. NPF–6 and NPF–29; Provisional Operating License No. DPR–5; and Facility Operating License Nos. DPR–26, DPR–64, DPR–59, DPR–35, NPF–47, DPR–28, and NPF–38; issued to Entergy Operations, Inc. and Entergy Nuclear Operations, Inc. (the licensees), for operation of Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station; Indian Point Nuclear Station, Units 1, 2 and 3; James A. Fitzpatrick Nuclear Power Plant; Pilgrim Nuclear Power Station; River Bend Station; Vermont Yankee Nuclear Power Plant; and Waterford Steam Electric Station, Unit 3, located in Pope County, Arkansas; Claiborne County, Mississippi; Westchester County, New York; Oswego County, New York; Plymouth County, Massachusetts; West Felciana Parish, Louisiana; Windham County, Vermont; and Saint Charles Parish, Louisiana. (The operating authority of Provisional Operating License No. DPR–5 for Indian Point Nuclear Station, Unit 1, was revoked by Commission Order dated June 19, 1980). Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide an exemption from the 10 CFR 20.1003 definition of total effective dose equivalent (TEDE), which is the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The proposed exemption would change the definition of TEDE to mean the sum of the effective dose equivalent or the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

The proposed action is in accordance with the licensee's application dated July 20, 2001, as supplemented by letter dated June 13, 2002.

The Need for the Proposed Action

The proposed action is needed because the current method of calculating TEDE, under certain conditions, can significantly overestimate the dose received.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that revising the methodology for calculating the dose received by individuals will not have any environmental impacts.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in: the Final Environmental Statement (FES) related to the operation of Arkansas Nuclear One, Unit 1, dated February 1973, and the Final Supplemental Environmental Impact Statement regarding Arkansas Nuclear One, Unit 1 (NUREG–1437, Supplement 3), dated April 2001; the FES related to the operation of Arkansas Nuclear One, Unit 2, dated June 1977; the FES related to the operation of Grand Gulf Nuclear Station, dated September 1981; previous reviews of Indian Point Nuclear Station, Unit 1, or the Final Generic Environmental Impact Statement on decommissioning of nuclear facilities, dated August 1988; the FES related to the operation of Indian Point Nuclear Station, Unit 2, dated September 1972; the FES related to the operation of Indian Point Nuclear Station, Unit 3, dated February 1975; the FES related to the operation of the James A. FitzPatrick Nuclear Power Plant, dated March 1973; the FES related to the operation of the Pilgrim Nuclear Power Station, dated May 1972; the FES related to the operation of the River Bend Station, dated January 1985; the FES related to the operation of the Vermont Yankee Nuclear Power Plant, dated July 1972; and the FES related to the operation of the Waterford Steam Electric Station, Unit 3, dated January 1985.

Agencies and Persons Consulted

On August 14, 2002, the staff consulted with the Arkansas State official, Bernie Bevill of the Arkansas Department of Health, regarding the environmental impact of the proposed action. On August 16, 2002, the staff consulted with the Mississippi State official, Silas Anderson, of the Mississippi Department of Health, regarding the environmental impact of the proposed action. On August 13, 2002, the staff consulted with the New York State official, Alyse Peterson of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. On August 28, 2002, the staff consulted with the Massachusetts State official, James Muckerheide of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. On August 13, 2002, the staff consulted with the Louisiana State official, Nan Calhoun of the Louisiana Department of

Environmental Quality, regarding the environmental impact of the proposed action. On August 15, 2002, the staff consulted with the Vermont State official, William Sherman of the Department of Public Service, regarding the environmental impact of the proposed action. The State officials had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 20, 2001, as supplemented by letter dated June 13, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of August, 2002.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–22491 Filed 9–3–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 2, 9, 16, 23, 30, October 7, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 2, 2002

Wednesday, September 4, 2002

10:25 a.m.
Affirmation Session (Public Meeting) (Tentative)
a. Final Rule: 10 CFR part 63: Specification of a Probability for Unlikely Features, Events, and Processes
b. Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Board's Certified Question Regarding Procedure

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

Week of September 16, 2002—Tentative

There are no meetings scheduled for the Week of September 16, 2002.

Week of September 23, 2002—Tentative

There are no meetings scheduled for the Week of September 23, 2002.

Week of September 30, 2002—Tentative

Tuesday, October 1, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: John Buckley, 301–415–6607)
This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Wednesday, October 2, 2002

10:00 a.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of October 7, 2002—Tentative

There are no meetings scheduled for the Week of October 7, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 29, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–22594 Filed 8–30–02; 11:32 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, 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 (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Dominion Nuclear Connecticut, Inc. (the licensee) for operation of the Millstone Power Station, Unit No. 3 (MP3), located in New London County, Connecticut.

The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ". . . up to 24 hours" to ". . . up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement would be added to SR 4.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination for amendments concerning missed surveillances in its application dated July 19, 2002.

The proposed amendment would also make administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2, "Westinghouse Standard Technical Specifications." These changes are necessary to make the current MP3 TSs compatible with the proposed CLIIP changes for missed surveillances. The licensee provided its analysis of the issue of NSHC for these proposed changes in its application.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves NSHC. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 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), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

[CLIIP Changes]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing Technical Specifications. As such, these changes are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

[CLIIP Changes]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

[CLIIP Changes]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

[Administrative Changes]

The proposed change involves rewording of the existing Technical Specifications to be consistent with NUREG–1431, Revision 2. The changes are administrative in nature and will not involve any technical changes. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes are administrative in nature, no question of safety is involved. Therefore, there will be no reduction in a margin of safety.

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 NSHC.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 4, 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,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of NSHC. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385, 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).

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on—

(1)A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

For further details with respect to this action, see the application for amendment dated July 19, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of August, 2002.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–22490 Filed 9–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 46428]

Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) Thereunder Granting a *De Minimis* Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

August 28, 2002.

Rule 11Aa3–2(d),[1] adopted pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[2] requires each self-regulatory organization ("SRO") to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 11Aa3–2(f) authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member thereof, or specified security, from the requirement of this rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.[3]

The Intermarket Trading System ("ITS") is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating SROs based on current quotation information emanating from their markets.[4] The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[5]

Under the ITS Plan, a member of a participating SRO may access the best bid or offer displayed in CQS by another Participant by sending an order (a "commitment to trade") through ITS to that Participant. Exchange members participate in ITS through facilities provided by their respective exchanges. NASD members participate in ITS through a facility of the Nasdaq Stock Market ("Nasdaq") known as the Computer Assisted Execution System ("CAES"). Market makers and electronic communications networks ("ECNs") that are members of the NASD and seek to display their quotes in exchange-listed securities through Nasdaq must register with the NASD as ITS/CAES Market Makers.[6]

Section 8(d)(i) of the ITS Plan provides that:

Absent reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not purchase any security that he is permitted to trade through the system at a price that is higher than the price at which that security, at the time of such purchase, is offered in one or more other Participant's Markets that trade the security through ITS as reflected by the offer furnished from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by, such member or available in the quotation service used by an ITS/CAES Market Maker.[7]

A similar provision applies with respect to the sale of any such security at a price lower than the price at which the security is bid for in one or more other Participant's markets.[8] If a trade-through occurs and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[9]

The ITS trade-through provisions were designed both to encourage market participants to display their trading interest—which contributes liquidity to the market—and to help achieve best execution for customer orders in exchange-listed securities. Like ITS itself, however, these rules were designed at a time when the order routing and execution facilities of markets were much slower, intermarket competition less keen, and the minimum quote increment for exchange-listed securities was 1/8 of a dollar ($0.125).

With the introduction of decimal pricing and technology changes that have enabled vastly reduced execution times, the trade-through provisions of the ITS Plan have increasingly limited the ability of a Participant or ITS/CAES Market Maker to provide an automated execution when a better price is displayed by another Participant that does not offer automated execution. For example, certain electronic systems can offer internal executions in a fraction of a second, whereas ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Thus, an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i)

[1] *See* 17 CFR 240.11Aa3–2(d).

[2] Pursuant to Section 11A of the Act, the Commission may, by rule or order, "authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system." *See* Section 11A(a)(3)(B) of the Act, 15 U.S.C. 78k–1(a)(3)(B).

[3] *See* 17 CFR 240.11Aa3–2(f).

[4] Quotations in exchange-listed securities are collected and disseminated by the Consolidated Quote System ("CQS"), which is governed by the CQ Plan approved by the Commission under Rule 11Aa3–2.

[5] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. (the "NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") ("Participants").

[6] *See* Securities Exchange Act Release No. 42536 (March 16, 2000), 65 FR 15401 (March 22, 2000). Market makers and ECNs are required to provide their best-priced quotations and customer limit orders in certain exchange-listed and Nasdaq securities to an SRO for public display under Exchange Act Rule 11Ac1–1 (the "Quote Rule") and Regulation ATS. 17 CFR 240.11Ac1–1(c) and 242.301(b)(3).

[7] ITS Plan, Section 8(d)(i).

[8] To implement the intent of Section 8(d)(i), each Participant has adopted and obtained Commission approval of a "trade-through rule" substantially the same as the rule attached as Exhibit B to the ITS Plan. *See* ITS Plan, Section 8(d)(ii). *See also* NYSE Rule 15A; NASD Rule 5262.

[9] *See* ITS Plan, Exhibit B.

attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through.

These provisions are particularly restrictive in the case of exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs"). These ETFs share certain characteristics that may make immediate execution highly desirable to certain investors. In particular, because these ETFs are highly liquid securities and their value is readily derived from the values of the underlying shares, the ability to obtain an immediate execution at a displayed price may be more important than the opportunity to obtain a better price.

The Commission is granting a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in these ETFs that are effected at a price no more than three cents away from the best bid and offer quoted in CQS. A *de minimis* exemption will allow Participants and ITS/CAES Market Makers to execute transactions, through automated execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant. The Commission believes that exempting transactions at this level from the ITS trade-through provisions will, on balance, provide investors increased liquidity and increased choice of execution venues while limiting the possibility that investors will receive significantly inferior prices. In particular, the Commission believes that the expected benefit to investors seeking an immediate execution in such ETFs, rather than a delayed execution through ITS, is not likely to exceed three cents per share.

The Commission considered other alternatives to the three-cents threshold and concluded that on balance it represents a sensible compromise between retaining the trade-through provisions in their current form (a zero-cent threshold) and permitting all trade-throughs (a large threshold). The three-cents threshold was chosen to avoid compelling broker-dealers to use ITS unless the expected price improvement is greater than the de facto cost of using ITS. The de facto cost of using ITS is largely due to the option value of the commitments that broker-dealers give to dealers in other markets when trying to obtain better execution prices. The Office of Economic Analysis estimated the value of these options to be between one cent per share and two and one-half cents per share for the securities in question. Further, since execution of a commitment is uncertain, there is a risk that the expected price improvement will be less than the displayed quote would suggest. The staff therefore concluded that a three-cents trade-through threshold was more reasonable. Although the Commission recognizes the limitations of this analysis, it believes that the three-cents threshold represents an appropriate compromise between competing interests.

By granting the exemption on a temporary basis, moreover, the Commission will be able to gather the data necessary to study the effects of an exemption from the ITS trade-through provisions and the desirability of extending the exemption. The Commission therefore believes that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system to grant a temporary *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in these ETFs. In this connection, the Commission emphasizes that the proposed exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, *it is ordered,* pursuant to Section 11A of the Act and Rule 11Aa3–2(f) thereunder, that Participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in QQQs, DIAMONDs, and SPDRs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

This Order shall be effective commencing on September 4, 2002 through June 4, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22531 Filed 9–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46422; File No. SR–NASD–2002–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 3010(b)(2) and IM–8310–2

August 28, 2002.

I. Introduction

On January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder.[2] On May 31, 2002, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposal amends NASD Rule 3010(b)(2), also known as the "Taping Rule," and NASD–IM–8310–2. Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on June 18, 2002.[4] The Commission received three comment letters regarding the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NASD Rule 3010(b)(2) requires NASD members to adopt special supervisory procedures and to tape record all of their registered representatives' telephone calls with customers (or potential customers) when they meet specified threshold levels of representatives that have worked at disciplined firms. A firm is "disciplined" within the meaning of the Rule if, in connection with securities sales practices, it has been expelled from membership or participation in a securities self-regulatory organization, or is subject to an order of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Grace Yeh, Assistant General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002.

[4] *See* Securities Exchange Act Release No. 46067 (June 12, 2002), 67 FR 41561.

[5] *See* letters to the Secretary, SEC, from Brad Bervert, President, Financial World Corporation, dated June 4, 2002 ("Bervert Letter"), and William Perry, President and Chief Executive Officer, Pro-Integrity Securities, Inc., dated June 27, 2002 ("Perry letter"); e-mail from James St. Claire, Chief Executive Officer, ViewTrade Securities, Inc., dated August 2, 2002 ("St. Claire e-mail").

Commission revoking its registration as a broker or dealer.[6]

NASD now proposes several changes to the Rule. First, NASD proposes to permit firms to avoid its application by reducing their staffing levels to fall below the specified threshold levels within 30 days of receiving notice or obtaining actual knowledge that they are subject to the Rule. Thereafter, the firm could not rehire the terminated individuals for at least 180 days. Firms could not hire additional registered representatives to fall below the thresholds; the rule only permits firms to reduce their population of registered representatives from disciplined firms. A firm would only be permitted to adjust its staffing levels once, and only the first time it becomes subject to the Taping Rule. NASD has represented that although a new entity resulting from a restructuring, such as a merger, would be allowed to take advantage of the new procedures even if a participant in the restructuring had previously done so, this would not be permitted where an entity was restructured in an attempt to avoid the Rule.

NASD would also revise the criteria for determining whether a firm is subject to the Taping Rule. Specifically, persons who were registered with one or more disciplined firms for 90 days or less within the last three years and who have no disciplinary history, as defined in NASD–IM–1011–1, would not count as former associates of disciplined firms, although they would still count toward the firm's total number of registered persons.

In addition to these changes, the proposal would extend the period that firms must maintain taping systems from two years to three years, extend the time for firms to install taping systems from 30 days to 60 days, and revise the rule to state that exemptions will be available only in "exceptional circumstances."

Several other changes are also proposed. Specifically, NASD would substitute "associated with one or more Disciplined Firms in a registered capacity" for "employed by one or more Disciplined Firms" in subparagraph (b)(2)(viii) of the Rule to reflect that the calculation of registered representatives from disciplined firms includes independent contractors previously registered with disciplined firms. NASD would also clarify that firms must both establish and "implement" the required systems within the time set forth in the Rule, and that the compliance period begins on the date that the member establishes its special supervisory procedures and implements its taping system.

Finally, NASD proposes to amend NASD–IM–8310–2 to allow investors and the general public to ascertain whether a particular firm is subject to the Taping Rule via the NASD Public Disclosure Program's toll-free telephone listing.

[6] NASD Rule 3010(b)(2)(x).

III. Summary of Comments

The Commission received three comment letters regarding the proposed rule change. The commenters were generally supportive. However, two believed that NASD should have proposed to apply the amendments to firms already subject to the Taping Rule.[7] One of the commenters opposed the extension of the taping period to three years as being unduly burdensome. This commenter also opposed disclosure of whether a particular firm was subject to the Taping Rule, on the grounds that the Rule was meant to be remedial in nature, and that the public might construe its application as a disciplinary sanction.[8] The commenter also suggested that NASD should consider the level of experience of individual representatives and the reason their previous firm was disciplined in determining whether they should be counted toward the threshold levels, and that the rule should be modified to permit exemptions depending on whether NASD had particular concerns about a firm's population of former associates of disciplined firms.[9] Another commenter suggested that NASD should define the circumstances where it would grant an exemption to include where an employee had been associated with a disciplined firm within the past three years, but had departed prior to the activities that led to the disciplinary action.[10]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[11] The Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[12] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the proposal to allow firms an opportunity to reduce staffing levels in order to fall below the Taping Rule's threshold levels is proper. This change should allow firms a degree of flexibility when they might inadvertently or unintentionally become subject to the Rule due, for example, to sudden turnover among registered persons or other events beyond the firm's control. At the same time, NASD's proposal includes measures to prevent firms from taking inappropriate advantage of the new provisions. The staff adjustment would only be permitted once, and only on the first occasion that the firm triggers the Rule. Moreover, it could not be accomplished by hiring more personnel, but only by reducing the number of employees from previously disciplined firms. Additionally, the member could not re-hire a terminated employee for 180 days. Finally, notwithstanding the inherent difficulty a firm would face if it sought to restructure and then terminate personnel for the sole purpose of avoiding the Taping Rule, NASD has stated that it will not allow a firm to evade the Rule through such a measure.

The Commission also believes that NASD's proposal to change the calculation of the threshold levels by not counting persons that were short-term employees of disciplined firms as having worked at disciplined firms is proper. The Commission agrees with NASD that such employees are less likely to have received poor training or learned improper sales tactics, and are more likely to have any "bad habits" corrected by proper training and supervision at their new firm. As an additional safeguard, the proposed rule change provides that such short-term employees may not themselves have a relevant disciplinary history. These changes should adequately address the suggestions by one of the commenters that NASD should consider the histories and qualifications of individual personnel in evaluating whether a firm is subject to the Rule or should be exempted, while at the same time retaining clear, workable standards.

[7] *See* Bervert letter, Perry letter, *supra*, note 4.

[8] *See* Perry letter, *supra* n. 4.

[9] *See* Perry letter, *supra* n. 4.

[10] *See* St. Claire e-mail, *supra* n. 4.

[11] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o(b)(6).

NASD has also proposed to change the Rule to provide that exemptions will only be granted in "exceptional circumstances." This change, coupled with those described above, should help to reduce the number of requests that might otherwise consume time and resources on the part of both NASD and firms subject to the Rule. Furthermore, NASD's proposal to extend the duration of the taping requirement from two years to three years from the date taping begins is proper. Although one commenter noted that this constitutes a higher compliance burden, it should reduce any confusion that might be caused by the difference between the Rule's current two-year taping requirement and the Rule's requirement that member firms must review the last three years of their employees' work history to determine whether they had worked at disciplined firms. The Commission also believes that the proposal to allow 60 days, instead of 30, for the installation of taping systems is appropriate. One commenter noted that it could take 60 days to implement a taping system.

The proposed clarifying changes to the Rule are also consistent with the Act. The substitution of "associated with one or more Disciplined Firms in a registered capacity" for "employed by one or more Disciplined Firms" in subparagraph (b)(2)(viii) of the Rule should eliminate any misconception that representatives that were independent contractors [13] of disciplined firms do not count toward the threshold levels. Likewise, adding language to clarify that firms that become subject to the Rule must "implement" the required procedures within the allotted time period should make clear that the taping and supervisory procedures must be put into use within the prescribed time period. Finally, NASD's proposal to clarify that the taping compliance period begins on the date that the member implements its taping system should help to ensure that the Rule's requirements are easily understood.

As noted above, NASD has also proposed to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule. This disclosure would be made available through the toll-free telephone listing of NASD's Public Disclosure Program. Although one of the commenters asserted that the public might interpret the Rule's application as a disciplinary sanction, rather than a remedial measure, this does not mean that the disclosure should not be permitted. Rather, the Commission believes that this disclosure will benefit investors and the general public by providing information that will permit them to consider the level of experience and training of a firm's representatives. Therefore, this should allow investors a better opportunity to evaluate their choices in selecting a broker/dealer.

Finally, the Commission believes that NASD's proposal to apply the changes prospectively is appropriate. Retroactive application would allow firms currently subject to the Rule to evade the requirements entirely, and thereby inappropriately restrict NASD's oversight of such firms' sales training and practices.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–2002–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–22461 Filed 9–3–02; 8:45 am]

BILLING CODE 8010–01–P

[13] The Commission notes that the issue of independent contractors was addressed in a letter from the Division of Market Regulation to NASD. *See* letter from Douglas Scarff, Director, Division of Market Regulation, Commission, to Gordon Macklin, President, NASD (June 18, 1982).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 23, 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–2002–13190.
Date Filed: August 20, 2002.
Parties: Members of the International Air Transport Association.
Subject: CTC COMP 0411 dated 2 August 2002. Worldwide Area Resolutions (changes to rates) except to/from USA/US Territories, CTC COMP 0417 dated 20 August 2002, technical correction Summary attached. Minutes—CTC COMP 0400 dated 25 June 2002. Tables—CTC1 Rates 0017, CTC2 EUR Rates 0018, CTC2 ME–AFR Rates 0029, CTC3 Rates 0020, CTC12 NATL–TC2 Rates 0068, CTC12 MATL–TC2 Rates 0034, CTC12 SATL–TC2 Rates 0033, CTC23 AFR–TC3 Rates 0020, CTC23 EUR–TC3 Rates 0021, CTC23 ME–TC3 Rates 0032, CTC31 N/C Rates 0014, CTC31 S Rates 0013, CTC123 Rates 0015. Intended effective date: 1 October 2002.

Docket Number: OST–2002–13192.
Date Filed: August 20, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC1 0226 dated 16 August 2002, Mail Vote 2226, TC1 Within South America, Expedited Special Amending Resolution 010y r1–r7, Intended effective date: 15 September 2002.

Docket Number: OST–2002–13193.
Date Filed: August 20, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC1 0227 dated 16 August 2002, Mail Vote 227, TC1 Longhaul (except between USA and Chile), Expedited Special Amending Resolution 010z r1–r4, Intended effective date: 15 September 2002.

Docket Number: OST–2002–13205.
Date Filed: August 21, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0144 dated 19 July 2002, TC2 Europe-Middle East Resolutions r1–r25. Minutes—PTC2 EUR–ME 0146 dated 20 August 2000. Tables—PTC2 EUR–ME Fares 0063 dated 26 July 2002, PTC2 EUR–ME Fares 0065 dated 26 July 2002, Technical Correction to PTC2 EUR–ME Fares 0063, PTC2 EUR–ME Fares 0067 dated 2 August 2002, Technical Correction to PTC EUR–ME Fares 0063, Intended effective date: 1 January 2003.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–22511 Filed 9–3–02; 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 August 23, 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–2002–13203.

Date Filed: August 20, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 10, 2002.

Description: Application of Emirates, pursuant to 49 U.S.C. Section 41302, 14 CFR Part 211 and Subpart B, requesting a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property, and mail, including all-cargo service, from points behind the U.A.E., via the U.A.E. and intermediate points, to a point or points in the United States and beyond. Emirates also requests, authority to engage in all-cargo service between the United States and any point or points in third countries, and to operate charters pursuant to 14 CFR Part 212.

Docket Number: OST–2002–13207.

Date Filed: August 21, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 11, 2002.

Description: Application of Clair Aero, Inc., pursuant to 49 U.S.C. Section 41738 and Subpart B, requesting authority to engage in scheduled passenger operations as a commuter air carrier.

Docket Number: OST–2002–13230.

Date Filed: August 23, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 13, 2002.

Description: Application of Dairo Air Services Limited d/b/a DAS Air Cargo ("DAS"), pursuant to 49 U.S.C. Section 41302, 14 CFR Part 211 and Subpart B, requesting a foreign air carrier permit authorizing DAS to provide scheduled air transportation of property and mail between the United States and any point or points, as permitted by Annex I of the U.S.-Uganda open skies agreement, commencing on or about October 1, 2002. DAS also requests, authority to conduct U.S.-Uganda and U.S.-third country all-cargo charters, as permitted by Annex II of the open skies agreement.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 02–22512 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–02–115–21 Retention of Items of Mass Installed in Transport Airplane Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy that addresses the use of industry standards in the seat certification process regarding qualification of video systems mounted on seats.

DATES: Send your comments on or before October 4, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (425) 227–1149; e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in the **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement ANM–02–115–21."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will further simplify the certification process pertaining to the retention of video components on seats for which the supplier has been granted a Technical Standard Order authorization. This policy relieves the applicant from the formal test plan/report approval and test article conformity procedures identified in FAA Order 8110.4B.

Issued in Renton, Washington, on August 26, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–22501 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–04–U–00–AOO) To Use the Revenue From a Passenger Facility Charge (PFC) at Altoona-Blair County Airport, Altoona, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application; correction.

SUMMARY: This correction revises information from the previously published notice.

In notice document 02–21141 beginning on page 54013 in the issue of Tuesday, August 20, 2002, under the **SUPPLEMENTARY INFORMATION** section, third paragraph, Proposed charge effective date should be, "July 1, 2000" and the Total estimated PFC revenue should be, "$43,610".

Also, under the Supplementary Information section, sixth paragraph, the contact address for FAA regional airports office should be: "Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434".

DATES: Comments must be received on or before October 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Daboin/Manager HAR–ADO Airports District Office, 3905 Hartzdale Drive, Suite 508, (717) 730–2830. The

application may be reviewed in person at this same location.

Issued in Harrisburg, PA on August 26, 2002.

Sharon Daboin,

Manager, HAR–ADO, Eastern Region.

[FR Doc. 02–22500 Filed 9–3–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 28, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau of Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 4, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0127.

Form Number: IRS Form 1120–H.

Type of Review: Extension.

Title: U.S. Income Tax Return for Homeowners Associations.

Description: Homeowners associations file Form 1120–H to report income, deductions, and credits. The form is also used to report the income tax liability of the homeowners association. The IRS uses Form 1120–H to determine if the income, deductions, and credits have been correctly computed. The form is also used for statistical purposes.

Respondents: Business or other for-profit, State, Local or Tribal Government, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 112,311.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	11 hr., 43 min.
Learning about the law or the form.	5 hr., 19 min.
Preparing the form	13 hr., 12 min.
Copying, assembling, and sending the form to the IRS.	2 hr., 9 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,638,877 hours.

OMB Number: 1545–0941.

Form Number: IRS Form 8308.

Type of Review: Extension.

Title: Report of a Sale or Exchange of Certain Partnership Interests.

Description: Form 8308 is an information return that gives the IRS the names of the parties involved in a section 751(a) exchange of a partnership interest. It is also used by the partnership as a statement to the transferor or transferee. It alters the transferor that a portion of the gain on the sale of a partnership interest may be ordinary income.

Respondents: Business or other for-profit, State, Local or Tribal Government, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	2 hr., 23 min.
Learning about the law or the form.	2 hr., 22 min.
Preparing and sending the form to the IRS.	2 hr., 31 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,460,000 hours.

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group

Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion, Other (Changes in group membership)

Estimated Total Reporting Burden: 662 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 02–22515 Filed 9–3–02; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act; Meeting

DATE/TIME: Thursday, September 19, 2002, 9:30 a.m.–5:30 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

STATUS: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: September 2002 Board Meeting; Approval of Minutes of the One Hundred Fifth Meeting (June 20–21, 2002) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 2003 and 2004 Budget Review; Review of Unsolicited and Out-of-Cycle Grant Applications; Other General Issues.

CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: August 29, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–22559 Filed 8–29–02; 4:06 pm]

BILLING CODE 6820–AR–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final policy priorities for amendment cycle ending May 1, 2003.

SUMMARY: In June 2002, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2003. *See* 67 FR 42308 (June 21, 2002). After reviewing public comment received pursuant to this notice, the Commission has identified

its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2003. While the Commission intends to address these priority issues, it recognizes that other factors, such as the enactment of legislation requiring Commission action, may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2003. The Commission may address any unfinished policy work from this agenda during the amendment cycle ending May 1, 2004.

For the amendment cycle ending May 1, 2003, and possibly continuing into the amendment cycle ending May 1, 2004, the Commission has identified the following policy priorities: (1) Implementation of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, which pertains to corporate fraud, securities fraud, as well as other general types of fraud, and requires the Commission to promulgate amendments under emergency amendment authority; (2) implementation of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, which requires the Commission to promulgate amendments under emergency amendment authority; (3) in conjunction with its work on the Bipartisan Campaign Reform Act of 2002, a review of the public corruption guidelines in Chapter Two, Part C (Offenses Involving Public Officials), through the amendment cycle ending May 1, 2004; (4) continuation of its policy work relating to the USA PATRIOT ACT, Pub. L. 107–56, nuclear, biological, and chemical weapons offenses, and other terrorism offenses, including offenses created by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107–188, and the Terrorist Bombings Convention Implementation Act of 2002, Pub. L. 107–197; (5) continuation of its work on the 15 Year Study, which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2); (6) continuation, through the amendment cycle ending May 1, 2004, of its research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (A) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (B) assessment of the criminal history rules for minor offenses, juvenile offenses, and expunged convictions; (C) assessment of the criminal history rules for related cases; and (D) consideration of other application issues relating to simplifying the operation of Chapter Four; (7) § 3E1.1 (Acceptance of Responsibility), which may include an assessment of downward adjustments given for timely entry of a guilty plea prior to trial preparation, provision of information regarding the defendant's role in the offense, and the criteria for demonstrating acceptance of responsibility; (8) consideration, through the amendment cycle ending May 1, 2004, of amendment proposals pertaining to compassionate release programs; and (9) other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (A) offenses involving trafficking in oxycodone; (B) offenses involving trafficking in red phosphorous; (C) offenses involving the unlawful sale or transportation of drug paraphernalia; (D) § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment); and (E) policies for voluntary disclosure of offense conduct by defendants (§ 5K2.16 (Voluntary Disclosure of Offense)) and related guidelines. The Commission also will continue to provide its assistance to Congress and the Administration with respect to the Commission's report to Congress, *Cocaine and Federal Sentencing Policy*, which was submitted in May 2002.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 02–22541 Filed 9–03–02; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will hold its first meeting on Monday, September 23, 2002, through Wednesday, September 25, 2002, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 430 Washington DC 20420. The meeting will convene daily at 8:30 a.m. and conclude Monday and Tuesday at 5 p.m. and Wednesday at 12 noon. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors, direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On September 23, the Committee will convene its opening session with an overview of the mission and objectives of the Committee, an ethics briefing, and orientation briefings on requirements of the Federal Advisory Committee Act and other administrative matters. The Committee will also receive briefings from the Veterans Health Administration (VHA) on the current status of chiropractic care within VHA. On September 24, the Committee will receive briefings on human resources policies pertinent to the charge of the Committee and begin discussion of a work plan for the Committee and how to address of scope of practice issues. On September 25, the Committee will continue discussion on scope of practice of chiropractic practitioners and conclude with a discussion of action items for the Committee.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Committee Manager, at (202) 273–8558, no later than 2 days before the meeting

in order to facilitate entry to the building. No time will be allocated at this meeting for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting the development and implementation of the chiropractic health program within the Veterans Health Administration. Comments can be transmitted electronically to the Committee at *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Primary and Ambulatory Care SHG (112), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 23, 2002.

By Direction of the Secretary.

Ron Aument,

Deputy Chief of Staff.

[FR Doc. 02–22443 Filed 9–3–02: 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463 (Federal Advisory Committee Act), gives notice that a meeting of the Advisory Committee on Homeless Veterans will be held from Wednesday, September 18, 2002, through Friday, September 20, 2002, at the VA Medical Center, Room 100, 10000 Brecksville Road, Brecksville, OH. The meeting will begin at 8:30 a.m. each day and conclude on Wednesday and Thursday at 4:30 p.m. and Friday at noon. the meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on going advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On September 18, the Committee will visit program sites in the Cleveland, Ohio, area that provide housing and supportive services to homeless veterans. On September 19, the Committee will receive information about Federal efforts to coordinate services, veteran access to homeless services from VA health and benefits programs and review new initiatives to assist veterans. On September 20, the Committee will conclude with reviews of previous presentations and discuss future actions for the Committee, including formulation of Committee recommendations.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 23, 2002.

By Direction of the Secretary.

Ron Aument,

Deputy Chief of Staff.

[FR Doc. 02–22442 Filed 9–3–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Respiration	September 19, 2002	Holiday Inn Central
Immunology & Dermatology	September 19, 2002	Washington Plaza
Surgery	September 23, 2002	Holiday Inn Central
Aging & Clinical Geriatrics	September 27, 2002	Washington Plaza
Nephrology	September 27, 2002	Holiday Inn Central
Cardiovascular Studies	September 30, 2002	Holiday Inn Central
General Medical Science	September 30, 2002	Holiday Inn Central
Endocrinology	October 3–4, 2002	Marriott Residence Inn
Alcoholism & Drug Dependence	October 4, 2002	Washington Plaza
Mental Health & Behav Sciences	October 7, 2002	Holiday Inn Central
Gastroenterology	October 14, 2002	Holiday Inn Central
Clinical Research Program	October 16, 2002	Holiday Inn Central
Infectious Diseases	October 17–18, 2002	Holiday Inn Central
Neurobiology-C	October 18, 2002	Holiday Inn Central
Oncology	October 21–22, 2002	Holiday Inn Central
Hematology	October 24, 2002	Holiday Inn Central
Neurobiology-D	October 24–25, 2002	Marriott Residence Inn
Epidemiology	October 29, 2002	Holiday Inn Central
Medical Research Service Merit Review Committee	December 5, 2002	Holiday Inn Central

The addresses of the hotels are:

Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC

Marriott Residence Inn—Thomas Circle, 1199 Vermont Avenue, NW, Washington, DC

Washington Plaza, 10 Thomas Circle, NW, Washington, DC

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site

visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: August 23, 2002.

By Direction of the Secretary.

Ron Aument,

Deputy Chief of Staff.

[FR Doc. 02–22441 Filed 9–3–02; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 403

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 403

[CMS–4027–F]

RIN 0938–AL25

Medicare Program; Medicare-Endorsed Prescription Drug Card Assistance Initiative

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

ACTION: Final rule.

SUMMARY: This final rule describes the Department of Health and Human Services' (HHS) Medicare-Endorsed Prescription Drug Card Assistance Initiative, and sets forth the necessary requirements to participate in the initiative.

EFFECTIVE DATE: This final rule is effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa DeCaro, (410) 786–6604.

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I. Background

A. Purpose of the Initiative

The purpose of this final rule on the Medicare-Endorsed Prescription Drug Card Assistance Initiative is to assist Medicare beneficiaries in making optimal use of their Medicare-covered services and to provide Medicare beneficiaries with information, counseling and education on private sector plans and opportunities available to them to lower their prescription drug costs. There already exist a number of private sector tools—such as formularies, use of generic drugs, and negotiation of discounts or rebates—for obtaining prescription drugs at discounted prices. Also, a number of commercial products and drug discount programs already exist that offer discounts to seniors and others. This final rule and initiative will recognize those drug discount programs that offer features we believe are most useful to beneficiaries, and will educate Medicare beneficiaries about the methods used in the private sector to lower prescription drug costs. This will assist beneficiaries in making optimal use of their Medicare covered services.

While Medicare generally does not cover the purchase of outpatient prescription drugs, Medicare Part B, in section 1832 of the Social Security Act (the Act), provides benefits for a variety of other outpatient services and procedures, including physician office visits and services for which a

prescription drug order is a critical component of the service provided. In 2000, the Medicare fee-for-service program paid for approximately 188 million physician office visits (for new and established patients) at a program cost of nearly $6.6 billion for the visits alone, not including other services such as lab tests or procedures. *See* Table 62, *Health Care Financing Review, Medicare and Medicaid Statistical Supplement, 2002,* unpublished. Our preliminary analysis of 2001 Medicare data indicates that fee-for-service beneficiaries had, on average, roughly 6 physician office visits per person.

Over the last two decades, prescription drugs have played an increasingly critical role in these outpatient medical care settings and as such, prescription drugs are an integral part of the treatment plans that physicians develop for patients during office visits. According to an unpublished analysis by the National Center for Health Statistics of data from the 2000 National Ambulatory Medical Care Survey (NAMCS), approximately 70 percent of all physician office visits for individuals 65 years of age or older include the physician prescribing new or continued medications, or supplying or administering a prescription drug to the patient. Further, published NAMCS data indicate that the number of new drug prescriptions, renewals, or drug administrations per 100 physician office visits for patients 65 years of age or older has grown from roughly 150 in 1985 to nearly 200 in 1999. *See* "Advance Data From Vital and Health Statistics Number 322", *National Ambulatory Medicare Care Survey: 1999 Summary,* July 2001.

Despite the increasing importance of prescription drugs in medical treatment, our data indicate that over 9 million Medicare beneficiaries are without drug coverage. Many of these individuals also are either not aware of or do not have access to the private sector methods insurance companies and drug discount card programs use to lower drug costs. Even if beneficiaries are aware of prescription drug discount cards, they frequently do not have enough information to make a meaningful choice among available prescription drug discount cards. *See* for example, Kaiser Family Foundation, *Prescription Drug Discount Cards: Current Programs and Issues,* February 2002. These beneficiaries do not benefit from lower negotiated drug prices. This means that the nation's elderly without drug coverage, along with uninsured Americans, are likely paying the highest prices for drugs in the marketplace—prices higher than those paid by working individuals, whose drugs are covered by group health insurance. The lack of drug coverage, combined with the high prices, means that some of these beneficiaries may not fill prescriptions or may have them filled less often because they cannot afford the cost. Failing to fill a prescription ordered by a doctor is not an optimal use of a physician visit paid for by the Medicare program.

Providing education to seniors on ways to access more affordable prescription drugs—especially for those beneficiaries without drug coverage—will, we believe, allow Medicare beneficiaries to make more optimal use of their Medicare-covered services, such as the service of having a physician provide an examination and issue a prescription order. We believe that when beneficiaries do not comply with the prescription drug regimens ordered by their physicians as a result of an office visit because of lack of drug coverage or lack of affordable access to prescription drugs, beneficiaries are not making the most optimal use of their Medicare-covered physician visits and other outpatient services. There is evidence that large numbers of beneficiaries, particularly those without drug coverage, do not fill some prescriptions ordered by their physicians and skip doses to make their drugs last longer due to cost concerns. A recent study of Medicare beneficiaries in eight states found that among those without drug coverage, 25 percent reported not filling a prescription due to cost, and 27 percent reported skipping doses to make drugs last longer. These rates of noncompliance with physician prescribing orders were more than double the rates reported among beneficiaries with drug coverage. *See* Dana G. Safran, et al., "Prescription Drug Coverage And Seniors: How Well Are States Closing the Gap?" *Health Affairs* Web Exclusive W253 (July, 2002). Additional examples of related research are discussed in section I.B of this preamble, discussing the statutory basis for the initiative.

Furthermore, analysis of 1997 and 1998 data from a nationally representative sample of Medicare beneficiaries shows that Medicare beneficiaries without drug coverage fill fewer prescriptions than those with drug coverage. *See* John A. Poisal and Lauren Murray, "Growing Differences Between Medicare Beneficiaries With and Without Drug Coverage," 20 *Health Affairs* 74, (2001). Our more recent analysis of data from the 1999 Medicare Current Beneficiary Survey (MCBS) indicates that, overall, beneficiaries without drug coverage, on average, self-report filling fewer prescriptions (17.7) than those with drug coverage (25.1). This phenomenon holds true even among groups of beneficiaries with large numbers of chronic conditions. For beneficiaries with five or more chronic conditions, those without drug coverage self-report, on average, filling approximately 38.7 prescriptions compared to beneficiaries with drug coverage, who self-report filling, on average, 44.4 prescriptions.

Not filling prescriptions, skipping doses, or cutting pills in half is referred to in the medical literature as "medication noncompliance" and can have adverse health effects. Medication noncompliance can lead to worsening health problems and the need for additional health care services. A study of prescription drug noncompliance among disabled adults found that about half of the individuals reporting medication noncompliance due to cost reported experiencing one or more health problems as a result, including pain, discomfort, disorientation, change in blood pressure or other vital signs, having to go a doctor or emergency room, or being hospitalized. *See* Jane Kennedy and Christopher Erb, "Prescription Noncompliance Due to Costs Among Adults with Disabilities in the United States," *American Journal of Public Health,* July 2002. This study also cites other research indicating that medication noncompliance is a clinical problem, particularly related to chronic illnesses such as hypertension, and has been found to be a predictor of hospital admissions and emergency room visits in other studies. We believe that medication noncompliance can lead to additional Medicare program costs which burden the Medicare program, thus this final rule works towards furthering the interest of efficient program management.

In addition, even Medicare beneficiaries without prescription drug coverage, but who can afford to pay out-of-pocket for prescription drugs, do not have access to the most sophisticated systems used in insured products to detect and provide information between pharmacies on drug interactions, interaction prevention, and allergy monitoring. Further, a substantial number of uninsured beneficiaries, or beneficiaries with capped prescription drug coverage, have little experience or knowledge on how they might lower their prescription drug costs, for example by obtaining a prescription drug discount card or by using generic equivalents.

To fulfill the Medicare program goals and to educate Medicare beneficiaries on this important aspect of their care

and treatment plans, this final rule creates a Medicare-Endorsed Prescription Drug Card Assistance Initiative. This initiative is intended to educate beneficiaries regarding the products and tools already available to them in the private sector for reducing their prescription drug costs, including the use of generic drugs. Our initiative is intended further to inform Medicare beneficiaries about how they can receive the types of price concessions that are typical of insurance products. This final rule does not, nor does it intend to, create a new Medicare benefit. The initiative merely creates a mechanism—the Medicare endorsement for qualifying drug discount cards—to recognize those programs with features we believe are most useful to beneficiaries, and to educate and assist Medicare beneficiaries in accessing the methods used in the private sector for lowering prescription drug costs. We believe that by educating beneficiaries about opportunities to access more affordable prescription drugs, beneficiaries will be more likely to be compliant with prescription drug treatment plans and consequently will make more optimal use of their Medicare-covered services. This initiative is consistent not only with the Secretary's duty under the Medicare program to educate beneficiaries, but is also consistent with the Secretary's duties under the Act to effectuate the purposes of the Medicare program.

B. Statutory Basis for the Initiative

1. Section 4359 of the Omnibus Budget Reconciliation Act of 1990

As we explained in the preamble to the proposed rule published in the **Federal Register** on March 6, 2002 (67 FR 10262), the authority for this initiative is primarily based upon the educational and assistance authority found in section 4359(a) of the Omnibus Budget Reconciliation Act of 1990 (OBRA)(Pub. L. 101–508). Under that section, the Secretary is authorized to "establish a health insurance advisory service program * * * to assist Medicare-eligible individuals with the receipt of services under the Medicare and Medicaid programs and other health insurance programs." Section 4359(c)(1)(B) of OBRA authorizes the Secretary to "provide for information, counseling, and assistance for Medicare-eligible individuals" with respect to benefits, whether or not covered by Medicare. The statute is broadly written, with section 4359(c) authorizing the Secretary to provide "such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the Medicare program and to improve the relationship between beneficiaries and the program." Section 4359(f) of OBRA expressly anticipates that there will be "other health insurance informational and counseling services" for Medicare-eligible individuals.

As we stated in the proposed rule, we believe that this initiative meets the definition of a beneficiary assistance program because it will assist Medicare beneficiaries not just with their utilization of Medicare-covered services, but also with the receipt of services common under other health insurance programs. Access to more affordable prescription drugs will assist beneficiaries in receiving services under Medicare and other health insurance programs, since access could lead them to more effectively or efficiently use Medicare services, such as physician or hospital services. In fact, as we state in one of the responses below, several studies have shown that access to lower-price prescription drugs can result in more effective or efficient use of medical care. One study, which we discuss in more detail below, showed that such access resulted in a lower incidence of nursing home admissions. In addition, to the extent that better pricing on drugs leads beneficiaries to comply with the drug regimens prescribed by their physicians, this initiative results in beneficiaries making better use of their Medicare-covered physician visits.

We also believe that this initiative will be a valuable educational tool for beneficiaries. It will improve their understanding of how to access better prescription drug prices, as well as increase their understanding of the private sector tools currently used to lower prescription drug costs and improve the quality of pharmaceutical services.

Outpatient prescription drugs generally are not a covered benefit under Medicare. However, we believe that prescription drugs are so intertwined with other types of Medicare-covered care, such as physician visits and medical and surgical care that beneficiaries should receive information, counseling, and assistance regarding prescription drug discount programs. Section 4359(b) of OBRA instructs the Secretary to provide education and assistance not just about Medicare-covered benefits, but also about benefits not covered by the Medicare program. For several years we have offered Medicare beneficiaries education and assistance in accessing several non-covered benefits that are complimentary to Medicare, Medicaid, and other health insurance programs. Our "Guide to Choosing a Nursing Home" discusses long-term care options outside Medicare coverage, including assisted living, subsidized senior housing, and private long-term care insurance. We provide further education to beneficiaries regarding options for long-term care, such as adult day care and community-based services, many of which are not covered by Medicare. Finally, we provide educational assistance concerning prescription drugs. For example, the Medicare Web site (*http://www.Medicare.gov*) provides information on programs that offer discounts or free medication to individuals in need. Beneficiaries may access information on pharmaceutical companies or associations that offer assistance programs for those with low incomes, on available State assistance programs, or on community-based programs available in their area. This Web site also provides a link to an article on Internet pharmacies.

Moreover, by enhancing the buying power and knowledge of beneficiaries, we believe that we will further the Congressional goal in section 4359(c) of OBRA of "increas[ing] beneficiary understanding of, and confidence in, the Medicare program and * * * improv[ing] the relationship between beneficiaries and the program."

In one of the responses to comments below, we discuss studies by the Employee Benefits Research Institute that demonstrate a lack of confidence among older Americans in the ability to afford prescription drug costs. While beneficiary confidence in Medicare is already high, we believe such confidence will be enhanced by educating beneficiaries about discount drug programs and assisting them in obtaining discounted prices, as well as other valuable pharmacy services. This initiative will allow beneficiaries to make more efficient and effective use of their Medicare services, as well as benefits that may be available to them under Medigap plans, employer-sponsored group health plans, retiree health insurance, or other health insurance programs. We believe that the broad provisions of section 4359 of OBRA permit us to pursue these important objectives. (*See Texas Gray Panthers* v. *Thompson,* 139 F.Supp.2d 66, 76 (D.D.C. 2001), vacated and remanded on other grounds by 37 Fed. Appx. 542, 2002 WL 1359464 (D.C. Cir. May 17, 2002) (finding that section 4359 of OBRA is ambiguous in defining what types of "information, counseling, and assistance" are to be provided, and therefore deferring to the Secretary's reasonable interpretation of the statute.))

Comment: Several commenters stated their belief that we lack the statutory authority to implement the program. Commenters proposed that section 4359 of OBRA is merely an educational resource for providing seniors with information regarding benefits and services available under Medicare and Medicaid. Commenters also stated that a district court previously stopped the drug card program due to lack of authority, and that because this program is allegedly similar to the proposed program, we need the Congress to grant specific statutory authority.

Response: For the reasons stated in the preamble to the proposed rule, as well as in the preamble to this final rule, we believe that we possess the statutory authority to implement this initiative. We believe that section 4359 of OBRA is broad concerning the types of assistance that the Secretary may offer in order to improve beneficiary confidence in the Medicare program and to improve the relationship between beneficiaries and the program; and that therefore, the Secretary has the discretion to interpret section 4359 in a manner that will provide assistance to Medicare beneficiaries through this discount card initiative. If section 4359 were intended only for providing information, as one commenter suggests, then there would have been no need for the Congress to state that the beneficiary assistance program shall provide for "information, counseling, *and assistance* for Medicare-eligible individuals." Section 4359(c) (emphasis added). The requirement that the beneficiary assistance program provide assistance, in addition to counseling and information, suggests that the Congress contemplated more than the provision of information. While the Congress's use of the term "assistance" would not provide authority to spend benefit dollars on prescription drugs, or to mandate discounts from manufacturers or pharmacies, this initiative does not impose requirement on any entities—it merely creates conditions that we will use to endorse card programs that we consider to be appropriate for beneficiaries. Thus, we believe that the Congress's use of the term "assistance" suggests that the Secretary can assist beneficiaries by informing them of, and educating them about, the private sector discount cards that we believe include features most appropriate for beneficiaries. In 4359(c), the Congress also required the "beneficiary assistance program [to] provide such *other services* as the Secretary deems appropriate." *Id.* (emphasis added). If the Congress had intended to limit the beneficiary assistance programs to providing information, then there would have been no need to include the "other services" language in the section. Finally, if the purpose of section 4359 were merely to increase beneficiary understanding of the Medicare program, then there would have been no need for the Congress to authorize the Secretary also to increase beneficiary "confidence in" the Medicare program and "to improve the relationship between beneficiaries and the program." *Id.*

Commenters are correct that a United States District Court judge, *in National Ass'n of Chain Drug Stores* v. *Thompson,* No. 01–1554 (D.D.C. 2001), made a preliminary finding that section 4359 of OBRA did not provide the necessary legal authority for the program published in the **Federal Register** on July 18, 2001 (66 FR 37563). We respectfully disagree with that preliminary finding, but we have abided by it by ceasing all activity on any applications received in response to the application published in the summer of 2001. We anticipate that, if the plaintiffs believe that the final rule is substantially similar to the program published in the July 18, 2001 **Federal Register**, they will seek further judicial review, which could result in a delay in implementation.

2. Sections 1102, 1140, and 1871 of the Social Security Act

Sections 1102, 1140, and 1871 of the Social Security Act (the Act), in conjunction with the authority provided by section 4359 of OBRA, lend further support to this initiative. Sections 1102 and 1871 of the Act provide the Secretary with general rulemaking authority. Section 1102 of the Act provides the Secretary with the authority to publish such rules and regulations as "may be necessary to the efficient administration of the functions with which" he is charged. Facilitating beneficiary access to lower-cost prescription drugs, and improving their access to other valuable pharmacy services, will lead to greater efficiency in the Medicare program. For example, with improved access to prescription drugs, beneficiaries will be more inclined to follow their drug regimens, which could affect their need for Medicare-covered services.

Prescription drugs are an integral part of treatment of medical problems, and Medicare beneficiaries are more likely to have multiple and complex medical problems. Therefore, easier access to drug price comparisons, greater beneficiary access to affordable prescription drugs and expertise on how to use them will lead to more effective and efficient use of items and services covered by the Medicare program. Courts have acknowledged that the authority under section 1102 of the Act is "broad," (*National Welfare Rights Organization* v. *Mathews,* 533 F.2d 637 (D.C. Cir. 1976)) and have even stated that a "more plenary great (sic) of rule-making power would be difficult to devise." (*Serritella* v. *Engleman,* 339 F.Supp. 738, 752 (D.N.J.), aff'd per curiam, 462 F.2d 601 (3d Cir. 1972)).

Section 1140 of the Act also supports this initiative. That section, among other things, prohibits misuse of the word, "Medicare," in a manner that a person knows or should know would convey the false impression that an item is approved, endorsed, or authorized by the Health Care Financing Administration (the predecessor to the agency CMS) or the Department of Health and Human Services. By prohibiting the use of the term "Medicare" to convey the false impression that an item is approved or endorsed by us, the statute implicitly recognizes that the impression may be accurate and authorized in some circumstances. Thus, section 1140 of the Act, in combination with the educational and assistance authority of section 4359 of OBRA, as well as the general rulemaking authority of sections 1102 and 1871 of the Act, provides further support for the Secretary to endorse qualified entities as being approved by the Medicare program.

Comment: One commenter stated a belief that sections 1102 and 1871 of the Act do not provide authority for this initiative, since the Secretary's general rulemaking authority is restricted by the substantive areas over which he is charged.

Response: Sections 1102 and 1871 might not, by themselves, provide sufficient authority to implement the Medicare-Endorsed Prescription Drug Card Assistance Initiative; however, in conjunction with OBRA section 4359, we believe that the general rulemaking authority provides the Secretary with authority to make rules that will further the goals of OBRA section 4359—that is, providing education and assistance to Medicare beneficiaries in their receipt of services under Medicare, Medicaid, and other health insurance programs; increasing beneficiary confidence in the Medicare program; and improving the relationship between Medicare and its beneficiaries by providing assistance on accessing lower cost drugs.

As we stated in the preamble to the proposed rule, prescription drugs are such a critical component in today's health care delivery that we believe that

improved beneficiary access to prescription drugs will improve confidence in the Medicare program and improve the relationship between Medicare beneficiaries and the program. While studies show that Medicare beneficiaries are "very satisfied" with the Medicare system, we believe that evidence also shows that access to affordable prescription drugs would further boost confidence in Medicare. *See* Public Opinion Strategies and Peter D. Hart Research Associates, *Medicare and Prescription Drug Focus Groups, Summary Report* (July 2001). A 2001 Health Confidence Survey conducted by the Employee Benefits Research Institute (EBRI), a private, nonprofit, nonpartisan public policy research organization, showed that 41 percent of respondents 65 and older were not confident they would be able to afford prescription drugs without financial hardship and that prescription drugs were their biggest concern. In the 2000 Health Confidence Survey, 50 percent of those surveyed responded that they were not too or not at all confident that, once eligible for Medicare, they would be able to afford prescription drugs without financial hardship. Again, prescription drugs were their largest concern (as compared to (a) the ability to get needed treatments; (b) freedom to choose a provider; and (c) ability to afford health care without financial hardship). The EBRI studies are available on the Web site, *http://www.ebri.org/hcs/*.

As shown by these surveys, Medicare beneficiaries are concerned about the prescription drug costs they are facing and their ability to pay for the drugs. We believe that providing a method for accessing discounts on prescription drugs—discounts that are available to most other insured populations—could help to partially address this concern and will demonstrate to the Medicare population that the Department of Health and Human Services is taking some action to help beneficiaries alleviate their drug costs. Of course a drug discount is no substitute for a drug benefit, but in the absence of legislation authorizing a drug benefit, we believe that we can improve beneficiary confidence in the Medicare program and improve the relationship between beneficiaries and the Medicare program through this initiative. In addition to research supporting our conclusion that this initiative will increase beneficiary confidence in and improve the beneficiary relationship with the Medicare program, there is also evidence supporting our conclusion that access to prescription drugs is an integral part of the health care services delivered by the Medicare program, and that improving access to prescription drugs directly influences the effectiveness of Medicare-covered services.

For example, one study found that patients with hypertension who lacked drug coverage were 1.4 times more likely than those with coverage not to purchase their anti-hypertension medications, thus potentially increasing their risk of more severe medical consequences (of beneficiaries with hypertension and without drug coverage, 21.8 percent failed to purchase any hypertensive tablets during the year as compared to 17.1 percent of those with coverage—thus increasing the odds of failing to purchase any hypertensive medications by forty percent (adjusted odds ratio = 1.4, p=.002)). *See* Jan Blustein, "Drug Coverage and Drug Purchases by Medicare Beneficiaries with Hypertension," 19 *Health Affairs* 219 (2000).

Another study showed that Medicare beneficiaries without drug coverage used about 8 fewer prescriptions (or 33% fewer medications) than those with drug coverage. *See* John A. Poisal and Lauren Murray, "Growing Differences Between Medicare Beneficiaries With and Without Drug Coverage," 20 *Health Affairs* 74 (2001).

A third study found that limiting access to medications among low-income, elderly Medicaid patients increased rates of admission to nursing homes. The study analyzed Medicaid recipients aged 60 years or older who took three or more medications per month and at least one maintenance drug for chronic diseases. Limiting affordable access to prescription drugs for this population (through a reimbursement cap on medications) increased rates of admission to nursing homes. The authors concluded that for the sicker patients in the study, the limitation on medication more than "double[d] the rate" of admission in comparison to a group whose medications were not limited. *See* Stephen B. Soumerai *et al.*, "Effects of Medicaid Drug-Payment Limits on Admission to Hospitals and Nursing Homes," 325 *New Engl. J. of Med.* 1072, 1074 (1991).

Finally, a study in the December 2001 issue of the *Journal of General Internal Medicine* found that certain characteristics, such as minority ethnicity, and low income (defined as income less than $10,000) significantly increase the risk that an individual will restrict medications by, for example, skipping doses or avoiding taking medication altogether. For example, the odds of medication restriction in minority subjects were 10.3 times higher in those with no drug coverage than in those with full drug coverage. Similarly, the odds of medication restriction were 14.8 percent higher in low-income subjects with no drug coverage than in those with full drug coverage. The author of the study stated: "Policies designed to limit medication use may have serious consequences for patients' health, resulting in increased emergency department visits, nursing home admissions, use of emergency mental health services and more." *See* Michael A. Steinman, *et al.*, "Self-restriction of Medications Due to Cost in Seniors without Prescription Coverage," 16 *Journal of General Internal Medicine* 793–799 (Dec. 2001).

Patients who skip doses or who do not take their full dose (by, for example, cutting pills in half) are not making the most effective use of their Medicare-covered services, in part, because they are not following their doctors' orders. Since a physician visit is a Medicare-covered service, patients who do not follow the drug regimen their doctor prescribes are not getting the full benefit of the Medicare-reimbursed physician visit.

While providing information and educational assistance to beneficiaries which allows them to access lower cost prescription drugs is not the same as providing drug coverage, we believe the evidence supports our conclusion that making prescription drugs available and more affordable to beneficiaries will make other Medicare-covered services, such as physician visits, more effective.

Comment: At least two commenters stated that section 1140 of the Act does not authorize the establishment of a prescription drug card program, and in fact, use of the Medicare name in connection with private prescription drug card programs will result in the kind of false impression or confusion that section 1140 is meant to prevent.

Response: Section 1140 may not by itself authorize Medicare to endorse discount drug cards meeting certain criteria; however, we believe that section 1140 indicates that the Congress recognizes that in some cases endorsements by the Medicare program may be warranted. The fact that section 1140(a) prohibits using the word Medicare "in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the . . . Health Care Financing Administration,

or the Department of Health and Human Services," provides evidence that the Congress understood that in some cases use of the word Medicare by private parties and organizations will be approved by the Secretary. Therefore, we cited section 1140 as further support for the initiative. Thus, while section 1140 would not necessarily independently authorize the Medicare-Endorsed Prescription Drug Card Assistance Initiative, in conjunction with OBRA section 4359 and sections 1871 and 1102 of the Act, we believe it provides further support to the initiative.

We do not believe that this initiative will lead to false impressions prohibited by section 1140, since only programs that meet the criteria of this final rule, and that enter into an agreement with us, will be endorsed and approved. Thus, there will not be confusion or false impressions regarding Medicare endorsement, since such programs will, in fact, be endorsed. In fact, in order to ensure that the Medicare name is only used in appropriate circumstances, this final rule creates specific criteria for use of the Medicare name.

Comment: Some commenters stated that Congressional bills proposing discount card programs similar to the one in the proposed rule show that we lack statutory authority to implement the discount card. In addition, Congressional proposals or enactments to establish an outpatient drug benefit for seniors show that we are not authorized to implement the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Response: We do not think that current legislative proposals have much bearing on the Secretary's authority to implement the proposed initiative. Because bills are introduced by individual members, and not passed by the Congress as a whole, they are not viewed as reflecting the collective intent of Congress. Proposed legislation is viewed as a "particularly dangerous ground" upon which to base an interpretation of prior statutes. (*Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 650 (1990) (discussing interpretive value of failed legislative proposals)). Even if there were some way to divine a clear statement of congressional intent from proposed bills in Congress, later congressional interpretations of statutes passed by earlier Congresses "[are] of little assistance" when construing the statute's scope. (*Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 185 (1994)) (citation omitted).

In addition, we do not believe that previous proposals or enactments on an outpatient prescription drug benefit for Medicare beneficiaries would be relevant to this initiative. This initiative is not a drug benefit, since it does not require the expenditure of benefit dollars. The Administration continues to support modernizing the Medicare program by adding a drug benefit. However, in the interim, Medicare beneficiaries without drug coverage are paying some of the highest prices for drugs. This initiative will provide Medicare beneficiaries with the educational tools and assistance to obtain some relief on drug prices, until a Medicare drug benefit can be enacted.

C. July 2001 Program Superceded

In July 2001, the President announced the Medicare-Endorsed Prescription Drug Discount Card program. A Federal district court preliminarily enjoined implementation of that program. *National Ass'n of Chain Drug Stores* v. *Thompson*, No. 01–1554 (D.D.C. 2001). In accordance with the judge's order, we ceased all work on implementing that program and did not make any Medicare endorsements on the basis of applications received in response to that program.

On November 5, 2001, the district court in that case granted a Motion for Stay, staying the case while we submitted our new initiative for comment by publishing a proposed rule in the **Federal Register** on March 6, 2002 (67 FR 10262). This final rule describes a program that differs in important respects from the Administration's initial proposal from 2001, for example, by endorsing only those discount programs that demonstrate an ability to obtain manufacturer rebates or discounts and that can share, either directly or indirectly, a substantial portion of rebates with beneficiaries. Other changes include: additional reporting; endorsing only those cards where discounted prices remain stable for periods of 60 days; a more stringent access standard for rural and urban pharmacies; endorsing card programs with 3 years of experience; and allowing card sponsors to have two endorsed programs. If the plaintiffs in the previously mentioned district court case believe that this final rule is substantially similar to the President's initial program from 2001, they may seek further judicial review that could delay implementation of this final rule.

D. Objectives and Major Aspects of the Initiative

1. Objectives

The objectives of this initiative are to:

- Educate Medicare beneficiaries about private market methods available for securing discounts from manufacturers and other competitive sources on the purchase of prescription drugs.
- Provide a mechanism for Medicare beneficiaries to gain access to the effective tools widely used by pharmacy benefit managers (PBMs) or insurers and pharmacies to obtain higher quality pharmaceutical care, for example, monitoring for drug interactions and allergies.
- Publicize information (including drug-specific prices, formularies, and pharmacy networks) to facilitate easy consumer comparisons that will allow Medicare beneficiaries to choose the best card for them.
- Promote participation of Medicare beneficiaries in effective prescription drug assistance programs, increasing the leverage and ability of these programs to negotiate manufacturer rebates or discounts for Medicare beneficiaries and to provide other valuable pharmacy services.
- Improve beneficiaries' overall experience with Medicare by enhancing the quality and use of their Medicare-covered services through improved access to prescription drugs.
- Endorse qualified private sector prescription drug discount card programs (either for profit or nonprofit), based on structure and experience; customer service; pharmacy network adequacy; ability to offer brand name and/or generic manufacturer rebates or discounts (passing through a substantial portion to beneficiaries, either directly or indirectly through pharmacies), and available pharmacy discounts; and permit endorsed entities to market their programs as Medicare-endorsed.
- Assist Medicare beneficiaries in obtaining a low (in Year One, $25 maximum) or no-cost opportunity to enroll in a Medicare-endorsed prescription drug discount card program.

We solicited comments on all aspects of the proposed rule, and many commenters responded by discussing the basic issue of whether or not to implement the initiative.

Comment: Some commenters expressed support for the initiative as an interim approach prior to enactment of a Medicare prescription drug benefit. Commenters indicated that the initiative would lay the groundwork for a Medicare sponsored drug benefit by

creating the necessary infrastructure, and that it would give seniors access to coordinated pharmaceutical care and utilization review. One commenter noted that the market-based, competitive initiative would teach beneficiaries and government officials valuable lessons about pharmaceutical benefit management—a building block in virtually every drug benefit proposal before the Congress.

However, other commenters took issue with the initiative in general and other basic structural aspects of the initiative. One indicated that any long-term solution to high prescription drug prices should address the costs pharmacies pay manufacturers for drug products. Others indicated that the initiative should be run by the Federal government, and not private entities. Other commenters criticized the use of pharmaceutical benefit management organizations and their involvement in providing prescription drugs. Another commenter indicated that a better approach for an interim program would be a benefit that offers substantial coverage, not modest discounts, to those most in need.

Response: As we indicate throughout this preamble, the President strongly supports the enactment of a Medicare prescription drug benefit. We agree with the commenters that the educational initiative of the Medicare endorsement of prescription drug discount cards is especially helpful in the absence of a Medicare drug benefit. We also agree that the initiative can help lay the groundwork for a prescription drug benefit by improving beneficiary knowledge related to purchasing prescription drugs and other prescription drug services, by increasing our experience with administration of prescription drug-related programs, and by allowing the private sector to gain experience in working with the Medicare program and its beneficiaries. We also think the use of a competitive market-based approach that requires endorsed card sponsors to obtain manufacturer rebates or discounts and pass those through to beneficiaries, combined with the publishing of drug prices, will help to lower the drug prices beneficiaries face. We think that the endorsement qualification for manufacturer rebates or discounts can help to reduce the pressure on retail pharmacies to be the sole source of prescription drug discounts. We also agree that while the nature and degree varies, the major prescription drug benefit proposals being considered by the Congress place reliance on use of the private sector in administering a Medicare prescription drug benefit.

Since the subject of this regulation is not a Medicare prescription drug benefit, we are not responding to the specific comments about the nature of a Medicare prescription drug benefit.

2. Summary of Major Policies in the Final Rule in Response to Public Comments

We made a number of changes to this final rule in response to public comments, and we provide a general overview here of the major aspects of endorsement we have modified and those we have retained. Our specific responses to comments are discussed in greater detail later in the preamble.

We are modifying the rebate requirements of the endorsement to assure that the rebates negotiated with manufacturers will be for brand name and/or generic drugs. As discussed in greater detail later in this preamble, we are also planning to propose in a forthcoming proposed rule recognizing, through our outreach and education efforts, those cards with the highest rebate levels passed on to beneficiaries.

We will retain the endorsement's enrollment exclusivity provision as a criterion for endorsement, as we believe it is critical to the ability of card programs to successfully negotiate meaningful manufacturer rebates, and therefore provide meaningful assistance on drug prices to beneficiaries.

We made changes to endorsement provisions of the drug categories list based on comments and analysis of the most recent data available to us on commonly used drugs.

We will retain our proposal to endorse cards that charge a one-time enrollment fee of up to $25.

We modified the endorsement's access standard to allow for greater access in both urban and non-urban areas, in order to assure beneficiary access to retail pharmacies, particularly community-based pharmacies in rural and urban areas.

We will allow endorsed card sponsors to offer home delivery as an option, but card sponsors must meet the retail pharmacy access requirements for endorsement.

As a condition of endorsement, card sponsors will agree to report on the participation of independent pharmacies.

We will continue to require, as a condition of endorsement, that card sponsors demonstrate organizational capacity and experience, in order to ensure that we endorse only stable and reputable entities, with a capacity to enroll a large number of beneficiaries. However, we have modified our endorsement criteria to better strike a balance between this goal and our interest in promoting the inclusion of innovative programs. The experience criterion has been changed to 3 years. The covered lives requirement has been changed to 1 million lives for either a national or regional program. The covered lives criterion has been de-linked from the 3-year experience requirement, providing more flexibility for entities to combine their capabilities and qualify for endorsement if the capacity for enrollment is provided through a separate organization than the one meeting the experience criterion.

We did not modify our endorsement criteria for demonstrating financial stability because we believe they are understandable, demonstrable and appropriate, given the objectives of this initiative.

We will retain as a condition of endorsement participation by a card program sponsor in an administrative consortium, and we will require endorsed card sponsors to operate a customer complaints process. In addition, we will recommend that the consortium of endorsed cards consider establishing an advisory board to provide it with guidance.

We will retain the requirement that endorsed cards publish comparative price information. However, we have modified the price comparison methodology so that prices are expressed in dollars, and the comparison will include information about generic substitutes.

Additionally, as discussed later in this preamble, as a condition of endorsement related to formularies and the publishing of prices, card sponsors must agree that a specific drug is not dropped from the formulary, nor its price increased for periods of at least 60 days starting on the first day of the program's operation, with 30 days notice to their network pharmacies, the consortium and us before making any changes.

We will allow endorsed card sponsors to offer up to two programs with different designs, as long as each independently meet the conditions for endorsement.

Endorsed cards will be required to report periodically certain information, in order to ensure that sponsors are accountable to us.

As a condition for endorsement, card sponsors will be required to have call centers, open during usual business hours and operating in accordance with standard business practices, that are able to handle pharmacy questions.

We specify that if a card sponsor's Medicare endorsement is terminated, the card sponsor will be required to

notify network pharmacies (in addition to beneficiaries), and contracts between the sponsor and the network for the purpose of this initiative will no longer be binding after a beneficiary notification period of 90 days ends.

We will retain the opportunity for both regional and national programs to qualify for endorsement. We also clarify that national or regional programs may include Puerto Rico, Guam and the U.S. territories.

We have revised the timeline for applicants to allow a 6-month start-up from the time that endorsements are announced.

E. Conditions of Endorsement and the Endorsement Initiative

1. General

We will endorse prescription drug card programs that meet defined requirements, and will permit successful applicants to market and label their programs as "Medicare-endorsed."

To be endorsed, applicants that meet the criteria for endorsement will sign an agreement with us certifying that they will comply with all requirements in the agreement, including funding and operating an administrative consortium of endorsed card sponsors to perform certain administrative functions, implementing the program as described in the application, and operating consistently within the endorsement requirements.

All applicants offering a prescription drug card program that apply for Medicare endorsement and meet or exceed these requirements for endorsement and sign the agreement will be Medicare-endorsed.

The conditions for endorsement discussed in this section reflect our interpretations of the standards included in this final regulation.

The Medicare-Endorsed Prescription Drug Card Assistance Initiative will publicize information that will allow Medicare beneficiaries to compare endorsed prescription drug card programs, assist Medicare beneficiaries in understanding and accessing private market methods for securing discounts and other valuable services associated with the use of prescription drugs, and raise beneficiary awareness of certain qualified prescription drug card programs available in the commercial market.

Aspects of the initiative will include the ability of each Medicare-endorsed drug card program sponsor to:

- Obtain manufacturer rebates or discounts on brand name and/or generic drugs, and provide a substantial portion of the manufacturer rebates or discounts to beneficiaries, either directly or indirectly through pharmacies, in order to reduce the price beneficiaries pay for prescription drugs or enhance the pharmacy services they receive.
- Enroll all Medicare beneficiaries who wish to participate.
- Provide stable access to discounts on at least one brand name or generic prescription drug in each of the therapeutic drug classes, groups, and sub-groups representing prescription drugs commonly needed by Medicare beneficiaries.
- Offer a broad national or regional contracted retail pharmacy network, providing convenient retail access.
- Charge no fees to us, or any other Federal agency.
- Charge a small one-time enrollment fee (of no more than $25 per beneficiary in Year One) or no fee.
- Provide customer service to beneficiaries, including enrollment assistance, toll-free telephone customer service help, and education about the card program services.
- Provide access to other prescription drug services offered by the program for no additional fee, including drug-drug interaction monitoring and allergy alerts through detection systems linking pharmacies in the entire network.
- Ensure that beneficiaries enroll in only one Medicare-endorsed prescription drug discount card program at a time, to facilitate obtaining rebates or discounts from drug manufacturers on their behalf.
- Protect the privacy of beneficiaries and beneficiary-specific health information.
- Agree to jointly administer, and abide by the guidelines of, a private administrative consortium of endorsed card sponsors funded by the sponsors, to perform administrative functions, consisting of publishing comparable information on drug prices, operating an enrollment exclusivity system, and, by the second year of the initiative, assuming review of information and outreach materials. We will recommend that the sponsors have the consortium consider establishing an advisory board to provide it with guidance.
- Limit enrollment in its Medicare-endorsed discount card program(s) to Medicare beneficiaries only.

We believe that this initiative will offer assistance to beneficiaries in accessing low-cost prescription drugs, as it will improve upon the current drug card market. The market-based design of this initiative, and its ability to mimic many of the important design features of an insured product, will facilitate Medicare-endorsed drug discount card programs having features that current market products generally do not have. This initiative will improve upon the current market in several important respects by:

- Educating about the availability of discount card programs offered by stable and reputable firms with sufficient capacity to handle the Medicare population likely to enroll in a prescription discount card program.
- Securing manufacturer rebates or discounts on brand name and/or generic drugs, and passing them through pharmacies or directly to beneficiaries, resulting in deeper discounts.
- Providing price comparison information and educating Medicare beneficiaries about formularies, generic substitution, drug utilization review, and other ways of lowering prices and improving the quality of pharmacy services.
- Ensuring that Medicare beneficiaries receive the lower of the negotiated drug discount card price or the pharmacy's lowest price to other cash paying customers.
- Providing the opportunity for Medicare beneficiaries who participate in a card program to enroll in a low-or no-fee Medicare-endorsed prescription drug card program.
- Protecting the privacy of beneficiaries and their personal health information.
- Assuring that discount card programs' information and outreach materials meet guidelines for appropriateness, completeness and understandability.

2. Beneficiary Eligibility and Enrollment

As a condition of endorsement, card sponsors must agree to limit enrollment in their Medicare-endorsed prescription drug card programs to Medicare beneficiaries only. Card sponsors could request the beneficiary's Medicare number or use another means to assess Medicare eligibility, with data elements necessary to maintain the enrollment exclusivity system; however, we will not provide data or assistance to verify Medicare eligibility.

Drug discount card program sponsors in this initiative will also be able to accept groups of enrollees from insurance groups, such as Medicare+Choice (M+C) plan members, Medigap enrollees, and beneficiaries with employer-sponsored retiree health insurance. Members who do not consent to group enrollment will be allowed to enroll individually in the endorsed program of their choice.

We will allow card sponsors to have M+C organizations subsidize the enrollment fee and to offer the drug

discount card program as part of their Adjusted Community Rate filing, however they will not be allowed to require enrollment in a drug discount card program as a condition of enrollment in any of their M+C plans.

Card sponsors will be required to ensure enrollment exclusivity, that is, that beneficiaries enroll in only one Medicare-endorsed card program at a time. Beneficiaries will always have the option to purchase drugs outside of a Medicare-endorsed card program and pay the retail price or a discount price secured through existing non-endorsed cards or some other means, as they do now.

Comment: A number of commenters expressed support for the proposed requirement that enrollment in the initiative be limited to Medicare beneficiaries only. Two commenters stated that card sponsors should not be allowed to exclude certain beneficiaries or classes of beneficiaries. If a card sponsor is endorsed by Medicare, its program should be available to any and all Medicare beneficiaries. The commenters asked that we confirm this interpretation of the provision.

Response: That is correct. Each card sponsor endorsed by Medicare to offer a discount card program must make its program available to all Medicare beneficiaries who wish to enroll.

Comment: One commenter recommended that we consider for endorsement card sponsor programs that target Medicare beneficiaries without drug coverage rather than all Medicare beneficiaries. In addition, the commenter urged us to allow endorsement of card programs that target beneficiaries with incomes below a specified level, provided the cards meet solvency and other requirements.

Response: Clearly, beneficiaries without drug coverage will realize the greatest benefit from this initiative. However, we believe that all beneficiaries should be informed of the initiative, and have the opportunity to participate, if they believe the initiative can be of benefit to them. We do not intend to exclude any Medicare beneficiary from participating in this initiative. The commenter's recommendation that we endorse card sponsor programs that target beneficiaries with incomes below a specified level is addressed elsewhere in this preamble.

Comment: The proposed rule declared that we would not provide data or assistance to verify Medicare eligibility. A number of commenters expressed concern about the ability of card sponsors to ensure that only Medicare beneficiaries are enrolled in endorsed drug discount card programs, as required, without the benefit of adequate eligibility data.

One commenter asserted that the need to verify Medicare eligibility without assistance from us would lead to unnecessary enrollment costs. Commenters strongly encouraged us to make Medicare electronic eligibility files available to endorsed card sponsors. Another commenter stated that the proposed policy may result in the enrollment of some otherwise ineligible individuals, either through fraudulent means or administrative errors.

Response: We do not intend to provide access to electronic eligibility files to card sponsors for purposes of verifying Medicare eligibility. One of the administrative consortium's primary responsibilities is to operate an enrollment exclusivity system to ensure that Medicare beneficiaries are enrolled in only one endorsed discount card program at a time. We believe that it is appropriate for the administrative consortium, on behalf of the endorsed card sponsors, to determine the best method to validate Medicare eligibility in its role in operating and maintaining this system. Card sponsors could, for example, request the beneficiary's Medicare number to confirm Medicare eligibility. Such alternative approaches should not result in added expense and, when employed uniformly and vigilantly, the risk of enrolling ineligible individuals, particularly through administrative error, should be minimal.

We do not believe we should share eligibility information because this is an endorsement initiative; it is not a benefit administered by us. The administrative consortium is not our contractor, but an external, independent entity. We have a duty to protect beneficiary-specific information housed in this eligibility file, and we do not believe it is either appropriate or essential that we provide our eligibility files to the consortium for purposes of determining Medicare eligibility as part of this initiative.

3. Card Sponsor Organization, Structure, and Experience

To be eligible for endorsement, applicants must demonstrate 3 years of private sector experience in the United States in pharmacy benefit management, the administration of drug discount cards, or low income drug assistance programs that provide prescription drugs at low or no cost. We require 3 years experience because the Medicare name is so well known and so important to beneficiaries that we do not want the name to be associated with any but the most stable and reputable organizations. The sponsors whose drug discount cards will be endorsed by Medicare should be those that have the experience and capacity to offer Medicare beneficiaries discounts and good customer service and will be likely to continue in the marketplace. The drug card industry is relatively new and has seen organizations entering and leaving the market in short periods of time. The 3 years of experience provides a sufficient amount of time to adequately demonstrate a reasonable track record of good performance and stability, taking into account the history of the pharmaceutical benefit management and discount card industries. Due to the evidence of market turnover in the discount card industry, we think that requiring anything less than 3 years experience will create the risk of having the Medicare name associated with other than stable and reputable organizations.

In addition to the 3 years experience criterion, drug card program sponsors must, at the time of application for endorsement, operate a regional or national drug benefit, discount drug card, or low income drug assistance program that provides prescription drugs at low or no cost that serves at least 1 million covered lives. We interpret covered lives to mean discrete individuals who have signed enrollment agreements or paid an enrollment fee or insurance premiums, or some comparable documentation, which we will use for verification purposes. The organization with the 3 years experience does not have to be the same organization that serves the requisite covered lives. The covered lives criterion is not linked with the 3-year experience requirement, providing flexibility for entities to combine their capabilities, through a contract or other legal arrangement. An organization that has the requisite experience, but may not have the enrollment capacity, for example, may acquire this capacity under a contract for the purpose of administering its program.

In order to qualify for Medicare endorsement, national program sponsors will have to operate in 50 States and Washington, DC. In order to balance the opportunity for smaller programs to qualify with the interest in assuring beneficiary access to network pharmacies when beneficiaries are traveling across a State line, regional program sponsors must include at least 2 contiguous States, with the exception of Hawaii and Alaska, because they do not share State borders; these States could partner with 2 or more contiguous States to form a regional program. Card programs that meet the national or

regional definition may also include the Commonwealth of Puerto Rico, Guam and the U.S. territories among the areas they serve as part of their national or regional program.

As discussed in the impact analysis, we estimate that during the first year of operation, over 9 million beneficiaries may wish to enroll in a Medicare-endorsed discount card program. The capacity of a Medicare-endorsed discount card program sponsor to accept from 1 to 10 percent of this volume is critical to implementing the Medicare-Endorsed Prescription Drug Card Assistance Initiative. Endorsed card program sponsors will need to be capable of handling a large influx of enrollees over a relatively short period of time, to negotiate rebates or discounts with pharmaceutical manufacturers and discounts with retail pharmacies, and to handle the customer service needs of the enrollees. Current levels of covered lives provide evidence of organizational capacity to handle a large enrollment and provide customer service. As a percentage increase in enrollment for organizations with as many as 1 million covered lives, a potential enrollment of 100,000 to several hundred thousand individuals represents a sizable expansion over current operations.

In examining our data on the number of covered lives served by a variety of organizations, we found that a standard of 1 million lives, whether for a regional or national program, strikes a balance between ensuring a competitive marketplace with a number of different options for Medicare beneficiaries and ensuring that organizations will have the capacity to handle a large increase in covered lives. We think the 1 million lives criterion is the right threshold, but as the initiative evolves over the next year or so, we will continue to evaluate it and the 3 years experience criterion to see if they are barriers to entry for well qualified sponsors, affecting competition, and if so, we will consider revising them.

Entities will be able to combine their capabilities to meet the various requirements for Medicare endorsement. In particular, the 3-year experience requirement is not linked to the covered lives criterion or to capabilities such as operating a customer service 1–800 telephone line, providing flexibility for entities such as a chain pharmacy (with the requisite 3 years experience in operating a prescription discount card program and extensive pharmacy network that meets our access definition) to combine its capabilities, through a contract or other legal arrangement, and qualify for endorsement.

The Medicare endorsement is intended for reputable organizations only that are prepared to administer a discount card program in accordance with all of the requirements of this initiative. If multiple organizations combine to meet the following requirements: years of experience and/or covered lives; establishing a pharmacy network; negotiating manufacturer discounts or rebates; conducting enrollment; and operating the customer service call center; we require evidence of legal arrangements between or among the entities. When multiple entities combine to meet these requirements, we require either contracts or signed letters of agreement to be submitted with the application. For the pharmacy network, we require one copy of each unique contract or signed letter of agreement used across the entire network. We require evidence in these documents that manufacturer rebates or discounts shared with the pharmacies will be passed through to the beneficiaries in lower prices or enhanced pharmacy services.

At least the following additional requirements must be satisfied in each of the contracts or signed letters of agreement:

- Clearly identifies the parties to the contract.
- Describes the functions to be performed by the subcontractor.
- Contains language that indicates that the subcontractor has agreed to participate in the discount card program.
- Describes the payment the subcontractor will receive for performance under the contract, if applicable.
- Be for a term of at least 15 months.
- Be signed by a representative of each party with legal authority to bind the entity.
- Contain language obligating the subcontractor to abide by State and Federal privacy requirements that apply to the card sponsor or other subcontractors, including the privacy and security provisions specified in this regulation.
- Contain provisions in the pharmacy contracts that the contracts will no longer be binding after the program's obligation to operate under the endorsement ends.

Where legal documentation is provided but does not constitute the actual contract for the purpose of operating the Medicare-endorsed prescription drug card program, we will allow the contract to be submitted following receipt of the Medicare endorsement, but we will not allow outreach and enrollment activities to begin until we determine that our requirements for legal agreements are satisfied.

An organization or entity will be allowed to have operational responsibilities in more than one drug discount card program. However, an organization or entity may be the primary sponsoring organization or entity in only two card programs at any time.

Additional requirements to assure that the Medicare endorsement will be provided to reliable and stable organizations include a demonstration of financial integrity and business ethics. We interpret this to mean that (1) the applicant; (2) any subcontractor or organization under other legal arrangement who (a) develops the pharmacy network, (b) handles the negotiation of rebates or discounts on behalf of the card sponsor, or (c) operates enrollment; and (3) the entity or entities that meet(s) the 3 years of experience and covered lives requirements meet(s) the following requirements:

- Provide a summary of the history, structure and ownership, including a chart showing the structure of ownership, subsidiaries and business affiliations.
- Provide the most recent audited financial statements (balance sheet, income statement, statement of cash flow along with auditor's opinions and related footnotes). Each of these entities must demonstrate that total assets are greater than total unsubordinated liabilities and that sufficient cash flow exists to meet obligations as they come due.
- Report financial ratings, if any, for the past 3 years.
- List past or pending investigations and legal actions brought against any of these entities (and parent firms if applicable) by any financial institution, government agency (local, State, or Federal) or private organization over the past 3 years on matters relating to health care and prescription drug services and/or allegations of fraud, misconduct, or malfeasance.

Each applicant will be required to provide a brief explanation of each action, including the following:

(a) Circumstances; (b) status (pending or closed); and (c) details as to resolution and any monetary damages, if closed. Additionally, we will conduct an independent investigation to include at least a review of Federal databases for issues related to any of these entities.

As a condition of endorsement, card sponsors must also agree to enrollment exclusivity, because the low-or no-fee card program to be offered under the

initiative could lead beneficiaries to enroll in more than one Medicare-endorsed prescription drug card program. Multiple enrollments will dilute the negotiating leverage of each organization offering an endorsed discount card, thereby lowering the discounts from drug manufacturers available to beneficiaries. In order to maximize these discounts, each beneficiary who enrolls in an endorsed drug discount card program will be required to enroll exclusively in one Medicare-endorsed card program, as is generally the case with programs that provide both discounts on, and insurance coverage of, prescription drug costs. A beneficiary enrolling for the first time in a Medicare-endorsed prescription drug card program could enroll at any time of the year. Beneficiaries will be allowed to disenroll at any time and could elect another Medicare-endorsed prescription drug card program. However, the new enrollment will not become effective until the first day of the following January or July following the date of disenrollment, whichever came first, unless the program in which the beneficiary was enrolled is no longer operating under Medicare's endorsement, in which case the beneficiary could join another card program, to become effective immediately.

a. Years of Experience and Covered Lives

We received a variety of comments concerning the years of experience and covered lives requirements for a Medicare endorsement.

Comment: Among other provisions, the proposed rule proposed as a qualification criterion, that card sponsors have 5 years experience and either serve 2 million covered lives, if seeking endorsement for a national program, or 1 million covered lives for a regional program. These linked criteria were developed because years of experience and covered lives are among the criteria used by private sector companies in selecting a third party administrator to manage their pharmacy benefits. The criteria were designed to assure that only stable organizations that also had the capacity to handle large enrollment and provide customer service would be endorsed.

While some commenters recognized the need to verify past experience, a number of commenters argued that the 5 years experience requirement is overly restrictive. Furthermore, according to the commenters, both the 5-year experience and covered lives requirements would exclude companies (including many chain pharmacy discount programs) that provide some of the best drug prices. Several commenters expressed concern that the 5 years experience criterion limits participation to large entities, and two commenters indicated that this requirement would foreclose new market entrants.

Response: We agree with the comments regarding the 5 years experience requirement, and have modified this particular criterion to permit card sponsors with 3 years experience to qualify for endorsement. We believe that this modification effectively addresses commenter concerns yet continues to provide a sufficient amount of time to enable card sponsors to adequately demonstrate a reasonable track record of good performance and stability.

Comment: A number of commenters questioned the appropriateness of the covered lives criterion. Two commenters pointed out that it would be difficult for all but the largest, most established PBMs or discount card sponsors to meet the covered lives requirement as specified in the proposed rule. One commenter recommended that we substitute "capability for processing "x" transactions" for "covered lives" as a more relevant and appropriate qualification criterion. The basis for this recommendation is the commenter's belief that the number of processed transactions as a benchmark measures the capabilities of a pharmacy program administrator as well as the size, reach and scope of a program. According to the commenter, the number of covered lives indicates only the number of enrollees, whereas the number of processed transactions measures how many times those enrollees use their card. The commenter argues that card sponsors must have the demonstrated capability to process a large volume of transactions efficiently and accurately.

Response: We believe the covered lives criterion is important, because it signals a card sponsor's capacity to execute large numbers of enrollments or provide customer service to a large population. As discussed elsewhere in this preamble, we have lowered the threshold for covered lives to 1 million covered lives, whether a program is regional or national. We believe this change provides a balance between the need to demonstrate capacity for large enrollment and customer service for a large population, and flexibility to enable recent and innovative programs that otherwise meet the provisions of this initiative to qualify for endorsement. We do not believe that the ability to handle a large number of transactions represents a direct measure of a card program sponsor's capacity to handle the high volume of enrollment that we expect from this initiative. However, we will continue to evaluate this as a proxy measure for enrollment capacity.

We have also de-linked the covered lives criterion from the experience requirement, which would allow an organization that has the requisite experience, but may not have the enrollment or customer service capacities, to acquire these capacities under a contract for the purpose of administering its program.

We think the 1 million lives criterion is the right threshold, but as the initiative evolves over the next year or so, we will continue to evaluate it and the 3 years experience criterion to see if they are barriers to entry for well qualified sponsors, affecting competition, and if so, we will consider revising them.

Comment: One commenter asserted that, if discounts are a function of volume, we should design the Medicare-Endorsed Prescription Drug Card Assistance Initiative on a nationwide basis, rather than a regional basis.

Response: Manufacturers will be interested in negotiating favorable terms on rebates with regional or national programs that are designed in a manner that influences market share. Volume is a consideration, but stable and exclusive enrollment are key to influencing market share. The success of card program features designed to steer usage, such as structure of the formulary, size of the pharmacy network and tools to educate and influence the behavior of beneficiaries and physicians, are dependent on beneficiaries staying in the program and being influenced by the program's incentives.

We believe that regional programs, as we have described for the purpose of this initiative, can be competitive with national programs and therefore successful at garnering manufacturer rebates, if regional programs are designed to be attractive enough to beneficiaries to drive their enrollment rates. These sponsors will potentially design programs keeping in mind the unique characteristics of the beneficiaries, physicians and pharmacies residing in that region. Regional programs have the advantage over national programs of being closer to the attitudes and behaviors of these stakeholders and can design programs that specifically address dimensions of decision making unique to the area.

Comment: A number of commenters encouraged us to include existing prescription drug card programs that are presently meeting certain criteria such as the following: (1) A nationwide network; (2) experience administering operational programs that process millions of transactions; (3) inclusion of a large number of drugs in multiple therapeutic classes covering conditions common to seniors; (4) technological infrastructure (including claims processing) that is in place and currently integrated with retail pharmacy; and (5) unlimited manufacturer and prescription drug product participation (no formulary).

Response: As part of the application process, we will seek some of the following information as evidence of a sponsor's experience: (1) Experience in pharmacy benefit management, which includes conducting activities such as enrollment, adjudicating claims at point of service, claims processing, providing discounts, and working with a contracted network of pharmacies and with drug manufacturers; (2) experience providing a prescription drug discount program, including conducting activities such as enrollment, providing discounts, and either owning or working with a contracted network of pharmacies; or (3) experience providing low-income drug assistance programs that provide drugs at low or no cost, including eligibility determination, enrollment, and arranging for access to drugs at low or no cost. In addition, as stated elsewhere in the preamble, we have de-linked the covered lives criterion from the experience requirement, which will allow an organization that has the requisite experience, but may not have the enrollment or customer service capacities, to acquire these capacities under a contract for the purpose of administering its program.

Comment: Two commenters recommended that we develop criteria that focus on value and cost savings for beneficiaries, not criteria, such as covered lives, that arbitrarily limit Medicare endorsements.

Response: Part of our qualification criteria is a rebate requirement that is defined to promote competition among the card sponsor programs and drive competitive discounts. However, in addition to assuring that card sponsors are capable of offering reasonable discounts to beneficiaries, in order to safeguard both the Medicare name and beneficiaries, we also believe it is important to consider the stability and reputation of a card sponsor in determining whether that card sponsor is deemed worthy of endorsement. As we stated in section B.1 of this preamble, one of the goals of this initiative is to increase beneficiary confidence in the Medicare program and to improve the relationship between beneficiaries and the Medicare program. If we were to endorse a card program that could not handle the volume of covered lives that we expect from this initiative, or that went out of business soon after the announcement of endorsement, this would have a negative impact on beneficiary confidence and the relationship between the Medicare program and beneficiaries. Of course, by endorsing card programs, we cannot guarantee that they will remain in business; however, we believe that by endorsing card programs with substantial experience, we can help to maximize beneficiary confidence in this initiative and in the Medicare program as a whole.

Comment: One commenter stated that the proposed rule effectively bars participation of Medicare beneficiaries who reside in Puerto Rico and the U.S. Territories. According to the commenter, Puerto Rico could not qualify for participation as either a national program, or a regional program, as defined in the proposed rule. Puerto Rico is not a State, and its geography dictates that it cannot be contiguous to any State, Guam or Territory. The geographical issue is also shared with Alaska and Hawaii.

Response: In order to balance the opportunity for smaller programs to qualify with the interest in assuring beneficiary access to network pharmacies when beneficiaries are traveling across a State line, we modified the proposed policy to clarify that regional programs must include at least two contiguous States, with the exception of Hawaii and Alaska, since they do not share State borders; these States could partner with 2 or more contiguous States to form a regional program. We further clarified that for either a national or regional program, card programs may also include the Commonwealth of Puerto Rico, Guam and the U.S. Territories as part of their programs.

b. Financial Integrity and Business Ethics

We received a number of comments related to expectations with regard to card sponsor financial integrity and business ethics.

Comment: Commenters expressed concern about the general lack of detail in the financial solvency requirements for endorsed card sponsors in the proposed rule. Commenters maintained that, while a card sponsor must demonstrate that it is "financially solvent," the proposed rule does not define the term. To safeguard against endorsement of financially unstable entities, commenters expressed the importance of explicitly including stringent, but fair financial solvency criteria.

Response: We agree that stringent, but fair, financial solvency criteria must be clearly delineated in order to ensure that only the most financially stable entities are endorsed by Medicare to offer prescription drug discount card programs. We believe that the proposed rule did, in fact, clearly state the financial solvency criteria that potential card sponsors must meet in order to qualify for endorsement. For example, the proposed rule noted that the specific financial requirements would consist of the applicant effectively demonstrating that total assets exceed total unsubordinated liabilities. In addition, the applicant must demonstrate that it has sufficient cash flow to meet obligations as they come due. We retain these conditions in the final rule.

In addition to these specific financial tests, the applicant must report any financial ratings secured over the past 3 years, as well as certain specified past or pending investigations over the past 3 years. As discussed earlier in the preamble, it was originally proposed that applicants would be required to provide any financial ratings secured over the past 5 years, as well as a list of past or pending investigations over the last 5 years; however, this requirement has been modified to be consistent with the new 3 years total experience requirement for card sponsors. This initiative is intended to increase beneficiary confidence in the Medicare program and to improve the relationship between beneficiaries and the Medicare program. To further that goal, we believe it is essential that we endorse only reputable organizations. We believe these requirements are explicit and reasonable to ensure, in combination with other card sponsor requirements, that only the most stable and reliable organizations are endorsed by Medicare to offer drug discount card programs.

Comment: One commenter questioned the appropriateness of the requirement to provide the most recent audited financial statements. According to the commenter, privately held companies are not required to audit financial statements. Thus, this requirement would appear to limit participation to publicly held companies. If the intent were to obtain information regarding financial stability, the commenter would need to know what the minimum

qualification criteria are for approval of this part of the review.

Response: As part of the application process, we are requesting that applicants submit their most recent financial statements because we want to have an independent audit from a third party rather than rely solely upon the sponsor's representations. We want to attract sponsors, including privately held companies, of a sufficient scope and organization that would, in the normal course of business, have had to produce an audit (for purposes of securing a loan, or the purchase of land, buildings or equipment). It was not our intent for this requirement to limit card participation to publicly held companies. We intentionally did not specify the source of requested financial ratings or how many ratings an applicant must produce in order to provide applicants greater flexibility in this regard.

We are not in any way attempting to limit participation to publicly held companies; rather, we believe it is reasonable to presume that a wide variety organizations (for-profit entities, not-for-profit entities, PBMs, chain drug stores, insurance companies, etc.) may apply to receive Medicare endorsement. A variety of organizations submitted applications in response to the August 2, 2001 solicitation published on our web site at *http://www.cms.gov*.

Comment: One commenter questioned the need for card sponsor applicants to provide a summary of the card sponsor's history, structure and ownership, including a chart depicting the structure of ownership, subsidiaries and business affiliations. This commenter requested a clarification of the minimum requirements for this part of the review. The commenter requested that we specify who would be responsible for the review, and their qualifications to render an opinion on the information provided.

Response: This requirement is to disclose important aspects of a potential card sponsor's operating structure, (to ensure transparency of all applicable relationships that comprise the card sponsor entity and discount card program) including transparency of its ownership relationships and contracting hierarchy. This criterion, by itself, will not be the basis for making an endorsement decision, and therefore, we do not need to specify the minimum requirements for this part of the review as part of a solicitation to be issued.

Comment: Two commenters suggested that we should have a means for monitoring solvency long after a sponsor files an application for endorsement. In addition, the commenters suggest that financial solvency should at least mean that a card sponsor must have more assets than liabilities, and that we should terminate the endorsement of any company that enters into bankruptcy.

Response: For the reasons stated elsewhere in this preamble (see our responses to comments on Reporting), we do not believe that quarterly financial reporting from a sponsor is needed. The initial review of the application has two specific financial standards; that the applicant's total assets exceed total unsubordinated liabilities and that cash flow is sufficient to meet obligations as they come due. These standards are consistent with the Medicare+Choice requirements, and we believe that these standards are appropriate for this initiative.

Also, as a provision of our agreement with an endorsed card sponsor, a card sponsor must notify us in advance of any change that materially affects its ability to perform under its agreement with us. This will include, for example, bankruptcy.

In addition, we believe that a critical source of information will be complaints directed to the complaints tracking and management system to be developed and operated by us. In the event that a card sponsor has financial difficulties that affect the performance of its program, we are likely to uncover such problems based on follow-up of complaints reported to its complaint tracking system.

Comment: Some commenters stated that the proposed rule should be revised to include objective business ethics guidelines, to safeguard the program. Other commenters point out that the proposed rule stated that a card sponsor must have a "satisfactory record of integrity and business ethics." However, commenters maintain that these terms are undefined and we have not proposed a method for determining what is "satisfactory."

The commenters suggest a number of circumstances that would be reason for us to withhold or terminate endorsement, including for example, indictments, civil liability in cases involving antitrust violations, and fraud. In addition, they believed that card sponsors should be required to report to us any lawsuits or government investigations that involve allegations of ethical violations.

Response: As part of the application process, potential card sponsors must provide a list of past or pending investigations and legal actions brought against the applicant organizations (and parent firms if applicable) by any financial institution, government agency (local, State, or Federal) or private organization over the past 3 years on matters relating to health care and prescription drug services and/or allegations of fraud, misconduct, or malfeasance. As with requirements pertaining to financial solvency, information regarding past or pending investigations and legal actions apply to the applicant organization, as well as for each of any subcontractors or organizations under other legal arrangements with the applicant to develop the pharmacy network, to handle the negotiation of rebates or discounts on behalf of the card sponsor, or to operate enrollment, and including the entity (or entities) that meets the 3 years of experience and covered lives requirements. This information will be considered during the application review process by our contract specialists who routinely evaluate this type of information as part of a determination for entering into third party relationship with a contractor.

Further, ongoing monitoring and enforcement of business ethics and integrity will be specified in the agreement entered into between us and the endorsed card sponsor.

c. Enrollment Exclusivity

We received a number of diverse and conflicting comments with regard to the enrollment exclusivity policy.

Comment: Three commenters supported the exclusivity policy, including one commenter who suggested a 1-year lock-in, to coincide with the Medicare open enrollment period. Nine commenters opposed the enrollment exclusivity provision. Many of these commenters expressed concern that the exclusivity provision will reduce access to the full range of discounts, with lock-in particularly problematic in the absence of any requirements for stability in formularies or prices. Some commenters not only questioned the assumption that enrollment exclusivity was needed to facilitate card sponsor negotiation of manufacturer rebates but also questioned whether manufacturers would provide substantial rebates, even with the exclusivity feature.

One commenter noted the positive benefit that an exclusivity provision provides from a drug utilization and patient safety perspective but, on balance, expressed concern that enrollment exclusivity limited access to a wider range of lower-priced drugs.

Response: We believe that enrollment exclusivity is needed to facilitate card sponsor negotiation of manufacturer rebates. We believe that beneficiaries in

a particular drug card program will have a strong incentive to purchase drugs on the formulary, and we believe manufacturers will be persuaded to provide significant rebates or discounts to card sponsors as a result. The enrollment exclusivity feature is expected to provide card sponsors a stronger negotiating leverage, thereby increasing the level of manufacturer rebates available to beneficiaries.

Furthermore, we believe that concurrent enrollment in multiple drug card programs is potentially confusing to beneficiaries and will add an additional burden at the retail pharmacy level, because pharmacies will likely be approached by beneficiaries who will want to know which of their drug cards offers the best price on a particular drug.

Under this initiative, card sponsors will be competing for a large number of new covered lives; potentially millions of Medicare beneficiaries. We believe that competition for share of beneficiaries will result in favorable formularies and prices across the card sponsor programs. Further, given that each card sponsor must provide a discount on a drug in each of the therapeutic classes indicated elsewhere in this preamble, beneficiaries will have access to discounts on a broad range of prescription drugs.

In addition, we agree that, as part of an enrollment exclusivity provision, beneficiaries need some stability in formularies and prices. Consequently, as stated elsewhere in the preamble, we are revising our policy to specify that card sponsors must agree to publish prices on formulary drugs, and assure that a specific drug is not dropped from the formulary nor its price increased for periods of at least 60 days starting on the first day of the program's operation.

Comment: One commenter maintains that tracking whether and how often enrollees switch to different card programs would be difficult administratively. The commenter questions whether: (1) A beneficiary would risk losing any expected discounts on prescription drugs if he or she were to unknowingly or unintentionally enroll in a different card program more often than is permitted; and (2) whether the beneficiary would be required to retroactively pay back any discounts received while incorrectly enrolled in the card program.

Response: As stated elsewhere in the preamble, the responsibility for ensuring enrollment exclusivity rests with the administrative consortium. We would expect the process for ensuring enrollment exclusivity to be well defined and deliberate, with a specific focus on minimizing the potential for concurrent enrollments in multiple drug card programs. Under no circumstances would a beneficiary be required to retroactively pay back any discounts received while incorrectly enrolled in a drug card program.

4. Formulary and Discounts to Beneficiaries

Each drug discount card program will be expected to provide a discount for at least one drug identified in the therapeutic classes, groups, and subgroups of drugs commonly needed by Medicare beneficiaries as listed in Table 1. This endorsement qualification is to assure that beneficiaries enrolling in Medicare-endorsed discount card programs will be offered discounts on many of the types of drugs most commonly needed. As some drugs can be classified into more than one category, a drug can be used only once to satisfy the criterion of providing a discount for a drug in a therapeutic class, group or subgroup. It is important to note that card sponsors have the flexibility to include as many drugs as they choose beyond the minimum number and types needed to satisfy this endorsement qualification criterion, and we expect that many card sponsors will choose to do so for purposes of attracting beneficiaries to their programs.

Discount card program sponsors' formularies and prices may vary geographically. As a condition of endorsement, card sponsors must agree that a specific drug is not dropped from the formulary, nor its price increased, for periods of at least 60 days, starting on the first day of the program's operation. In addition, card sponsors will notify the pharmacy network, the consortium, and us of formulary and pricing changes 30 days in advance of the change.

Also, card sponsors must guarantee that participating Medicare beneficiaries will receive, on all prescription drugs included under the card program at the point of sale, the lower of the discounted price available through the program or the price the pharmacy would charge a cash paying customer at that time. Pharmacies sometimes offer special prices on drugs for promotional purposes to the general public. If these prices are lower than the price that could be obtained through the drug card program, the card sponsor will be expected to arrange with its network pharmacies that these lower prices also be made available to Medicare beneficiaries to the extent the drugs are included in the card program's formulary.

The listing of therapeutic classes, groups, and subgroups of drugs most commonly needed by Medicare beneficiaries is in Table 1. A revised Table 1 has been prepared incorporating the comments discussed below. In addition, the categories listing has been updated to reflect the top prescription drug utilization and spending data collected through the 1999 Medicare Current Beneficiary Survey (MCBS). The Table 1 listing included in the proposed rule was based in part on the 1998 MCBS data. Also, working in consultation with Federal experts in pharmacology, the lists of new drugs approved by the Food and Drug Administration during 1999, 2000, and 2001 were examined for purposes of identifying whether recently released drugs might have further implications for the drug categories to be included in the listing as those commonly needed by Medicare beneficiaries. We anticipate modifying these classes, groups, and subgroups over time in future solicitations to remain current with beneficiary use of drugs and changes in the market, including the emergence of new drug types and drugs removed from the market.

The table below shows the drug therapeutic classes and groups (and in a few cases, subgroups) that contain the drugs most commonly needed by Medicare beneficiaries. A single drug cannot be used to count in more than one category for purposes of providing a discount on a drug in each one of the listed categories (for example, propranolol cannot be used for both antiarrhythmic agents and as a beta blocker).

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
Nutrients and Nutritional agents	Specialty multi-vitamin low in phosphorus

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES—Continued

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
Hematological Agents	Other
	Hematopoietic Agents
	Antiplatelet Agents
	Anticoagulants
	Coumarin and Indandione Derivatives
	Hemorrheologic Agents
Endocrine/Metabolic Agents	Sex Hormones
	Estrogens
	Progestins
	Others
	Bisphosphonates
	Antidiabetic Agents
	Insulin
	Sulfonylureas
	Biguanides
	Thiazolidinediones
	Others
	Adrenocortical Steroids
	Thyroid Drugs
	Calcitonin-Salmon
	Agents for Gout
Cardiovascular Agents	Inotropic Agents
	Vasodilators
	Antiarrhythmic Agents
	Supraventricular, Prophylaxis
	Supraventricular, Treatment
	Ventricular, Prophylaxis
	Ventricular, Treatment
	Calcium Channel Blocking Agents
	Dihydropyridine
	Diphenylalkylamine
	Benzothiazepine
	Antiadrenergics/Sympatholytics
	Beta-Adrenegic Blocking Agents
	Cardioselective Beta-Adrenergic Blocking Agents
	Antiadrenergic Agents—Centrally Acting
	Antiadrenergic Agents—Peripherally Acting
	Other
	Renin Angiotensin System Antagonists
	Angiotensin—Converting Enzyme Inhibitors
	Angiotensin II Receptor Antagonists Antihypertensive Combinations
	Antihyperlipidemic Agents
	Bile Acid Sequestrants
	HMG—CoA Reductase Inhibitors
	Others
Renal and Genitourinary Agents	Anticholinergics
	Diuretics
	Thiazides and Related Diuretics
	Loop Diuretics
	Others
Respiratory Agents	Bronchodilators
	Sympathomimetic—Long Acting
	Sympathomimetic—Short Acting
	Xanthine Deriatives
	Leukotriene Modulators
	Respiratory Inhalant Products
	Corticosteroids
	Intranasal Steroids
	Mast Cell Stabilizers
	Others
	Antihistamines—Non-Sedating
	Cough Preparations
Central Nervous System Agents	Analgesics
	Narcotic

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES—Continued

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
	Narcotic/sustained release
	Other
	Agents for Migraine
	Others
	Antiemetic/Antivertigo Agents
	Antianxiety Agents
	Antidepressants
	Selective Serotonin Reuptake Inhibitors
	Others
	Antipsychotic Agents
	Phenothiazines/Thioxanthenes
	Phenylbutylpiperadine Deriatives
	Indoles
	Atypical Antipsychotics
	Other Antipsychotic Agents
	Cholinesterase Inhibitors
	Sedatives and Hypnotics, Nonbarbiturate
	Anticonvulsants
	Iminostilbene
	Hydantoins
	Barbiturates
	Deoxybarbiturates
	Succinimides
	Valproic Acid
	Oxazolidinedione
	Benzodiazepines
	GABA Mediating Medications
	Other Anticonvulsants
	Antiparkinson Agents
Gastrointestinal Agents	
	Histamine H2 Antagonists
	Proton Pump Inhibitors
	GI Stimulants
	Salicylate Deriatives for Inflammatory Bowel Disease
Systemic Anti-Infectives	
	Penicillins
	Cephalosporins and Related Antibiotics
	Fluoroquinolones
	Quinolones
	Macrolides
	Sulfonamides
	Antivirals
	Antiretroviral Agents
	Tetracycline
Biological and Immunologic Agents	
	Immunologic Agents
	Immunosuppressives
	Immunomodulators
	Interferon Alpha
	Interferon Beta
	Other
Dermatological Agents	
	Anti-Inflammatory Agents
Ophthalmic/Otic Agents	
	Agents for Glaucoma
	Cholinergic
	Sympathomimetic
	Adrenergic Antagonists
	Prostaglandins
	Carbonic Anhydrase Inhibitors
	NonSteroidal Anti-Inflammatory Agents (NSAIDS)
	Anticholinergic
	Muscarinic Antagonists
	Glucocorticoids
	Anti-Infectives
	Mast-cell Stabilizers/Antihistamines
	Other Outpatient Ophthalmologics
Antineoplastic Agents	Alkylating Agents
	Antimetabolites
	Hormones

TABLE 1.—THERAPEUTIC CLASSES AND GROUPS/SUBGROUPS OF DRUGS COMMONLY NEEDED BY MEDICARE BENEFICIARIES—Continued

Therapeutic drug classes	Drug groups/subgroups (subgroups where shown are indented)
	Antiestrogens
	Aromatase inhibitors
	Antiandrogen
	Other Antineoplastics
Rheumatologicals* (*Note: Gout agents and immunomodulators listed under other categories)	
	Nonsteroidal Anti-Inflammatory Agents
	Cox-2 Inhibitors
	Other Rheumatologicals

Sources: Drug Facts and Comparisons, A Wolters Kluwer Company, 2001 edition; *Pharmacological Basis of Therapeutics,* Goodman and Gilman, 9th edition (1996); *Clinical Pharmacology,* Melman and Morelli, 4th edition, 2000; *USP 2002* United States Pharmacopeia.

We received a number of comments related to the drug classes, groups and subgroups listing included in Table 1 of the proposed rule.

Comment: One commenter indicated that the nationally recognized classification system used to develop the drug categories listing was not specified.

Response: There are several nationally recognized systems used to classify drugs. At the bottom of Table 1 in the proposed rule, the drug classification sources that were consulted to develop the Table 1 drug category listing were indicated. We chose to predominantly rely on *Drugs Facts and Comparisons* as it is a system commonly used by pharmacists. Since there are several systems for classifying drugs, for the proposed rule listing we also consulted two other sources, Goodman and Gilman's *Pharmacological Basis of Therapeutics,* and *Clinical Pharmacology,* by Melman and Morelli.

Comment: Another commenter suggested using the American Hospital Formulary system or the USP DI.

Response: As noted above we have relied primarily on *Drugs Facts and Comparisons* because of its common usage in the context of retail pharmacy. Based on this comment, though, we did also examine the *USP 2002* by United States Pharmacopeia to assist in addressing some of the comments related to specificity of categories.

Comment: Several commenters raised issues related to the specificity of the listing, indicating that the groups and subgroups were broad and nonspecific. They recommended that additional groups and subgroups should be established to more adequately reflect the full range of medicines. Some commenters suggested factors that should be considered, such as whether products are used to treat the same spectrum of disorders, patient outcomes are similar, differing mechanisms of action, significant side effects, and dosing frequencies. Another commenter thought that the approach of listing a single product for each category was not adequate from a therapeutic interchange perspective. Another commenter thought that the listing was not comprehensive enough and it did not address the needs of those who have sensitivity to certain drugs. Another commenter expressed concern that strict formularies may limit medications and not address the needs of the elderly population.

Response: It is important to keep in mind that the classes, groups, and subgroups categories were developed in the context of a drug discount program, not a drug benefit. We think that this is a very important distinction. The drug category listing for Medicare endorsement of a drug discount card serves as a minimum criterion for qualification related to the number of drugs for which discounts need to be provided. (Card sponsors could provide discounts for more than one drug per category.) This is a different concept than coverage of drugs in the context of a drug benefit. Formulary design in the context of a drug benefit would need to be done in a different manner and would need to take into account benefit coverage policy issues. Since the Medicare-Endorsed Prescription Drug Card Assistance Initiative is not a benefit, we do not think that coverage policy considerations are applicable. In addition, requiring discounts on all drugs would need to rely heavily on discounts from pharmacies rather than drug manufacturers.

In developing the listing, we focused on drugs that are commonly used by Medicare beneficiaries, based on analysis of top utilization and spending data. We examined the levels of specificity in drug classifications in order to have groupings in which generally there will be multiple products. Educating beneficiaries on how to obtain better drug prices is the focus of the Medicare-Endorsed Prescription Drug Card Assistance Initiative. We think this approach provides an adequate framework for beneficiaries to learn about use of drug formularies and choose between formulary options commonly available in the insurance market. Under this initiative, beneficiaries enrolled in Medicare-endorsed card programs will be free to purchase prescription drugs as they do today, but for at least some of their drugs that are included in the endorsed card sponsor's formulary, they would be able to obtain lower prices.

Importantly, under the Medicare-Endorsed Prescription Drug Card Assistance Initiative, beneficiaries will have ample choice and an opportunity to examine closely the differences between cards, including drug offerings and their associated prices. Some cards may offer fewer drugs, and as a consequence, garner deep discounts or rebates, while other cards may offer a broad range of drugs with a lower level of rebates or discounts. Under this initiative, beneficiaries will choose what they perceive as most valuable and gain experience to assist in making future choices. The marketplace will gain important experience designing drug products and services that meet the expectations and needs of the Medicare population.

Comment: Three commenters recommended covering all drugs. One suggested this could be done by obtaining discounts from pharmacies rather than from manufacturers. Another suggested that there should be mandatory participation by manufacturers rather than voluntary, which results in a patchwork of covered and non-covered drugs. One commenter expressed support for having card sponsors provide a discount for at least

one drug identified in the therapeutic classes, groups and subgroups.

Response: As noted previously, this initiative is distinct from a drug benefit. This initiative endorses private sector entities that meet certain minimum criteria. To require discounts on every drug might limit the rebates that will be available to card sponsors, and could result in lower discounts to beneficiaries for particular drugs. Moreover, we expect that market forces will operate to determine the number of drugs that will be offered in each therapeutic category. With regard to the comment on mandatory participation by drug manufacturers, we have no authority to mandate participation.

Comment: Several commenters identified categories of drugs for which they thought more specificity was needed, including cardiac antiarrhythmic agents, bronchodilators, and antineoplastics. One commenter noted that certain classes of drugs used by the senior population were not on the Table 1 listing, specifically benign prostatic hyperplasia, Alzheimer's drugs, and ophthalmic drugs. The commenter also noted that within the category of thyroid drugs, separate groups should be identified for hypothryroidism and hyperthyroidism. Another commenter suggested that the antidepressants category broken out into "selective serotonin reuptake inhibitors" and "others" be further specified by also identifying a category for "serotonin and norepinephrine reuptake inhibitor (SNRI)."

Response: Because cardiac arrhythimias, respiratory conditions treated by bronchodilators, and cancer conditions are common in the Medicare population, we re-examined these three categories. We agree with the commenters that in the case of antiarrhythmic agents and bronchodilators, additional specificity will be appropriate to take into account the differing underlying conditions (for example, atrial versus ventricular arrhythmias) and treatment mechanisms for these common disorders. Furthermore, there are multiple products used to treat these conditions. Consequently, we have revised the listing to provide more specificity related to antiarrhythmic agents and bronchodilators. Four subcategories are now shown for antiarrhythmic agents in Table 1 (supraventricular/prophylaxis, supraventricular/treatment, ventricular/prophylaxis, and ventricular/treatment). For bronchodilators there are now three subcategories (sympathomimetic/long acting, sympathomimetic/short acting, and xanthine derivatives).

In the case of antineoplastics, it is important to note that Medicare currently does cover many drugs in this class because they are provided as part of physician services. However, because of the development of newer types of oral antineoplastic agents, we have expanded the listing to include alkylating agents and also provided an "other antineoplastics" category so the card sponsors will further need to provide a discount on an additional antineoplastic agent of their choosing.

We also agree that the sex hormone category was broad and needed additional specificity to take into account such disorders as benign prostatic hyperplasia. The sex hormone group has been further divided into estrogens, progestins, and others.

With regard to the comment on Alzheimer's drugs, the Table 1 listing includes categories for antipsychotic drugs and cholinesterase inhibitors. These drugs are used in the treatment of individuals with Alzheimer's disease.

With regard to the comment on ophthalmic agents, Table 1 in the proposed rule did include categories of ophthalmic agents, for example, drug agents to treat glaucoma, a common disorder in the Medicare population.

Table 1 includes a category for thyroid drugs, and we do not believe we need to separately identify drugs for hypothryroidism and hyperthyroidism. The purpose of the Table 1 listing is to have sponsors include discounts on drugs that are commonly needed by the Medicare population. Only one of these conditions, hypothryroidism, is common in the Medicare population. Consequently, we do not think it is necessary to further break out the thyroid drug category. Card sponsors have the flexibility to choose the thyroid drug products that they think are most appropriate for inclusion in a Medicare endorsed discount card.

As indicated previously, in developing the listing of drug classes, groups and subgroups for purposes of establishing a minimum level of drugs to be included in drug discount programs seeking Medicare endorsement, we focused on the most common prescription drug needs of the Medicare population. At the same time, we believe it is necessary to balance the drug categories listing with the design element that there generally needs to be multiple drug products in a given category. With regard to the comment for an additional breakout under the antidepressant category for serotonin and norepinephrine reuptake inhibitor (SNRI), we think this would be a very narrow grouping in terms of number of drugs within it. Consequently, we do not believe that a separate SNRI category should be included in the context of a discount card minimum listing. Card sponsors have the flexibility to include a discount for an SNRI drug under the "other" antidepressant subgroup if they desire. As mentioned previously, card sponsors have the flexibility to include as many drugs as they choose beyond the minimum number and types needed to satisfy the endorsement qualification criterion, and we expect that many card sponsors will choose to do so for purposes of attracting beneficiaries to their program.

Comment: We also received a number of other comments regarding other issues related to card sponsors' formularies. Several commenters suggested that Medicare-endorsed card sponsors use interdisciplinary committees consisting of physicians, pharmacists, and other health professionals familiar with medication therapy to establish formularies. They suggested that these committees, commonly known as pharmacy and therapeutics (P&T) committees, should be independent and meet on a regular basis (for example, quarterly) to ensure access to the latest medical innovations, with decisions based on scientific and economic considerations that achieve appropriate, safe and cost effective drug therapy. One commenter submitted a set of principles that have been established regarding the composition and role of P&T committees. Another commenter suggested that if formularies vary geographically that a regionally based professionally qualified body should include practicing physicians using that formulary.

One commenter raised the issue of providing for exceptions from a card sponsor's formulary when a physician determines that medical necessity dictates use of a non-formulary drug. The commenter suggested that formulary exceptions, while not necessarily provided at the same discount as formulary drugs, should be covered under the same cost-sharing requirements as formulary drugs. The commenter also suggested that enrollees, or their physicians, have access to a timely, independent, objective third party appeal of formulary disputes, with resolution as rapid as patient's condition requires.

One commenter indicated that we should provide, through the application review and acceptance process, that card sponsors adequately evaluate clinical considerations in drug selection and placement. The commenter suggested that sponsors should have to place on their formulary any product for

which they receive a discount or rebate that offers therapeutic advantage over other products in the same therapeutic class.

Response: We recognize that P&T committees play an important role in the development of formularies for use in drug benefits. They are a common industry practice and various organizations have developed guidelines working with these committees. The Medicare endorsement, however, is related to discount card programs rather than a drug benefit, where coverage policy is involved. Given this distinction and the effects on beneficiary choice, we do not think that it is necessary to specify additional provisions regarding endorsed discount card sponsors use of P&T committees. Similarly, the issues of exceptions from the formulary, cost-sharing levels, and an appeals process related to formulary disputes are all formulary-related aspects that arise in the context of the use of formularies in a drug benefit and its related coverage policy. Finally, we think that the construction of the list of drugs to be included in the context of a drug discount card is different than for a drug benefit. We think that the commenter's suggestion is more appropriate in the context of a drug benefit in terms of inclusion of drugs that offer certain advantages over other drugs in the same therapeutic class. Beyond specifying the minimum number and types of drugs that need to be included for purposes of Medicare endorsement, we think that the decisions regarding which actual drugs are to be included under card sponsors' programs need to be left to the sponsors to determine based on their negotiations with drug manufacturers and pharmacies, and what they think they can offer to beneficiaries.

Comment: A few commenters submitted comments related to generic drugs. One commenter noted the importance of physician involvement in decisions regarding generic substitution. The commenter also noted that since generic products can look different, it is important that there be proper labeling and explanation to the patient in order to avoid beneficiary confusion. Another commenter also noted the important role of medical practitioners in drug substitution. Another commenter indicated support for the language in the proposed rule supporting the use of generics, but noted that therapeutic safety and equivalency do need to be established for generic use. One commenter thought the proposed rule failed to provide specific incentives for the purchase of generic drugs when appropriate.

Response: The Medicare endorsement of prescription drug discount programs is intended to better educate beneficiaries about how to lower their prescription drug costs. The educational initiative will include information about the use of generic drugs as one way that beneficiaries may be able to lower their prescription drug costs. The potential savings to beneficiaries provides the incentive to use generic products. As part of the educational effort, we would expect to inform beneficiaries of the need to talk with their physicians about the availability of generic products for the medications they are taking.

Comment: The proposed rule provided that endorsed drug discount card programs be allowed to vary their formularies by geographic location and over the course of the endorsement period. Two commenters thought that card sponsors should not be allowed to vary formularies and prices geographically. There was concern that variation could cause confusion, with one commenter noting that this would be particularly true for beneficiaries who live in different places during the year.

Response: Allowing formularies and prices to vary geographically simply recognizes that this is how the market currently works, and that there are variations. We think it is necessary to provide for geographic variation to provide flexibility to accommodate market conditions and competition. As part of both our and card sponsors' educational efforts, the presence of geographic variation will be communicated. In addition, an endorsed card sponsor needs to make available to beneficiaries, over its customer service telephone line, upon request, information about prices and formulary at the retail pharmacy level. Beneficiaries also need to be informed that a lower price could be available due to pharmacies having special sales. Under the Medicare-Endorsed Prescription Drug Card Assistance Initiative, the beneficiary is to get the lower of the negotiated discount price or the usual and customary price available at that point in time.

Comment: Several commenters recommended that there be some stability over time in the formularies and in the prices, particularly because of the provision that beneficiaries can only be enrolled in one Medicare-endorsed card program at a time and can change among Medicare-endorsed card programs twice a year, in January and June. One commenter noted that we should prohibit sponsors from altering coverage terms for any product if the change would be to the detriment of card enrollees. The proposed rule had provided that card sponsors report to the consortium any formulary or price change within 48 hours before the change became effective. Commenters suggested different possible periods of times for maintaining stability in formularies and prices, including 60 days, 90 days, 6 months related to the enrollment period, and for the entire period of the endorsement.

Response: We agree that there is an important trade-off between having enrollment exclusivity for a period of time for purposes of market leverage and the need for some stability in formularies and prices that underlie beneficiaries' decisions regarding selection of card programs. We examined data reported by Express Scripts in its 2000 and 2001 Drug Trends Reports on changes in the average wholesale price (AWP) for the top 50 common brand drugs. The data indicate that the AWP did not change that frequently during the course of the year, typically one or two times, with the most frequent number of changes being four. Consequently, we are revising our policy to indicate that if a card sponsor seeks Medicare endorsement, it needs to agree to publish prices on formulary drugs, and that a specific drug is not dropped from the formulary, nor its price increased for periods of at least 60 days, starting on the first day of the program's operation. Within this context, card sponsors could still add drugs or lower prices at anytime, since neither of these changes has a negative impact on beneficiaries. Card sponsors will need to notify their pharmacy network, the consortium, and us of formulary and pricing changes 30 days in advance of those changes taking effect.

Comment: One commenter recommended that we develop an annual report card on the impact of formularies on beneficiaries enrolled in the Medicare-Endorsed Prescription Drug Card Assistance Initiative to better understand the impact of formularies on patient care. The commenter supports study by the industry and by us in this area.

Response: We agree with the commenter that such studies could provide a valuable source of information for policymaking and for industry sponsors as they design their programs. We will have information from each card program about their formularies. We also intend to survey beneficiaries about their knowledge of various components of the drug card program, and their perceptions of, and experiences and satisfaction with, their discount drug card. This information

will allow us to assess how well beneficiaries understand the concept of a formulary under their discount card program and how this impacts their use of the card. As this body of knowledge needs time to develop, we do not intend to develop a report card on the impact of formularies on beneficiaries under this initiative.

5. Manufacturer Rebates or Discounts

The name "Medicare" is extremely valuable and highly regarded by the nearly 40 million Medicare beneficiaries. Medicare focus groups have indicated that virtually all seniors recognize the name "Medicare". We believe its name recognition is so strong that it is unlikely to be duplicated in the commercial market.

As a result of the Medicare endorsement, Medicare name recognition, and education of Medicare beneficiaries, we believe that Medicare-endorsed drug discount card program sponsors will have increased visibility for their discount drug programs, which will lead to significant enrollment by Medicare beneficiaries. The attributes of this initiative, coupled with exclusive enrollment, will provide card sponsors with the ability to negotiate significant drug manufacturer rebates or discounts. Competition among card sponsors and, in turn, drug manufacturers, will attract beneficiaries through lower prices and other valuable prescription related services and assure that a substantial portion of manufacturer rebates or discounts are shared with Medicare beneficiaries either directly or indirectly through pharmacies, thereby improving the assistance this initiative can offer to beneficiaries.

In order for the endorsement initiative to ensure meaningful assistance on drug costs to Medicare beneficiaries, a condition of endorsement will be that card program sponsors meet the threshold of obtaining manufacturer rebates or manufacturer discounts on brand name and/or generic drugs. Medicare-endorsed discount card programs must pass a substantial share of those rebates or discounts through to beneficiaries either directly, or indirectly through pharmacies. Card sponsors will be required to have contractual arrangements with brand name and/or generic drug manufacturers for rebates or discounts and a contractual mechanism for passing on the bulk of rebates or discounts that are not required to fund operating costs to beneficiaries or pharmacies. Card sponsors will be required to have contractual agreements with pharmacies ensuring that the rebates or discounts be passed through to the Medicare beneficiaries in the form of lower prices or enhanced pharmacy services.

Card sponsors must share with us a detailed description of their manufacturer rebate program as part of the application for endorsement. In describing their rebate program, card sponsors will share with us information such as the aggregate level of manufacturer rebates or discounts that they will secure from brand name and/or generic manufacturers, their expected total rebate or discount, the share that will be passed through to beneficiaries, and other information necessary to assess whether or not the requirement has been met. This descriptive approach provides card sponsors with maximum flexibility within the basic requirement to design a rebate program, to negotiate rebates with a broad range of manufacturers, and to negotiate a level of rebates or discounts that is commensurate with their card program design.

We believe that competitive market forces will encourage endorsed card sponsors to secure the highest manufacturer rebates or discounts possible and pass those rebates through to enrollees, thereby maximizing the level of assistance provided to beneficiaries in lowering prices on prescription drugs. However, as a consequence of our consideration of public comments regarding this condition of endorsement, and in order to provide additional incentive for card sponsors to secure manufacturer rebates or discounts and pass them through to beneficiaries, we intend, in a future proposed rule, to propose a Gold Star policy. Under this proposed policy, we would award a Gold Star designation to those Medicare-endorsed discount card programs securing the highest levels of manufacturer rebates or discounts which are passed on to Medicare beneficiaries directly, or indirectly through pharmacies. Subject to the provisions of a future proposed and final rule, at the close of Year 1, we would anticipate awarding a Gold Star designation to no more than 10 percent of endorsed discount card programs which have secured and passed through the highest levels of manufacturer rebates or discounts. We would publicize this designation in beneficiary education materials, and card sponsors would be permitted to use the designation in information and outreach material.

A proposed Gold Star designation could serve several purposes. First, it could assist in educating beneficiaries about the various price concessions contributing to the total discount. Second, it could encourage card sponsors to secure the highest manufacturer rebates or discounts possible from both brand name and generic manufacturers. Third, it could encourage card sponsors to pass along the highest possible level of rebates or discounts to beneficiaries, directly, or indirectly through pharmacies. While retail discounts are also an important part of providing reduced prices to Medicare beneficiaries, we believe that one of the improvements of this Medicare initiative over the current market is the emphasis on securing manufacturer rebates or discounts. As discussed elsewhere in the preamble, the requirements of Medicare endorsement are designed, in part, to maximize the ability of card sponsors to secure manufacturer rebates or discounts. We believe that special recognition of card programs for obtaining and passing through to beneficiaries the best manufacturer rebates or discounts through a potential Gold Star designation would be consistent with the goals of this market-based initiative.

We believe that this overall approach to securing and passing along manufacturer rebates or discounts promotes better drug pricing for beneficiaries and may enhance pharmacy participation in a card sponsor's network.

We received numerous public comments related to manufacturer rebates or discounts.

Comment: Many commenters indicated that the final rule needs to clearly define "substantial", related to the level of rebate or discount card sponsors must secure from drug manufacturers (one indicated that 10% is not "substantial", two others indicated that each sponsor should show an ability to garner 10% average savings, and one commenter indicated that manufacturers should be required to offer a minimum discount in the range of 30%). Two commenters supportive of defining substantial recommended that we use the same rebate percentages required by Title XIX (Medicaid), two suggested the level of discounts offered by the Federal Supply Schedule, and one suggested the level secured by the Veterans Administration. One commenter suggested a minimum percentage payment from manufacturers, on a per prescription basis. Several commenters indicated that requiring a specific level of manufacturer rebate is not needed in a competitive marketplace as rebates or discounts will be reflected in fees and prices.

Response: We agree that requiring a specific level of manufacturer rebates or discounts is not necessary in a competitive market. Card sponsors will submit to us as part of the application for endorsement a detailed description of their rebate program as described above. Card sponsors seeking endorsement must meet the threshold of securing brand name and/or generic manufacturer rebates or discounts. We believe that competition among card sponsors—assisted by the price comparison web site—will encourage card sponsors to negotiate the most favorable rebates or discounts possible. The policy is designed to allow competition among card programs to drive rebates rather than government-imposed conditions.

We have deleted reference to the term "substantial" related to the level of manufacturer rebates or discounts card sponsors seeking endorsement must secure. We believe that the design of card sponsors' programs will determine the level of rebates they can secure, and that consumer preferences for formulary and pharmacy access will drive program design. We believe that market forces will come to bear on the level of manufacturer rebates secured by card sponsors. In addition, we believe that use of the term in this context may cause confusion as it is also used to describe the level of rebates or discounts we require be passed through to beneficiaries, either directly or through pharmacies. Given that the level of manufacturer rebates or discounts card sponsors may reasonably secure is different from the level of manufacturer rebates or discounts we require and expect will be passed through to beneficiaries, we are opting to not refer to both as substantial.

We believe that this descriptive approach also keeps card sponsors from focusing on only meeting a minimal level of rebates. For example, if we set a minimum average manufacturer rebate level that all endorsed card sponsors must secure, card sponsors may focus on attaining that level rather than striving to exceed it. Once that minimum threshold is attained, card sponsors might be less inclined to pass along any additional rebates or discounts received from manufacturers. Further, in order to encourage card sponsors to secure and pass along a maximum level of manufacturer rebates or discounts, we will propose, in a forthcoming proposed rule, a Gold Star designation policy, rather than use a defined level as suggested by some commenters.

Comment: Two commenters urged against requiring manufacturer rebates at all because they are unpredictable and unreliable. Commenters argued that if the amount of rebate on a particular drug changes, card sponsors may change their formularies. These changes might interfere with the patient/physician relationship, as changes in formularies might lead to drug switches.

Response: Securing manufacturer rebates or discounts is a tool widely used in the private insured market today. Virtually all insured products with managed pharmacy benefits are able to secure manufacturer rebates in response to shifts in market share. This initiative seeks to harness the purchasing power of Medicare beneficiaries in order to effectively negotiate rebates or discounts with manufacturers, similar to insured products. We believe that physicians are familiar with the role of formularies in insured products, and the benefits that may accrue to their patients in sometimes switching to formulary drugs. Groups representing physicians have publicly supported this initiative, while expressing, among several concerns, the need for some stability in formularies and prices. While negotiated rebate or discount levels may change from time to time, this Medicare initiative will require that a specific drug offered under the card program is not dropped from the formulary, nor its price increased for periods of at least 60 days, starting on the first day of the program's operation, and that card sponsors notify pharmacies, the consortium and us of price changes 30 days in advance of the change (see also the discussion of price stability in the previous section of this preamble).

Comment: We received several comments indicating that the proposed rule did not specify a minimum total discount that sponsors must offer to beneficiaries, and that we should require a clearly defined level of savings under this initiative. One commenter indicated that the program must be structured to give beneficiaries the greatest price reduction possible.

Response: We do not require that card sponsors offer a minimum total discount level in order to be eligible for Medicare endorsement. We believe that competition among card sponsors will encourage card sponsors to seek the highest total discount levels possible, given the broad retail pharmacy access standard they must meet in order to be considered for endorsement. In addition, we believe that card sponsors will design their programs differently, and that these differing designs may yield different discount levels. Some beneficiaries may prefer a card program with design features that may yield a lower discount level than other programs (for example, less emphasis on preferred drugs). We believe that permitting beneficiary choice among card designs, despite perhaps differing discount levels, is a positive feature we would want to preserve.

We plan to issue a proposed rule on the Gold Star designation that could help maximize the total level of discounts available to Medicare beneficiaries.

Comment: We also received numerous comments related to the level of manufacturer rebate or discounts we might expect under a Medicare discount card. Commenters indicated that this Medicare initiative will likely not garner rebates equivalent to those secured by funded products because there is little incentive to use one branded product over another; that rebates will not likely be greater than what is already available in the private market; and that rebates will likely fall below those recently announced by manufacturers for low-income beneficiaries. One commenter noted that manufacturers have given little or no rebates for discount card programs, due to lack of ability to show market share movement. One commenter indicated that the lower level of rebates expected may affect beneficiary satisfaction.

Response: The level of manufacturer rebates or discounts a card sponsor secures will depend, in part, on the design of its discount card program. For example, programs that rely heavily on the use of formularies, that are successful at educating Medicare beneficiaries regarding the benefits of using formulary or preferred drugs, and that are successful at educating physicians about formulary alternatives when available will be able to secure larger rebates. These dynamics are also at play in insured, or funded, products. We recognize that the benefit to the beneficiary of using formulary or preferred drugs is much greater in an insured product because some or most of the cost of the drug is being paid by an insurer. We assume that manufacturer rebates or discounts under this initiative may be generally below that of insured products. However, we expect that prescription drug manufacturers will respond to the ability of card sponsors to move market share as a result of the major design features of this initiative (for example, education, exclusive enrollment, 6-month enrollment period, use of formularies or preferred drugs, and rebate and discount requirements). While manufacturers may not offer the same prices on all drugs as they do under their low income assistance

programs, we believe that manufacturers will offer Medicare beneficiaries the best prices possible, particularly when the card sponsors guarantee that rebates will be passed through to beneficiaries. A full discussion of our estimates of beneficiary savings under this initiative can be found in the Impact Analysis section of the preamble.

Comment: We received a comment indicating that current discount card programs secure discounts from pharmacies only, and this program structure also finances discounts from community pharmacies.

Response: We understand that the discount card programs prevalent in the market today generally do not secure manufacturer rebates or discounts and pass those savings on to enrollees either directly, or through pharmacies. We believe that this initiative is an improvement over the current market in this respect. Card sponsors seeking Medicare endorsement must secure rebates or discounts from brand name and/or generic prescription drug manufacturers and pass a substantial share of the savings through to beneficiaries. Medicare-endorsed discount card programs may not rely solely on discounts received from community pharmacies; endorsement is contingent, in part, on securing rebates or discounts from manufacturers. We believe that the Gold Star designation, discussed in greater detail elsewhere in the preamble and in a forthcoming proposed rule, would also help encourage card sponsors to seek and secure manufacturer rebates or discounts, and to pass those concessions on to beneficiaries directly, or indirectly through pharmacies.

Comment: We requested comments on efforts to sustain the use of generic drugs in spite of manufacturers' rebates or discounts on brand name drugs. We wanted to better understand the effects of various levels of rebates or discounts and negotiating strategies on market competition and their impact on the use of generic drugs. Many commenters were supportive of encouraging the use of generic drugs when available. Several commenters stated that a substantial share of discounts on generic drugs secured by card sponsors should also be passed on to beneficiaries, and that this will increase the use of generics. However, there was disagreement among commenters regarding whether or not rebates, discounts, or other price concessions are commonly found in the generic drug market. One commenter indicated that rebates are greater for brand name drugs, which may dampen card sponsors' interest in encouraging the use of generics.

Response: We believe that card sponsors should be encouraged to seek rebates or discounts on generic as well as brand name drugs and pass a substantial share of those savings through to Medicare beneficiaries. However, we understand that current industry standard practice does not necessarily include traditional rebates on generic drugs flowing through discount card sponsors or insurers. We have changed our rebate requirement to state that applicants for Medicare endorsement must secure rebates or discounts from brand name and/or generic drug manufacturers.

This initiative will encourage the use of generics in other ways as well. For example, the price comparison web site will provide information about the availability of generics. In addition, we expect that the potential of generic drugs to reduce beneficiary out of pocket costs on drugs will be discussed in beneficiary education and outreach materials and activities.

Comment: We received numerous comments related to the pass through of manufacturer rebates or discounts to beneficiaries directly or indirectly through pharmacies. Many commenters noted that the proposed rule did not define what level of manufacturer rebates or discounts would be passed on to beneficiaries. Many were supportive of our establishing a required percentage of rebates or discounts that must be passed through to beneficiaries but there was disagreement regarding what the level should be. For example, one commenter supports passing through 100% of savings offered by manufacturers, two proposed requiring that 90% be passed through, two proposed using Title 19 as a model, and one proposed requiring that pharmacists determine what portion of the rebate or discount should be kept by a card sponsor. One commenter indicated that, if endorsed, they anticipate passing through all or a majority of revenues in the form of lower drug prices. Several commenters stated that we should not require specific amounts of manufacturer rebates be passed through to beneficiaries directly or through pharmacies because competition among plans (market forces) will likely lead to rebates being passed through.

Response: We require that Medicare-endorsed card sponsors pass along a substantial share of rebates or discounts received from brand name and/or generic drug manufacturers to beneficiaries, either directly or indirectly through pharmacies. Requiring that a particular percentage of rebates or discounts be passed through does not take into consideration the differing operating costs of individual card sponsors (card sponsors are permitted to use a portion of rebates or discounts to defray operating expenses). We want to encourage card sponsors to provide excellent customer service, negotiate fair dispensing fees, and provide quality assurance and drug utilization review programs that also are of benefit to beneficiaries. Placing an arbitrary limit on the percentage amount a card sponsor may retain to defray the costs of these worthwhile activities may not be in the best interest of beneficiaries. In addition, smaller or regionally operating card sponsors initially may not be able to pass through the same level of rebates or discounts on all drugs as their overhead costs as a percentage of rebates or discounts may be somewhat higher in some cases.

We believe that competition among card sponsors will encourage card sponsors to pass along the maximum amount possible to beneficiaries. Simply, beneficiaries will most likely enroll in card programs with the best prices on the drugs they take, all other things being equal (for example, card program design and customer service). We also believe that prescription drug manufacturers may put pressure on card sponsors to pass along pricing concessions to enrollees. And, we believe that our proposed Gold Star designation policy, explained elsewhere in this preamble and in a forthcoming proposed rule, would encourage card sponsors to share the maximum amount of manufacturer rebates or discounts possible. We continue to use the term "substantial" in describing this requirement to indicate to card sponsors that we believe that most of the savings should be passed through, and that it is our expectation that rebates and discount revenues not used to defray operating expenses be passed through to beneficiaries, directly or through pharmacies.

Comment: Several commenters are concerned that card sponsors could attribute most or all payments to overhead and avoid passing those payments on to beneficiaries directly or through pharmacies. While one comment was supportive of using manufacturer rebates to give pharmacies an incentive to participate, one commenter could not think of any case where insurers share a rebate with a retail or community pharmacy. One commenter indicated that there is no guarantee that rebates will be passed through pharmacies. One commenter offered that one way to assure that the discount is passed on to the consumer is to give card sponsors a fixed negotiating fee to improve the

probability that they will share discounts with small businesses.

Response: We believe that competitive pressure will prevent card sponsors from retaining rebates and discounts for purposes other than operating expenses that benefit the beneficiary (for example, customer service, quality assurance activities, and pharmacy counseling). Beneficiaries will select card programs that offer the best overall value, including the lowest prices on drugs they take and other valuable services offered. If card sponsors fail to pass along rebates or discounts in a form that is obvious to beneficiaries, beneficiaries will enroll in a competing discount card program that offers more clear value to them. In addition, we believe that Medicare-endorsed discount card program sponsors would have an incentive to pass along as much of the rebate as possible to beneficiaries directly or through pharmacies if we incorporate our proposed Gold Star designation policy (described elsewhere in this preamble and in a forthcoming proposed rule) into this initiative.

We agree with the commenter that currently, insurers do not pass rebates and discounts through to pharmacies. Insurers do not have an incentive to reduce the price to the enrollee directly or indirectly through the pharmacy. Generally, rebates are forfeited to the employer to reduce overall health care expenditures; there is no expectation that a substantial portion of the rebate will be passed through to the enrollee at the point of service or through pharmacies. In this initiative, we expect the consumer will take the place of the employer, and likely receive rebates and discounts from manufacturers.

Comment: In a related matter, some commenters suggested that sponsors should be required to pass through to beneficiaries a portion of all payments received from manufacturers, not just a share of manufacturer rebates or discounts.

Response: As a condition of endorsement, we will require card sponsors to pass through a substantial share of manufacturer rebates or discounts to beneficiaries directly or through pharmacies. Other payments and/or fees between the card sponsor and manufacturer that may be unrelated to moving market share in the context of this initiative are business matters between the card sponsor and manufacturer. This policy is consistent with current industry practice. Card sponsors are not precluded from using revenues from other sources to further lower prices or offer valuable pharmacy services. In addition, our proposed Gold Star designation policy, described in greater detail elsewhere in this preamble and in a forthcoming proposed rule, may provide an incentive for card sponsors to do that to the extent possible. We believe that competition among card sponsors, including publicly available price comparison information and, if ultimately incorporated into the initiative, our proposed Gold Star designation policy, will compel card sponsors to pass through a maximum amount of revenue from manufacturers.

Comment: We received several comments indicating that reporting or disclosing rebates in advance is difficult because they are often determined retroactively, and operational challenges and challenges posed by compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) are large.

Response: We agree that offering a lower price at the point of sale is a challenge, but we believe it is in the best interests of beneficiaries to receive the benefit of lower prices at the point of sale. We believe that the significant experience of the insured population with manufacturer rebates or discounts will provide the groundwork for estimating prices at the point of sale. Card sponsors will have had experience negotiating rebates or discounts with manufacturers, either in the discount card context or, more likely, in the context of an insured product. We believe that this experience, combined with the experience of negotiating discounts with retail pharmacies, will enable card sponsors to estimate the expected total discount in advance.

Comment: One commenter said that any financial incentives on formulary drugs (such as manufacturer rebates) should not interfere with the delivery of quality care.

Response: We agree. We expect that physicians will continue to prescribe medications that are appropriate for their patients, just as they do today.

6. Access to Retail Pharmacies

To be eligible for endorsement, applicants must demonstrate that their national or regional prescription drug card program will offer Medicare beneficiaries convenient access to retail pharmacies. Convenient retail access means demonstrated contracts with retail pharmacies so that upon the start of outreach and enrollment in the discount card program at least 90 percent of Medicare beneficiaries, on average, in all Metropolitan Statistical Areas (MSAs) served by the program live within 5 miles of a contracted pharmacy (90/5) and at least 90 percent of Medicare beneficiaries, on average, in all non-MSAs live within 10 miles of a contracted pharmacy (90/10). We will require that this be demonstrated using mapping software, computed by using one hundred percent of beneficiary counts by zip code (provided by us).

Tables generated by the mapping software to be submitted to us will include both the MSA and non-MSA level in each of the States covered under the card sponsor's program, along with information on the contracted pharmacies.

In addition, as discussed later in this preamble, we will ask card sponsors to report on key aspects related to endorsement, such as aggregate level of manufacturer rebates, customer service, call center performance, complaints processes, and enrollment and disenrollment.

Drug card program sponsors will not be permitted to offer a home delivery-only (mail order) option to Medicare beneficiaries, since most Medicare beneficiaries are accustomed to purchasing prescription drugs from a local pharmacy. However, to provide a choice to beneficiaries who prefer home delivery, endorsed drug card programs will be allowed to include an option to use home delivery via a mail order pharmacy, in addition to the required contracted retail pharmacy network. We will ask card sponsors to report on the aggregate level of rebates or discounts shared with beneficiaries, and participation of independent pharmacies in the card program's network.

We also will not require drug discount card program sponsors to include institution-based pharmacies in their pharmacy networks; however, neither would we preclude their participation. Institutionalized beneficiaries whose prescription drugs are covered under Medicare Part A or Medicaid will not be able to use the drug discount cards for the covered drugs. This policy comports with the conditions of participation for long-term care facilities.

Participation in a Medicare-endorsed discount card program may not always be useful or appropriate for institutionalized beneficiaries. However, there are circumstances in which beneficiaries have short stays in nursing facilities and could use the card while in the community. And, there are circumstances, specifically in assisted living facilities, where some beneficiaries purchase their drugs in the community and manage their own medication regimes. Therefore, both card sponsors and we will educate beneficiaries about the advantages and

disadvantages of enrollment in a discount card for institutionalized beneficiaries to support their making informed decisions.

a. Pharmacy Network

Comment: Two commenters asserted that the 90/10 standard allows urban areas to be underserved. For example, a single pharmacy will satisfy the standard for all of New York City. In addition, the standard allows rural areas to be underserved because access calculations are aggregated. To correct these issues, the commenters recommend that, instead of a 90/10 standard, we should impose a 90/5 standard, or less, depending on the concentration of pharmacies in a particular zip code. Another commenter expressed concern regarding the proposed access requirement, indicating that 10 miles can be a long distance for an elderly person or person with a disability who does not drive.

Response: In recognition of the commenters' concerns, we have modified the 90/10 pharmacy access requirement to include a stricter access standard for MSAs and non-MSAs. This final rule defines retail pharmacy access to mean demonstrated contracts with retail pharmacies so that, upon the start of outreach and enrollment in the discount card program, at least 90 percent of Medicare beneficiaries, on average, in all MSAs served by the program live within 5 miles of a contracted pharmacy (90/5) and at least 90 percent of Medicare beneficiaries, on average, in all non-MSAs live within 10 miles of a contracted pharmacy (90/10). We believe that a 90/5 access standard will ensure that for urban areas, beneficiaries are within a reasonable distance from a pharmacy offering Medicare discounts, and that beneficiaries have choice regarding the pharmacies from which to purchase discounted drugs. Since the pharmacies in rural areas are not as concentrated, we required a 90/10 access standard for non-MSAs. The effect of this policy is to require greater pharmacy participation in both MSAs and non-MSAs than was originally proposed. This is because the MSA and non-MSA access standard will be calculated based on MSAs only and non-MSAs only—and not the combination of non-MSAs and MSAs. We believe this standard will give beneficiaries access to pharmacies, while retaining the flexibility needed by card sponsors to have a sufficient number of pharmacies with which to contract for a network.

Comment: The proposed rule highlighted the value of certain small, urban pharmacies that provide linguistically appropriate or culturally sensitive services to Medicare beneficiaries. We solicited comments regarding the role and importance of these pharmacies to underserved populations and other populations that may have special needs. We also solicited comments on how to maintain access to these pharmacies for Medicare beneficiaries who depend on them.

One commenter noted that the health care system in the United States has come to rely on independent pharmacies and chain pharmacies, particularly in low income and rural areas. Two commenters stated that the proposed initiative would adversely impact small community pharmacies. One commenter stated that the initiative should provide more opportunities for card sponsors to partner with small retail pharmacies, particularly in low income and rural areas. Another commenter urged us to monitor card sponsors' programs to ensure that local retail pharmacies are, in fact, utilized. If utilization of mail order pharmacies, for example, becomes too high, retail pharmacies could be threatened.

Response: We recognize the valuable role that rural and other small community pharmacies serve as part of today's health care system; what we estimate as the impact on these pharmacies is discussed elsewhere in the impact analysis.

As indicated elsewhere in this preamble, we have modified our pharmacy access requirement for endorsement to provide additional opportunities for small retail pharmacies, particularly in both urban and rural areas, to be sought out and included in a drug card's network.

In addition, as described elsewhere in the preamble, as part of our monitoring efforts, we will ask card sponsors to report on a number of items related to the operational aspects of their programs, including the participation of independent pharmacies in the card program's network.

Concerning the impact of mail order on retail pharmacy utilization, as stated later in the preamble, we do not believe that this initiative will result in a significant diversion of beneficiaries to mail order. The majority of beneficiaries currently rely on retail pharmacy dispensing, and we do not believe this initiative will unduly influence beneficiary choices with regard to mail order and retail dispensing.

Comment: We received a number of comments regarding pharmacy contracting as part of this initiative.

One commenter urged us to provide specific direction on whether pharmacy network contracts for the Medicare-Endorsed Prescription Drug Card Assistance Initiative must be separate from pre-existing contractual arrangements. Similarly, the commenter asks us to clarify whether such contracts must specifically reference the Medicare program. In addition, the commenter asks that we clarify whether the network contracts must obligate participating pharmacies to remain in an approved discount card program for the duration of that program's endorsement. The commenter also recommends that we include all of the material requirements that will be imposed on organizations proposing to offer a discount card program.

Response: As a condition for endorsement, card sponsors must execute pharmacy contracts that are specific to this initiative. In addition, we expect the term of these contracts to be in effect for the entire endorsement period. This is important to ensure that there are guaranteed network pharmacies for the duration of the endorsement period. These may be separate and distinct contracts, or renegotiated contracts with existing network pharmacies. We believe that this final rule includes all substantive requirements for card sponsors. There will be some procedural and interpretive details included in the solicitation for applications.

Comment: One commenter points out that pharmacy network contracting specific to this program may not be completed at the time applications are submitted. Therefore, card sponsors should be permitted to provide in their applications information on the preliminary status of network contracting activities, including pending contracts. Approved applicants should be required, as a condition of final participation, to demonstrate after approval that their networks meet the specified standards.

Response: We understand that in Year One of this initiative pharmacy network contracting may be incomplete as the application review process commences. For this reason, we will not permit card sponsors to begin outreach and enrollment until all card sponsor contracts with retail pharmacies have been executed.

Comment: One commenter recommended that participation in this initiative be open to all pharmacy providers who are willing to accept the terms of participation, whether retail, mail order or specialty pharmacy. The commenter maintains that true patient choice will only be provided by allowing any pharmacy the option to participate, and prohibiting economic

incentives that cause patients to move from provider to provider.

Another commenter argues that small pharmacies should be permitted to choose the card sponsor program(s) with which they would like to contract, especially those that serve rural or underserved areas. Yet another commenter states that the patient-pharmacist relationship is an important link in ensuring appropriate medication use and safety. Patients who develop a relationship with a single pharmacist or pharmacy should not be penalized for wanting to maintain that relationship.

Response: We believe the stated access standards would necessitate contracting with a broad network of retail pharmacies.

Given the access ratio standards and a provision that prohibits Medicare-endorsed card sponsor programs from offering mail order services only, we believe that most retail pharmacies will be invited and encouraged to participate in card programs' networks, particularly small pharmacies in rural and underserved areas. With respect to the comment that beneficiaries should not be penalized for wanting to maintain an existing relationship with a retail pharmacy, we expect that one of many considerations in selecting a card sponsor will be whether a particular retail pharmacy is part of a card sponsor's pharmacy network. Beneficiaries will have to weigh this, among a number of considerations, in the selection of a card sponsor program.

Comment: One commenter asserts that, in order to meet the 90/10 access standard, card sponsors may have to offer lower pharmacy discounts. Some card sponsors may prefer to limit the pharmacy network to produce the deepest possible discounts. The commenter suggests that we allow card sponsors the flexibility to design their programs to meet the needs of their members.

Response: As part of its basic program, an endorsed card sponsor must meet the stated retail pharmacy access standards. However, card sponsors, if they choose, may design a program within the basic program that offers more restrictive pharmacy networks and/or formularies in order to optimize the level of discounts for beneficiaries.

Comment: One commenter declared that we should utilize our Managed Care Pre-Implementation Review Guide in assessing the quality of and access to pharmacy services as part of the drug card initiative.

Response: The Managed Care Pre-Implementation Review Guide to which the commenter refers is a document developed specifically for the 1915(b) managed care waiver program in California, and is comprised of a series of questions regarding all aspects of a Medicaid managed care organization's structure and operations. The purpose of this guide is to assess the readiness of a managed care organization to begin operations. The section of the guide to which the commenter refers includes questions regarding the adequacy of a managed care plan's pharmacy benefits program, including oversight provisions, access and quality.

We appreciate the commenter's suggestion; the Managed Care Pre-Implementation Review Guide may be a useful consideration as we define our expectations with regard to the application review process as part of the solicitation.

b. Home Delivery

Comment: One commenter indicated beneficiaries will be drawn to mail order because of financial incentives.

Response: Medicare-endorsed card sponsors are not permitted to offer a mail order only product, but may offer a mail order option. According to analysis conducted for us by Booz-Allen-Hamilton, Medicare beneficiaries with insurance for prescription drugs through Health Maintenance Organizations (HMOs) are somewhat more likely than the commercially insured to use mail order in the current market (both in terms of use and spending). Given that this analysis is based on a population in a managed care plan, we may see less reliance on mail order in the population not insured for prescription drugs. In any event, while mail order may offer lower prices on some drugs, and may offer some beneficiaries more convenience than going to a pharmacy, we know that the vast majority of beneficiaries currently purchase their prescriptions through retail pharmacies. Beneficiaries may prefer interacting with pharmacists and pharmacy staff in person. To the extent that card sponsors and pharmacies offer additional incentives to use a retail pharmacy (for example, pharmacy counseling, and discounts on future purchases), beneficiaries may be inclined to continue to prefer retail outlets.

Comment: A number of commenters indicated that, as discount card sponsors, PBMs would likely steer Medicare beneficiaries to mail order pharmacies, stating that the five largest PBMs control 90 percent of the mail order pharmacy business in the United States. According to the commenter, rather than pass through manufacturer payments directly to beneficiaries, these PBMs and other card sponsors will be tempted instead to pass these funds to their subsidiary mail pharmacies, with the justification that these payments serve to enhance network participation or provide drug utilization review or other pharmacy services to beneficiaries. The commenter asserts that the potential for misdirecting manufacturer payments could be reduced if we revised the rule to prohibit card sponsors from funneling manufacturer payments to pharmacies that the sponsors own or control. These commenters also noted that beneficiaries who are diverted to mail order pharmacies lose valuable face-to-face contact with a licensed pharmacist, resulting in a decline in quality of care for beneficiaries. One commenter stated that financial incentives to use mail order pharmacies through a discount card approach may limit a beneficiary's access to medication consultation services. According to the commenter, many beneficiaries depend on the face-to-face consultation and pharmacy counseling they receive from their community pharmacist, and studies show that these pharmacy services save the health care system millions of dollars each year. However, many beneficiaries could be enticed by the discounts offered to use mail order service. Another commenter urged us to monitor card sponsors' programs to ensure that local retail pharmacies are utilized. As an example, the commenter suggested that the existence of retail pharmacies could be threatened if utilization of mail order pharmacies increases significantly. In addition to a major loss of revenue, pharmacies will suffer from the government's intervention in this competitive marketplace and, according to the commenter, we should not endorse that outcome.

Response: Beneficiaries today are making choices with regard to how they receive their medications, whether through home delivery (mail order) or retail pharmacies. Beneficiaries make these decisions based on individual preference. Most beneficiaries purchase their prescription drugs at retail pharmacies. While some beneficiaries may be most interested in deeper discounts that may be available through mail order dispensing, others may place greater value on the personal contact via retail pharmacies. By definition, those who elect to receive their medications through mail order give up the face-to-face contact they will otherwise have through the retail pharmacy outlet.

Card sponsors will not be permitted to offer a program that only includes mail order because we recognize that

maintaining access to retail pharmacies is in the general best interests of beneficiaries, the majority of whom rely on retail pharmacies. However, to provide a choice to beneficiaries who prefer mail order, endorsed drug card programs will be allowed to include an mail order option, in addition to the required contracted retail pharmacy network. We believe that a number of card sponsor organizations will be endorsed to offer discount card programs as part of this initiative, and many of these card sponsors will offer a mail order option. We recognize that a number of large PBMs have wholly-owned mail order subsidiaries. These are recognized as legitimate businesses, and we do not intend to prohibit lawful and valid business arrangements. This initiative is market based, and we believe that card sponsors will have a strong incentive to offer beneficiaries the best discounts possible through channels that beneficiaries prefer in order to attract beneficiaries and remain competitive.

Mail order services have some real cost advantages over retail dispensing; these advantages are largely a function of the inherent operational and economic differences between mail and retail dispensing. However, mail order is not appropriate for all beneficiaries. For example, mail order is not well suited today to the dispensing of drugs for acute use, because these drugs are required immediately in most cases, and mail order involves a delay in receipt of drugs. While mail order can be particularly suited to dispensing of chronic drugs, and mail order services are, in fact, used by many beneficiaries with chronic conditions, we do not believe that this initiative will result in a significant diversion of beneficiaries to mail order. Retail pharmacies have some advantages over mail order that also translate into value from a beneficiary's perspective. Among them are face-to-face counseling and an opportunity to develop a clinically supportive role with a local pharmacist, and the capacity to immediately fill a prescription without delay in receipt, which is of particular need in the case of new and acute medications.

The majority of beneficiaries currently rely on retail pharmacy dispensing, and we do not believe this initiative will unduly influence beneficiary choices with regard to mail order and retail dispensing.

Comment: One commenter stated that card sponsors should be required to provide access to professional pharmacists who can answer questions for beneficiaries using mail order services. The commenter stated that responsible card sponsors already provide such services.

Response: We are aware that States require mail order pharmacies to provide a means, for example, a toll-free hotline, for consumers to contact mail order pharmacists with questions they may have regarding their prescriptions. As the commenter indicated, responsible card sponsors already provide access to pharmacists, and we expect endorsed card sponsors that offer mail order services to provide access to a licensed pharmacist should there be inquiries that require clinical consultation.

Comment: Two commenters point out that the geographic requirements recognize that beneficiaries need convenient access to community pharmacies and state that we should clarify that mail order pharmacies do not satisfy the access requirements.

Response: The access standards, as detailed elsewhere in the preamble, pertain to contracted retail pharmacies in a given card sponsor's network only. While we expect that many card sponsor programs will offer a mail order option, mail order is not considered in the defined access ratio standard; the ratio measures access to a card sponsor's network retail pharmacies only.

c. Institutional Pharmacies

In the proposed rule, we solicited comments on whether and how institutionalized beneficiaries who have access to institution-based pharmacies would be affected if they choose to participate in the Medicare-Endorsed Prescription Drug Card Assistance Initiative, since institution-based pharmacies are explicitly not required in this program. We were also interested in better understanding whether and how institution-based pharmacies could participate in the drug card programs.

Comment: A number of commenters urged us to consider excluding beneficiaries in long-term care facilities from this initiative. Commenters indicated that beneficiaries in long term care facilities have unique needs and receive their drugs from long term care pharmacies, which provide specialized services to this population in a closed system, and that the use of pharmacies external to this system could affect beneficiaries' health outcomes. Commenters also indicated that long-term care pharmacies obtain some of the lowest drug prices negotiated in the health care market. They also indicated that it will be inefficient and an unsafe practice to allow patients to obtain drugs outside of the carefully controlled distribution systems of long-term care facilities, which capture all the necessary data to support extensive review of patients' drug regimens by consultant pharmacists. They commented that Medicare conditions of participation provide for safe drug distribution practices, thereby making it possible for skilled nursing facilities and nursing facilities to determine how their patients can receive medications. The effect of these conditions of participation is that skilled nursing facilities and nursing facilities may restrict which pharmacies supply drugs and pharmacy services to their patients. Several of the commenters explicitly noted that they intended their comments to apply to assisted living facilities in addition to skilled nursing facilities and nursing facilities.

Response: We agree with the commenters' interpretation of the conditions of participation for skilled nursing facilities and nursing facilities. Specifically, we agree that the conditions of participation provide for safe drug distribution practices, thereby making it possible for skilled nursing facilities and nursing facilities to control how their patients can receive medications, and that the effect of these conditions of participation is that skilled nursing facilities and nursing facilities may restrict which pharmacies supply drugs and pharmacy services to their patients. We believe our policy fully comports with Medicare and Medicaid conditions of participation for long term-care facilities. Therefore, we do not believe it is necessary to change our policy to exclude beneficiaries in long term care facilities from participating in the Medicare-Endorsed Prescription Drug Card Assistance Initiative, since skilled nursing facilities and nursing facilities can and do control which pharmacies will provide drugs to beneficiaries during their stays in these facilities.

Furthermore, we do not believe it is appropriate to exclude beneficiaries in skilled nursing facilities and nursing facilities outright. While, in general, it is not expected that institution-based pharmacies will be part of discount card pharmacy networks, we will not preclude their participation should an institution-based pharmacy elect to join a discount card's network. Further, while we agree that the use of a discount card by institutionalized beneficiaries may not be useful or appropriate for many individuals, we believe all beneficiaries should have the option of enrolling in a discount card, particularly since some beneficiaries have short stays in nursing facilities.

Finally, it will be cumbersome to administer an exclusion from the drug card based on patient stay. In order to

specifically exclude institutionalized beneficiaries from participation in a Medicare endorsed discount card, we would have to ascertain whether they were residents of long term care institutions at a particular point in time and disqualify their participation upon admission if they had already obtained a card. We believe that establishing such an eligibility process will also be confusing to beneficiaries. Instead, we plan to educate institutionalized beneficiaries and their caregivers about this issue. Both we and card sponsors will have to educate beneficiaries about the advantages and disadvantages of a discount card for institutionalized beneficiaries, and emphasize that beneficiaries and their caretakers should consider each beneficiary's particular circumstances to determine whether participation in a Medicare-endorsed discount card is in the person's best interest.

The education policy for beneficiaries residing in assisted living facilities will be different. Some residents of assisted living facilities purchase their drugs outside the facility's pharmacy and manage their own drug regimens. Also, Medicare has no regulatory jurisdiction over these facilities, as they are not Medicare providers, and the State regulations that guide prescription drug distribution and pharmacy practice in these institutions vary by State. We will advise beneficiaries or their caregivers to seek guidance from an administrator of the facility regarding whether their prescription drugs can be purchased at a pharmacy participating in the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

7. Other Drug-Related Items and Services Under the Endorsement and Items and Services Outside the Scope of the Endorsement

Drug-related services, drug utilization review, and pharmacy counseling, that are not offered for an additional fee, could be offered as endorsed features of the program under this initiative. In addition, drug card sponsors could provide other services to beneficiaries who enroll in their card programs. These services could include both (a) drug-related services or items for a fee, such as disease management; and (b) non-drug-related services or items, whether for a fee or not, such as discounts on dental services and prescription eyeglasses. These services will not be covered by the Medicare endorsement and could not be described as Medicare-endorsed. Also, as described in the privacy section elsewhere in this preamble, card sponsors will need to seek beneficiary written authorization to market such services.

Comment: We received a number of public comments regarding the valuable role pharmacists currently play in drug therapy management. Two commenters cited a number of studies that demonstrate the importance of pharmacy services. One commenter expressed concern that the proposed rule does not direct card sponsors to include coverage for pharmacy services as part of the program. In particular, the proposed rule does not ensure access to pharmacist-provided medication therapy management services. The commenter states that beneficiaries must have access to pharmacist services, including: self-management education and disease management, and asserts that pharmacist services must be recognized and paid for under the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Response: While we were not provided with specific data concerning pharmacist reimbursement for counseling services, we have carefully reviewed a number of studies and also conducted additional analysis of available research.

Under this initiative, we are recognizing that card sponsors may want to pass through a portion of rebates they garner from manufacturers to enhance the services beneficiaries receive from pharmacies. We believe that payment for such services under this initiative should be a contractual decision between a pharmacy and a card sponsor. We believe this is appropriate given the market-based approach of the Medicare-Endorsed Prescription Drug Card Assistance Initiative. If card sponsors believe specific pharmacy services are marketable to beneficiaries, then we expect them to negotiate terms that are of interest to the pharmacists to assure this is highlighted as part of the discount card program.

While we believe that beneficiaries will be most interested in their ability to obtain significant discounts and will base their card program decisions, in large part, on the level of discounts offered, we do believe that certain beneficiaries may place a higher value on card programs that offer enhanced pharmacy services. However, rather than mandate enhanced pharmacy services and associated payment for such services as part of this initiative, we believe that outreach and education efforts will be critical to make beneficiaries aware of the distinctions between card programs and, in particular, highlighting card programs that offer enhanced pharmacy services to beneficiaries.

Meanwhile, the responsibility resides with the pharmacist community to continue research using well designed studies to demonstrate the cost effectiveness of pharmacy counseling at the point of retail sale. Much of the best designed and current research is focused on pharmacy counseling in the context of disease management and consultation with physicians for a selective population. This important work will help inform future policy making at least in the circumstances to which it pertains. Whether and how the findings from such studies translates into reimbursement options at the point of retail sale will also be of interest to the government.

Comment: One commenter points to the statement in the proposed rule that beneficiaries without drug coverage often do not have access to valuable services offered by some drug benefit and assistance programs, including services such as drug interaction, allergy monitoring and advice on how medication needs might be met at a lower cost. One commenter disagrees with this statement. The commenter indicates that most States have taken the requirements of the Omnibus Budget Reconciliation Act of 1990 (OBRA), which mandates pharmacy cognitive services under the Medicaid program, and (either by statute or regulation) extended these activities to all citizens by imposing a patient counseling requirement. Thus, the incentive for the pharmacist to comply is to meet a statutory or regulatory requirement. Another commenter also cites OBRA, noting that this authority mandates pharmacists to provide consultation on all medications, along with patient drug history review and special pharmacy programs such as asthma, high blood pressure and diabetes education. According to the commenter, the benefit of these programs exists only because the pharmacist provides the data to perform these services. Pharmacists identify potential allergy or drug-interaction problems and work out a solution with the prescriber and the patient. The administrative entity does not perform this service.

Response: We acknowledge that State laws and regulations prescribe various requirements for pharmacists related to such areas as prospective drug review, the provision of information on drug interactions, side effects and related information, and requiring the pharmacist to offer to counsel a patient who presents a prescription for filling. We recognize the role that pharmacists play in the provision of clinical services, including, for example, drug utilization review efforts and timely

detection of drug-drug interactions. We are also aware that pharmacies typically maintain electronic records to support these activities. However, third party administrative entities, such as pharmacy benefit managers (PBMs), are also able to warehouse data from across network pharmacies, providing a rich data source that is also available for examining patterns in utilization and monitoring drug-drug interactions. One of the benefits of this initiative could be that pharmacists are able to analyze a wider range of data, which is collected and warehoused by the card sponsors. We continue to believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative will enhance Medicare beneficiaries' access to these, and other, effective tools that are widely used in insured products and by pharmacies to obtain higher quality pharmaceutical care.

Comment: A number of commenters cited the importance of safety measures as part of discount card programs. One commenter stated that card sponsors should be required to provide automated safety programs that prevent dangerous drug interactions. According to the commenter, responsible card sponsors already provide such services. The commenter maintains that the potential for preventable harm from medication errors is too great to allow card sponsors that do not have safety programs to participate in this initiative. Several commenters emphasized the value of a discount card initiative which includes safety measures that protect consumers from possible drug interactions and promote clinically appropriate drug therapy. Optional add-on programs not only improve patient health (for example, through disease management), but can also help manage patient costs by providing education on generic drugs.

Response: We agree that safety programs that are designed to identify drug interactions and promote clinically appropriate drug therapy are generally provided by reputable card sponsors. We believe that market competition will drive card sponsors to design programs that include features that may be of interest to Medicare beneficiaries, such as those cited by the commenters. To the extent that these services will require added fees, these too will be permitted, provided the beneficiary provides written authorization for the use and disclosure of his or her personal information for this purpose.

Comment: One commenter asserted that a Pharmacists' Reimbursement Committee must be established which, much like the Physicians' Reimbursement Committee under Medicare, would address issues of pharmacist reimbursement to ensure continued viability of the community pharmacies, specifically chain and independent pharmacies.

Response: This is a beneficiary assistance initiative designed for card programs to compete on value. Establishing fees for community pharmacists is beyond the scope of this initiative.

Comment: One commenter noted that pharmacists cannot be expected to counsel on the unique aspects of each individual card's rules and drug costs, as well as drug usage and quality.

Response: We do not believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative will substantially complicate the educational responsibilities of pharmacists. Presently, discount cards have disparate outreach approaches, terminology, and discounting methodologies. Under this initiative, endorsed cards will have certain required commonalities in all of these areas, as well as the national public education offered by us to support increased public awareness of discount cards in general. Therefore, we believe that pharmacists will not be unduly burdened by this initiative.

8. Card Program Administration and Customer Service

As a condition of endorsement, card sponsors will have to agree to: (1) Charge a low or no enrollment fee to beneficiaries; (2) operate customer service call centers in accordance with standard business practices; (3) provide information and outreach to enrolled beneficiaries; (4) protect the privacy of beneficiaries' information; and (5) maintain a customer complaints system. Each of these requirements is discussed in this section.

The one-time enrollment fee for any Medicare-endorsed drug discount card will be limited (a maximum of $25 in Year One), and we encourage Medicare-endorsed card program sponsors to keep their fees as close to zero as possible. We believe this limit will allow discount card program sponsors to recoup their administrative costs through the enrollment fee, if they so choose, so more of the manufacturer rebates can be passed on to beneficiaries, but the limit is not so prohibitive as to dissuade beneficiaries from enrolling in the drug discount card programs. If a beneficiary changes drug card programs (either voluntarily or because the drug card program no longer participates in the initiative), the beneficiary could be charged a separate one-time enrollment fee by the second drug card program.

As a condition of endorsement, each endorsed card program sponsor must also maintain a toll-free customer call center to assist beneficiaries in understanding the drug card program offered. The call center must be open during usual business hours and provide customer telephone service in accordance with standard business practices. We interpret this to mean that the call center will be available at least Monday through Friday from 8:00 a.m. to 4:30 p.m. Eastern to Pacific Standard times for those zones in which the discount card program will operate. We also interpret the requirement that the call center be operated in accordance with standard business practices to mean that 70 percent of customer service representatives' time will be spent answering telephones and responding to enrollee inquiries; 80 percent of all incoming customer calls will be answered within 30 seconds; the abandonment rate for all incoming customer calls will not exceed 5 percent; and that there will be an explicit process for handling customer complaints. These standards are required or exceeded by the 1–800 Medicare call center contractors.

Card sponsors must also have in place a convenient means for accommodating pharmacy inquiries regarding the card sponsor's program. Card sponsors could, for example, accommodate pharmacist inquiries by incorporating a specific number in the Interactive Voice Response (IVR) for the pharmacist to select so that hold times will be minimized (many pharmacies use this already for ease of access for physicians).

We are aware that card sponsors, as part of their current business operations, generally have some established mechanism for responding to pharmacy inquiries. However, we do not intend to mandate a specific approach because we do not want to inadvertently force a higher cost solution. Instead, we will let individual card sponsors decide how to effectively address pharmacy inquiries.

Medicare-endorsed discount drug card sponsors will need to provide Medicare beneficiaries with information and outreach regarding the endorsed features of the discount card program. We interpret this to mean that the endorsed card program sponsors must disclose, in customer appropriate printed material, to Medicare beneficiaries (prior to enrollment and after enrollment, upon request) a detailed description of the program that includes contracted pharmacies, enrollment fees (if any), drugs included, and their prices to reflect discounts that are provided to the consumer.

Information and outreach should include information regarding the tools used for lowering prices and improving the quality of pharmacy services, as well as the importance of maintaining current drug coverage and the availability of generic substitutes under the program.

Guidance on what information to include in pre-enrollment and post-enrollment materials will be provided in the guidelines for information and outreach materials to be produced by us and appended to the solicitation for applications for the Medicare endorsement. We anticipate that the information in these materials will also be made available on the drug card sponsors' web sites and through their enrollment and customer service phone lines.

With the exception of advertising in print or broadcast media with a national audience, outreach to beneficiaries outside of a card sponsor's defined service area will be the basis for intermediate corrective actions or termination of endorsement by us. In addition, our guidelines for information and outreach materials will require that card sponsors clearly disclose the areas in which their endorsed programs are available to beneficiaries.

In addition, card sponsors that provide additional prescription drug quality services for no additional fee, such as drug interaction, allergy alerts, and pharmacy counseling will be expected to educate beneficiaries about the role of, and availability of, these services, and provide information to us for use on our web site.

Endorsed card programs will be required to accept all Medicare beneficiaries who wish to participate in the card program. We expect the endorsed drug discount card programs to maintain methods for enrollment similar to usual business practice—such as accepting enrollees through paper, telephone, fax or Internet.

As a condition of endorsement we also expect card sponsors, as well as the administrative consortium (described later in this preamble), to protect the privacy of beneficiaries information. Generally, card sponsors, for the purpose of administering a discount card program, are not covered entities under the regulations implementing HIPAA at 45 CFR part 164 (Privacy Rule). In some circumstances, a card sponsor, for the purpose of administering a discount card program, could be a business associate to a covered entity under the Privacy Rule, for example, to the pharmacies in the card program's network, or to a health plan that engages in group enrollment as allowed under this initiative. To the extent that a card program is a business associate to a covered entity under the Privacy Rule, or in any other way the Privacy Rule is applicable, the privacy provisions under this initiative do not modify that applicability. We are incorporating certain provisions of the Privacy Rule into this initiative, regardless of whether the rule on its face would apply to card sponsors. The provisions of the Privacy Rule incorporated into this initiative will take effect—for purposes of this initiative—beginning at the time of the endorsement agreement. These provisions do not trigger the HIPAA enforcement mechanisms; enforcement is discussed elsewhere in this rule.

Specifically, card sponsors will be required, as a term of endorsement, to agree to protect the privacy of Medicare beneficiary information consistent with the privacy provisions set forth in 45 CFR 160.103, 160.202, 164.501 through 164.514, and 164.520. These sections concern consent, authorization, notice, public policy, permissible uses and disclosures, and limiting disclosure to the "minimum necessary". For purposes of this initiative, a card sponsor must consider itself a "covered entity", as referenced in the Privacy Rule.

Prior to enrollment, or at the time of enrollment, a card sponsor must notify each beneficiary of expected uses and disclosures of the beneficiary's protected health information, as well as of the beneficiary's rights and the card sponsor's duties with respect to such information. The notice must be in plain language and must contain sufficient detail to place the beneficiary on notice of the uses and disclosures permitted or required under this rule and other applicable law. (If changes are made to the Privacy Rule, these changes will be incorporated into this initiative.) Among these expected uses and disclosures are the routine uses and disclosures to operate the program. For the purpose of this initiative, routine uses and disclosures under health care operations are defined as the routine activities to operate the card program, including the provision of information and outreach activities, as provided in the Medicare endorsement agreement.

As described elsewhere in this preamble, we will provide guidelines in the solicitation about the content, structure, and process of information and outreach for beneficiaries by card sponsors, including such things as use of the Medicare name, general information about the program, and card program features within the scope of the Medicare endorsement that card sponsors must agree to meet.

Further, card sponsors must comply with the Privacy Rule provisions for obtaining written authorization for all uses and disclosures of protected health information, including the beneficiary's rights and the card sponsor's duties with respect to such information, provided in plain language and in sufficient detail to place the beneficiary on notice as required under the Medicare-Endorsed Prescription Drug Card Assistance Initiative rule and other applicable law. Additionally, as provided in the Privacy Rule, provisions must be in the notice about how a beneficiary's authorization can be revoked.

The requirement for authorization includes, but is not limited to, marketing. For the purposes of this initiative, marketing means any use or disclosure of protected health information considered outside the scope of the Medicare endorsement. As discussed elsewhere in this final rule, non-endorsed features include (a) prescription drug related products and services for an additional fee beyond the enrollment fee of up to $25 in Year One, such as disease management for a fee; and (b) non-prescription drug related products and services, such as discounts on eye wear and travel services.

Card sponsors will be required to develop, implement and update periodically a written data security plan to assure that such information is secure from unauthorized disclosure, unauthorized modification, and destruction.

In operating the enrollment exclusivity system, or in the conduct of any other activity that could involve the use or disclosure of Medicare beneficiaries' protected health information, the consortium will be considered, for the purpose of this initiative, a business associate, as defined by the Privacy Rule. Beginning with the formation and operation of the consortium, the consortium must develop, implement, and update periodically, a data security plan to assure that this information is secure from unauthorized disclosure, unauthorized modification, and destruction.

Endorsed card sponsors must also establish and maintain a customer complaints process designed to track and address in a timely manner enrollees' complaints about any aspect of the card sponsor's operations. Card sponsors must comply with the customer complaints requirements as specified in their endorsement agreements with us.

a. Enrollment and the Enrollment Fee

Comment: The proposed rule provided that card sponsors could charge no more than an initial $25 enrollment fee. In addition, the proposed rule sought comments regarding the advisability of permitting a nominal renewal fee of up to $15 in subsequent years of the initiative. Commenters expressed conflicting points of view regarding both card sponsors' ability to impose a maximum $25 enrollment fee in Year One of the initiative, as well as the need for and appropriateness of imposing a nominal renewal fee of up to $15 in subsequent years of the initiative.

Most commenters supported both the proposed $25 initial enrollment fee as well as a renewal fee, with many expressing support for an annual renewal fee of as much as $25. These commenters argue that these fees are likely to be the principal sources of revenue for card sponsors in the absence of Federal funding to offset the administrative costs associated with the Medicare-Endorsed Prescription Drug Card Assistance Initiative. Commenters asserted that enrollment costs identified in the proposed rule are significantly underestimated. As an example, one commenter pointed out that, while, on average, it may take card sponsors 15 minutes to enroll a beneficiary (as estimated in the proposed rule), each beneficiary will likely contact several of the endorsed programs to obtain information and materials before enrollment with one program. Therefore, the costs will likely be much more than the $11.62 enrollment cost referenced in the proposed rule, and this does not include expenses associated with the development of Internet, fax, telephone, and mail channels specific to the program. In addition, based on one commenter's experience, call center costs for individual enrollment are more than three times the cost per call of a typical group enrollment client, and experience shows that the senior population calls more frequently than other age groups, talk longer and prefers to speak to call center staff rather than use automated messaging systems, all of which increase operational costs.

Other commenters believed that the $25 enrollment fee is excessive and is "more than twice" the actual enrollment costs that card sponsors will incur. These commenters did not believe an annual fee should be permitted.

Response: We believe that the current policy of a one-time only enrollment fee up to $25 is reasonable and appropriate, as demonstrated in Section V.G of the regulatory impact analysis. While commenters correctly point out that a proportion of beneficiaries are likely to contact multiple endorsed card sponsors to obtain information and materials before deciding to enroll in a particular discount card program, we believe an enrollment fee up to $25 adequately accommodates these added costs. We are assuming that a large number of enrollments will be completed through a mail process, thus reducing the higher level of administrative costs that may be associated with enrollment via personal contact with customer service representatives.

Furthermore, we believe an enrollment fee up to $25 will cover administrative costs. In addition, card sponsors will have the discretion to use a portion of negotiated rebates or discounts as necessary to fund operating costs. Therefore, the current policy of a one-time only enrollment fee (no annual renewal fees) will be maintained.

b. Call Center

Comment: One commenter expressed support for the tracking of call center performance levels and believes the proposed standards of performance are generally acceptable. However, the commenter suggests that, before the standards of acceptable performance are finalized and implemented, actual experience with the program needs to be analyzed. The commenter recommends that card sponsors track and report call center performance levels for the first 6 months, and then be allowed to adjust any preliminary standards to make them more workable, if necessary.

Response: We believe there should be concrete standards for card sponsor call centers. The qualification criteria that card sponsors must satisfy, including years experience, covered lives and financial criteria, have been carefully considered and serve to ensure that well established, stable organizations are endorsed by Medicare to offer discount card programs.

Requirements for card sponsor call center operations are based on standard business practices, and card sponsors expected to qualify for Medicare endorsement should already be meeting these requirements. Based on the review of applications submitted in response to our solicitation for applications for Medicare endorsement issued on August 2, 2001 on our Web site at *http://www.cms.hhs.gov,* potential card sponsors clearly expressed their ability to meet the defined customer service standards. In fact, many applicants indicated that their customer service centers currently exceed these standards.

Comment: One commenter disagrees with the specific, quantifiable customer service requirements outlined in the proposed rule, including the requirement that 70 percent of customer representatives' time will be spent answering telephones and responding to enrollee inquiries. According to the commenter, this is not an industry standard. Private industry provides specific limitations of time off from work for vacation, sick and holidays and maintains strict guidelines in terms of tracking percent of work time in queue for customer service response.

Response: The goal of this requirement is that 70 percent of a customer service representative's time while on the job is spent fielding incoming calls and inquiries.

Comment: Two commenters suggested that card sponsor call centers should be responsible for pharmacies' questions.

Response: We agree that card sponsors should have in place a convenient means for accommodating pharmacy inquiries regarding the card sponsor's program. Card sponsors could, for example, accommodate pharmacist inquiries by incorporating a specific number in the Interactive Voice Response (IVR) for the pharmacist to select so that hold times will be minimized (many pharmacies use this already for ease of access for physicians). We are aware that card sponsors, as part of their current business operations, generally have some established mechanism for responding to pharmacy inquiries. We do not intend to mandate a specific approach because we do not want to inadvertently force a higher cost solution; instead, individual card sponsors will have to provide information in their application for endorsement about how they will effectively address pharmacy inquiries.

Comment: Two commenters suggest that call centers should operate 24 hours per day. The commenters note that thousands of pharmacies across the country remain open all day and night because Medicare beneficiaries and other patients need convenient access to prescription drugs. Questions regarding prescription drugs can arise at all hours; therefore, call centers should remain open at all hours.

Response: We do not agree that endorsed card sponsors should be required to provide 24-hour call center operations. According to analysis conducted for us by Booz-Allen-Hamilton, the numbers of pharmacies that operate on a 24-hour basis are a small subset of the total number of chain drug store outlets, differentiating themselves in the industry by providing

enhanced consumer convenience and value-added services such as drive-through pharmacies or 24-hour services.

Therefore, at this time, we do not believe there is sufficient justification to mandate 24/7 customer service for all card sponsors. We do agree, however, that the customer service component is critical to this initiative, and card sponsors will need to provide convenient access to customer services throughout their program area.

We understand that a number of large PBMs currently provide 24/7 customer service access, while others offer extended hours well beyond those required for this initiative. We will, however, monitor the adequacy of the card sponsor customer service requirements, and will consider modifying the present card sponsor customer service requirements if there is a demonstrated need as we gain experience with the program. The specific customer service requirements are delineated earlier in the preamble.

c. Information and Outreach

Comment: Two commenters thought that we should prohibit card sponsors with regional programs from advertising their programs or their Medicare endorsement in print or broadcast advertisements that extend beyond their defined service areas for a Medicare-endorsed card program.

Response: We agree with the commenters that regional card programs should not advertise their programs outside their defined service areas. With the exception of advertising in print or broadcast media with a national audience, outreach to beneficiaries outside of a card sponsor's defined service area could serve as the basis for corrective actions and/or termination of endorsement by us. In addition, our guidelines for information and outreach materials will require that card sponsors clearly disclose the areas in which their endorsed programs are available to beneficiaries.

d. Privacy

Comment: We received a significant number of comments on privacy related provisions of the proposed rule. Several commenters indicated that potential drug card sponsors will prefer to operate under one set of privacy provisions in order to avoid operational inefficiencies and confusion. Of particular concern was the provision that will require obtaining written consent from beneficiaries regarding the expected uses and disclosures of their individually identifiable information. The commenters were concerned that because of this provision, the enrollment process—which otherwise could be conducted via telephone, fax, or electronically—will necessitate additional and potentially costly steps.

Other commenters expressed concern about the lack of clarity and specificity regarding privacy protections for beneficiaries in the proposed rule, including: the need for specific limitations on what will be included among the expected uses and disclosures of individually identifiable information; whether beneficiaries will be provided notice of expected uses and disclosures of personal health information; whether the information about privacy provisions will be presented to beneficiaries in a manner that will be easily recognized and understood; and, whether beneficiaries who provide authorization for the use and disclosure of their personal health information will be allowed to revoke such authorization. These commenters stressed the importance of strong privacy protections under this initiative. Some commenters were concerned that the proposed rule's privacy provisions were not tied to HIPAA and, therefore, did not offer beneficiaries the same level of protection to which they would have been entitled under HIPAA. In particular, these commenters were concerned about drug card sponsors and pharmaceutical manufacturers inappropriately using and disclosing beneficiaries' individually identifiable information to market specific drugs and other profitable services.

Response: We have significantly revised our privacy provisions for the Medicare-Endorsed Prescription Drug Card Assistance Initiative in response to public comment. These revisions reflect our understanding that companies with drug card programs will not qualify as covered entities under the Privacy Rule because of their drug card, but may be, in some circumstances, business associates of covered entities under the Privacy Rule. For example, drug card programs will be business associates of health plans where beneficiaries are group enrolled into a card program, and of pharmacies where the card sponsor performs drug utilization review or provides other health or business services as a feature of the endorsed program. Some companies sponsoring drug discount cards, however, may be covered entities due to other business activities. These revisions also reflect public comments and our understanding that without clear and specific privacy provisions that align with the Privacy Rule, there will be unintended gaps in privacy protections for beneficiaries' individually identifiable health information. Specifically, we require as a term of endorsement that card sponsors must agree to protect the privacy of Medicare beneficiary information, consistent with the privacy provisions set forth in 45 CFR 160.103, 160.202, 164.501 through 164.514, and 164.520, including relevant subsequent changes to those provisions. These sections concern consent, authorization, notice, public policy, permissible uses and disclosures, and limiting disclosure to the "minimum necessary". For purposes of this initiative, a card sponsor must consider itself a "covered entity" as referenced in the Privacy Rule. These provisions will go into effect beginning at the time of Medicare endorsement.

We recognize that there could be circumstances wherein the sponsor of a card program could be operating under two sets of privacy provisions—that is, under the card program and in other lines of business—and that this could be costly and otherwise inefficient. We also share concerns expressed that beneficiaries need to understand and agree to the uses and disclosures of their protected health information. Since we believe that the privacy provisions under this initiative should be aligned with national policy concerning privacy as established in the Privacy Rule, we have revised the initiative to incorporate certain provisions of the Privacy Rule (along with any subsequent changes to those provisions).

To protect against marketing of items or services outside of the scope of our endorsement, our definition of marketing for the purpose of this initiative includes any use or disclosure of protected health information considered outside the scope of the Medicare endorsement. Notice and written authorization will be required as stipulated in the Privacy Rule (along with any subsequent changes to those provisions), subject to our definition of marketing. The notice must contain reasonable provisions about how a beneficiary's authorization can be revoked.

Finally, we provide that card sponsors will be required to develop, implement and update periodically a written security plan to assure that beneficiaries' protected health information is secure from unauthorized disclosure, unauthorized modification, and destruction.

Comment: One commenter recommended that a card sponsor's failure to adhere to any of this final rule's privacy protections should constitute immediate grounds for withdrawal of the sponsor's Medicare endorsement.

Response: We agree that failure to adhere to the privacy protections provided under this initiative is grounds for termination of a card sponsor's endorsement. As discussed elsewhere in this rule, in the case of termination, we reserve the right to require the card program to operate for 90 days to allow time for beneficiaries to identify and enroll in an alternative card program. We also reserve the right to fully consider the merits of any claim that a card sponsor has violated the privacy protections and whether corrective action or termination is the most appropriate course of action.

Comment: One commenter noted that there are no limits in the proposed regulation text regarding what beneficiary information goes to the consortium or on how the consortium or its members use or disclose such information.

Response: We make clear that in operating the enrollment exclusivity system or in the conduct of any other activity that could involve the use or disclosure of Medicare beneficiaries' protected health information, the consortium will be considered, for the purpose of this initiative, a business associate, as defined by the Privacy Rule. Beginning with the formation and operation of the consortium, the consortium will develop, implement, and update periodically a security plan to assure that beneficiaries' protected health information is secure from unauthorized disclosure, unauthorized modification, and destruction.

e. Customer Complaints

Comment: One commenter thought that requiring that card sponsors have a formal grievance and appeals process was inappropriate. Because card sponsors will offer a discount card program and not a drug benefit, a grievance and appeals mechanism similar to that for a funded prescription drug benefit will create unrealistic expectations and confusion among beneficiaries and unnecessarily add to card sponsors' administrative costs. Instead of a formal grievance and appeals process, this commenter thought that we should simply require card sponsors to establish a process for addressing disputes. The presumed intent of a dispute resolution would be to help beneficiaries obtain their drugs expeditiously and simply.

Response: We agree with the commenter that a formal appeals process is not necessary for discount card programs. We clarify our intended definition of a customer complaints process in § 403.820 as a process "designed to track and address in a timely manner enrollees" complaints about any aspect of the drug card program."

9. Administrative Consortium

As a condition of endorsement, card sponsors must agree to participate in, abide by the rules of, and fund the administrative activities of a consortium. Beginning in Year One, the consortium will operate and maintain an enrollment exclusivity system and a Web site for comparing drug prices among the Medicare-endorsed discount card programs. Beginning in Year Two, the consortium's administrative activities will include review of card sponsors' information and outreach materials under guidelines produced by us. We expect the administrative consortium to be operational no later than the first day that Year One enrollment may begin.

In structuring itself, we will also recommend that the consortium consider establishing an advisory board, comprised of beneficiary and other stakeholder representatives, such as pharmacists, physicians, and pharmacy benefit managers (PBMs), to provide guidance on the structure and operation of the consortium and publicly report on the performance of the consortium activities.

The consortium must abide by Federal and State laws, including the privacy and security provisions established by the Secretary for the purpose of this initiative.

The consortium will be financed by the Medicare-endorsed card sponsors. The administrative consortium will be free to use independent contractors to perform the review of information and outreach materials, as well as other consortium functions. As we explained in the preamble to the proposed rule, once card sponsors are endorsed, we will work with them to devise methods for funding and starting up the consortium. Card sponsors will be expected to share in start-up costs.

Review of beneficiary information and outreach materials will become the responsibility of the administrative consortium beginning in Year Two of the initiative. In the first year of the initiative, we will be responsible for developing guidelines and reviewing card sponsors' information and outreach materials. Beginning in the second year of the initiative, the consortium will assume review of these materials using guidelines drafted by us. All materials to be reviewed for approval and that could therefore be used by the card sponsor will pertain only to the drug card initiative and to the card program and its features that are recognized by us as included under the Medicare endorsement. It is essential that information and outreach materials be reviewed to ensure that the Medicare name is not misused, for example, to market services unrelated to prescription drugs.

We will also develop standards for use of a Medicare endorsement emblem and include them in the guidelines for information and outreach materials. To use the emblem on their cards, card sponsors will need to abide by the standards we develop, which will also cover the presentation of the emblem and other information on each program sponsor's discount card.

The consortium's Web site for comparing prices must express drug prices in dollars for the purpose of comparing across endorsed card programs. The price comparison will also include information about generic substitutes. This comparative information will assist beneficiaries in deciding which Medicare-endorsed discount card will offer them the greatest financial advantage. We have also revised our policy from the proposed rule, so that a specific drug on the price comparison Web site is not dropped from the formulary, nor its price increased for periods of at least 60 days, starting on the first day of the program's operation. In addition, card sponsors will notify the pharmacy network, the consortium, and us of removals from the formulary or increases in prices 30 days in advance of the change.

As discussed elsewhere in this preamble, card sponsors must also ensure that the consortium protects beneficiaries' protected health information, and therefore will be required to develop, implement and update periodically a data security plan that assures that beneficiaries' protected health information is secure from unauthorized use and disclosure, and unauthorized modification and destruction.

a. General Comments

Comment: We received numerous comments about the cost of the consortium and its activities. They include: (1) The cost will erode the value of discounts to beneficiaries as discount card programs do not produce enough margin to fund the consortium and deliver meaningful savings to beneficiaries; (2) the costs of the consortium should be borne by us if associated with criteria required for the endorsement; (3) the costs for the consortium will limit participation by card sponsors by serving as a barrier to participation of not-for-profit and

community based organizations; (4) the costs of the consortium are, in some cases, duplicative of the card program's own infrastructure, and (5) to the extent that a card program could perform for itself the administrative activities of the consortium, then the consortium costs borne by that card program should be adjusted downward accordingly.

Response: We will retain the requirement that endorsed card sponsors establish and fund an administrative consortium and the requirement that card sponsors fund it as a condition of endorsement. We believe that because the initiative is not a benefit, but instead a Medicare endorsement of private sector entities in order to educate and assist Medicare beneficiaries with their receipt of lower-priced prescription drugs, it is more appropriate for the private sector entities to operate the details of the initiative, including the consortium. We also think that card sponsors whose programs are competitively designed will have alternative sources of revenue that will more than offset the costs of the initiative through, for example, enrollment fees and negotiated manufacturer discounts and rebates on prescription drugs. Finally, many of the functions performed by the consortium, such as ensuring that information and outreach materials are accurate through the review process, providing a uniform mechanism for beneficiaries to compare prices through price comparison, and leveraging beneficiaries' negotiating power through enrollment exclusivity, will improve beneficiary confidence in the initiative and will thus improve beneficiary participation. This, in turn, should result in greater negotiating power for each of the card sponsors, and improve their ability to recoup costs of the consortium. We believe that the consortium function and its associated costs are appropriately borne by consortium and the card sponsors whose programs will benefit from the revenue stream generated under this initiative.

We do not agree that the costs of the consortium will undermine the participation of not-for-profit and community based programs. If card programs can successfully demonstrate that they meet the other requirements provided in this rule, and if their program features are perceived by beneficiaries as valuable relative to competing card programs, then not-for-profit and community based programs should have similar opportunities as for-profit programs, through the revenue streams generated under the card program, to cover their administrative costs. While it may be true that some card programs could have administrative infrastructure similar to what may be developed and maintained by the consortium for the purpose of executing its functions, we do not believe that an individual card program sponsor can successfully fulfill the functions of the consortium on its own behalf, as the value of these functions requires coordination across the card programs. Nonetheless, perhaps the infrastructure could be utilized by the consortium to promote efficiencies, provided that the necessary legal and other arrangements are made to assure the legitimate operation of the consortium. Such a determination is up to the consortium and its members.

Comment: A number of commenters expressed concern regarding the intersection between the consortium and antitrust laws. Commenters were concerned that if beneficiaries could only be in one endorsed card at a time, that might allow them to "divide up the market for beneficiaries among themselves" and violate antitrust laws. Commenters also expressed concern that the consortium's review of information and outreach materials in the second year of the program, or its posting of price information, could lead to potential antitrust violations.

Response: The commenters' claim that the proposed rule allows Medicare-endorsed discount card program sponsors to illegally divide up the market for program beneficiaries ignores the functional reality of what was proposed. As we stated in the proposed rule, exclusive enrollment is based on the concern that "multiple enrollments would dilute the negotiating leverage of each organization offering an endorsed discount card, thereby lowering the discounts from drug manufacturers available to beneficiaries" (67 FR 10262, 10270).

Far from authorizing program sponsors to divide up the market for beneficiaries, the proposed rule is premised on program sponsors competing to attract enrollees based primarily on comparative information on the prices offered to Medicare beneficiaries for drugs covered by the discount card. Therefore, to the extent Medicare-endorsed discount card program sponsors are responsible for assuring enrollment exclusivity, they are merely implementing this requirement after competing successfully to attract enrollees over the plans' offerings. Such activity provides no support for the claim that the proposed rule allows the Medicare-endorsed discount card program sponsors to divide up the market for beneficiaries among themselves.

In addition, we do not view the review of information and outreach materials or the posting of comparative price information as inherently anticompetitive. We expect that endorsed drug discount programs will need to work—perhaps with antitrust counsel—to ensure that the endorsed entities do not violate antitrust laws when they implement the review of information and outreach material or price comparison.

Comment: One commenter stated that the final rule should more thoroughly address how the initiative is to be administered and what, if any, enforcement rights are being delegated to the consortium. The commenter also stated that there needs to be a more transparent exploration of how the consortium will work.

Response: The consortium, not CMS, will determine the final designs and build and maintain the two systems associated with price comparison and assuring enrollment exclusivity. We will assist in developing options for the consortium to facilitate the start-up of the consortium and its activities. Beginning in Year Two, the consortium begins reviewing information and outreach materials using our guidelines. In addition to controlling the content of the guidelines in future years, even when the consortium is responsible for the review, we intend to transition the role of review to the consortium by conducting our own review on a sample of materials. Further, we reserve the right to spot check materials to assure that the consortium (and the card sponsors) are following the guidelines. While the final structure and operation of the consortium is the business of the consortium and its membership, we would intend to participate in the consortium activities on an ex officio and advisory basis. The other mechanism that we have for influencing the direction of the consortium is through the endorsement agreements with each of the card sponsors that may be revised annually, which will include terms for the sponsor's obligations to the consortium. The final structure and operations of the consortium cannot be made more transparent at this time, as endorsed card sponsors will ultimately be responsible for determining much of its design.

b. Enrollment Exclusivity

Comment: A number of commmenters stated that the exclusivity system should be run by an entity other than the consortium, such as a third party which will not have access to any information about any enrollee's health or drugs purchased. One commenter

was concerned that if the consortium operates the exclusivity function, ineligible individuals may be enrolled through either fraudulent means or administrative errors if we are not going to check eligibility.

Response: As discussed elsewhere in this rule, the consortium, in addition to each individual card sponsor, will be required to assure that the operation of the exclusivity system remains inside the privacy and security boundaries established under this final rule. Further, we believe that our complaints tracking system will be an important check to assure the confidence of the public in the operation of the enrollment exclusivity system. Given the public comments that we received in support of the consortium having an advisory board, we also believe that the consortium should consider an advisory board as another way to instill confidence in the public about consortium operations. We will monitor these sources of information and may implement a random check to assure the integrity of the system if this appears necessary.

c. Review of Information and Outreach Materials

Comment: One commenter noted that there should be specific guidelines governing how we will monitor information and outreach materials to prevent unrealistic expectations among beneficiaries.

Response: We agree with the commenter. We will develop information and outreach guidelines that card sponsors will be required to follow. Review of these materials, by us in Year One and by the consortium in Year Two, will be based on these guidelines. All materials to be reviewed for approval and that could therefore be used by the card sponsor will pertain only to the drug card initiative and to the card program and its features that are recognized by us as included under the Medicare endorsement.

Comment: One commenter supported our requirements for prior review and approval of information and outreach materials based on our guidelines. One commenter opposed our requirement for prior review and approval of these materials because such review will be cumbersome and time consuming for card sponsors. Two commenters recommended that, instead, card sponsors file and use these materials based on our guidelines without prior approval, and that we audit these materials on an as-needed basis after their use.

Response: We believe that prior review and approval of information and outreach materials is important under this initiative in order to protect beneficiaries' privacy and the Medicare name, as well as to ensure that materials used by the endorsed cards meet the guidelines that will delineate, among other things, what information must be provided to beneficiaries, what will be considered appropriate context, and how the Medicare name and emblem may be used. This will facilitate card sponsors gaining experience in developing materials for beneficiaries under our guidelines without putting these important objectives at risk.

Comment: Two commenters thought that we should provide interested parties with an opportunity to review and comment on the proposed guidelines for information and outreach materials prior to finalizing the guidelines.

Response: We believe the information and outreach material guidelines are interpretive rules that govern the presentation and content of materials, once a program has been endorsed. The solicitation for applications will contain the guidelines for information and outreach materials as an appendix, and the public will have time to submit comments and questions for clarification to us. We will take these comments and questions under advisement and make any necessary changes to the guidelines once the comment period has concluded.

Comment: One commenter recommended that we require card sponsors to include a prominent statement in all their information and outreach materials that explains that the appearance of a drug on a card sponsor's formulary of discounted drugs does not mean that the drug is clinically superior to other products in that therapeutic grouping, and that clinical decisions about the proper drug for a beneficiary should be made by the treating physician in consultation with the beneficiary.

Response: We agree with the commenter that this is an appropriate and important issue about which beneficiaries should be educated. We will take this recommendation under advisement as we work to finalize the guidelines for information and outreach materials.

Comment: In support of pharmacy programs providing information about appropriate medication regimens, self monitoring, refill reminders, disease state information programs and drug therapy education, one commenter discussed the Medguide Action Plan developed by the Food and Drug Administration (FDA) in consultation with the industry as one model that could be used by the card programs to educate beneficiaries and included in expected uses and disclosure statements developed to protect the use of beneficiaries' personal information.

Response: Beneficiary education is a key component of this initiative. We believe that our guidelines, which will assure that appropriate, complete and understandable information is provided to beneficiaries in a manner that also protects their privacy, as required under the privacy provisions of this initiative, are important. As we develop our guidelines for information and outreach materials, which will be included in the solicitation for applications, we will take this comment under advisement.

d. Price Comparison

Comment: We received numerous comments on price comparison. Most commenters agreed that price comparison information could improve a beneficiary's ability to make an informed decision in choosing a discount card. One commenter claimed that comparative price information is more important to a cash-paying customer than to an insured customer. However, one commenter stated that price information reported by the individual card program should satisfy the requirement to provide information. Another commenter stated that retrospective pricing information (at the point of sale) from the card will provide the most meaningful information and will give the government the ability to audit and ensure that savings are passed to the beneficiary. Several commenters noted that comparisons of ever changing prices on the array of drugs and dosages that are available through standardized reporting procedures are among challenges that must be faced in order to develop an accurate and meaningful price comparison system. Other challenges include providing the information in a user friendly, understandable format. One commenter stated that overcoming these kinds of challenges to provide genuine comparative information is an impossible task. Commenters agreed that publishing discounts relative to the average wholesale price (AWP) will not be meaningful to beneficiaries and that price information is what is needed. One commenter said that restricting pricing disclosure to commonly used products, as was proposed in the proposed rule, would serve to protect established products to the detriment of their competitors, and that restricting the list of drugs may be construed by beneficiaries as Medicare endorsing these drugs. Several commenters said that generic or other alternative drug

therapies that may not be associated with a specific card's formulary should be provided so that beneficiaries know that an alternative is available, which may not be discounted as deeply as a brand name drug but could nonetheless be less expensive. Several commenters indicated the importance and value of working with the industry and beneficiaries to develop the comparison methodology and web site formats. One commenter stated that most people over 65 do not have access to the Internet; therefore, in addition to the web site, options need to be developed to get comparative information to beneficiaries through alternative communication channels.

Response: We agree on the importance of comparative price information for beneficiaries to make an informed decision about joining a card program. We have revised our policy, which now provides that a specific drug offered under the card program is not dropped from the formulary, nor its price increased for periods of at least 60 days, starting on the first day of the program's operation. We also provide that comparisons will be based in dollars, not AWP discounts, and that information on generics will be provided. We do not agree that providing meaningful price comparisons is impossible, but we acknowledge the challenges raised in the comments and agree that developing a comparison price methodology with input from beneficiaries and industry stakeholders is important to assuring that the price comparison methodology is feasible operationally and meaningful. We also agree that alternative channels for providing price comparison information should be developed. We will work with the consortium to assist in developing a price comparison methodology, a design for a web-based price comparison system, and alternative channels for providing information. Work will be conducted with input from beneficiaries and the industry.

Comment: In addition to prices, several commenters indicated the importance of providing other comparative information such as enrollment fees and the availability of patient management services.

Response: This information will be provided through a number of communication channels, including on our Prescription Drug Assistance Program web site and by the card sponsors themselves for beneficiaries to use in making an informed decision about what card program to join.

e. Advisory Board

Comment: We received several comments supporting an advisory board for the consortium and suggesting how it should be structured, who should be on the advisory board and whether we should be a member.

Response: We agree that the consortium could benefit from having an advisory body representing beneficiaries and a cross-section of other stakeholders in the Medicare-Endorsed Prescription Drug Card Assistance Initiative, and we will recommend that the consortium consider establishing an advisory board to provide it with guidance.

10. Our Educational Efforts

We will educate beneficiaries about this initiative, both at the time it is announced and as part of ongoing education efforts thereafter. We will create and authorize the use of a Medicare-Endorsed Prescription Drug Card emblem. This emblem will be used to communicate that Medicare has endorsed a stable and reputable drug card. We will highlight this initiative in Medicare publications, such as brochures, and in the pre-enrollment package that is sent to all beneficiaries when they become eligible for Medicare. We will provide general information about the initiative on the Medicare Web site (*http://www.medicare.gov*). We will post on our Web site information for each discount card program including: contact information, including toll free telephone numbers for individual programs, the program's web site, enrollment fee, and customer service hours.

Since other prescription drug related services, such as drug interaction notification, drug allergy notification and pharmacy counseling, could improve the overall quality of the card program, we will identify these services on our web site as well, provided they are not associated with a separate fee. We will strive to educate Medicare beneficiaries that, generally, generic drugs are less expensive than brand name drugs, even those purchased at a discount. Among the messages we will disseminate to beneficiaries are: an emphasis on the importance of drug coverage, including the messages that beneficiaries should keep their existing coverage, or access coverage, for example, through a Medicare+Choice plan in their area, or through Medicaid if the beneficiary could qualify; that many Medicare+Choice plans and other health care insurance include a discount card program as an added feature to their benefit package and that beneficiaries should check with their plan to see if this is an integrated part of their benefit package; that beneficiaries who are admitted to long-term care facilities may not be able to benefit from a discount card if the facility is operating under policies that maintain a closed drug dispensing system; and that a Medicare endorsement does not constitute an endorsement of any particular drug over another, therefore, beneficiaries should consult with their physician and pharmacist to select the best drug for their particular needs. We will develop these messages and identify and develop other necessary messages into understandable and meaningful information for beneficiaries in order to maximize the value they get from their participation in this initiative.

The information made available on our web site will also be available to Medicare beneficiaries through the toll-free Medicare information line (1–800–MEDICARE), which is available 24 hours per day, 7 days a week. In addition, we will strive to disseminate information to community level organizations that represent the needs and the interests of the diverse Medicare beneficiary population.

Comment: One commenter thought that there was no quality check in place to ensure that the best drug is being dispensed to beneficiaries, and that card sponsors should inform beneficiaries about any drug that offers an advantage. Another commenter made the point that beneficiaries should be educated that the drugs contained in a card sponsor's formulary are not necessarily clinically superior.

Response: We will encourage participants in the Medicare-Endorsed Prescription Drug Card Assistance Initiative to continue to rely on their doctor and pharmacist in selecting the best drugs for their condition, emphasizing that a drug's therapeutic effectiveness and its cost do not necessarily correlate, especially when a generic alternative is available. It is not unusual for alternative, less expensive drugs to provide the same clinical benefit as more expensive drugs. One of the important features of this initiative is that discount card programs and the consortium will make available price information that can be compared so that beneficiaries can discuss with their doctor and pharmacist similarly effective, but less expensive drugs as alternative therapies.

Comment: One commenter noted that because manufacturer participation is voluntary, not mandatory, this initiative will result in a patchwork of covered and non-covered drugs, which will

create the need for a high level of consumer involvement in order to assure savings for beneficiaries' individual prescriptions. The commenter thinks that many seniors will not be familiar enough with the individual endorsed programs to enroll with a sponsor that covers their particular prescriptions and actually secure the initiative's intended savings.

Response: We are committed to educating beneficiaries and assuring that they have timely and accurate information to address their drug discount questions. As part of this initiative, we will launch a widespread educational effort to address beneficiaries' questions and concerns in a variety of formats. Card sponsors will make available drug formulary and price information, and the consortium price comparison system will assist the public in determining which sponsors' endorsed cards are offering the largest discounts on any given drug. We are confident that when provided with the appropriate information, most beneficiaries and their families will make appropriate card elections based on an examination of pertinent health care needs. In the unfortunate case when a beneficiary chooses a prescription drug card program and is dissatisfied with its discounts, he or she may enroll in a different program, to become effective the first day of the following January or July, whichever comes first. Also, as we discuss elsewhere in this preamble, endorsed cards will be required to have discounts on a drug in the therapeutic categories most common to Medicare beneficiaries, thereby giving seniors access to discounts on a broad range of prescription drugs.

Comment: One commenter thought patients' primary care physicians should be involved in educating seniors about their options.

Response: As Medicare beneficiaries rely on their physicians for medical treatment and guidance, we agree that it will be helpful to beneficiaries if their physicians were familiar with this initiative. We plan to provide information to the physician community so they may help beneficiaries obtain lower prices for the prescription drugs they take. Several major national medical organizations provided comments in support of this initiative and we plan to work with these organizations to provide educational material to physicians.

Comment: One commenter noted that due to the vast differences in educational attainment and literacy levels in the population that Medicare serves, print materials for consumers should be at the sixth grade reading level.

Response: We agree that in order to be effective in getting information about this initiative out to the public, we have to be cognizant of our beneficiaries' needs, including literacy levels. We recognize the diversity of the Medicare population and it is a priority to effectively reach out to Medicare beneficiaries at all literacy levels. To this end, we utilize many information channels beyond print materials, including the toll-free 1–800-MEDICARE help line and our annual fall television advertising campaign. When we do use print materials, we strive for a fifth grade reading level.

Comment: One commenter recommended that education materials inform beneficiaries about Medicaid and other low-income assistance programs.

Response: We are committed to educating Medicare beneficiaries about all avenues of assistance that may be available to them, including low income and drug assistance programs. On our Medicare Web site, *http://www.medicare.gov,* individuals can search the Prescription Drug Assistance Program database, which provides information on public and private programs that offer discounted or free medication, as well as Medicare health plans that include prescription coverage. The Prescription Drug Assistance Program database can be searched by geographic region to help Medicare beneficiaries find programs in their areas for which they may qualify.

Comment: Three commenters suggest that, in order to get our message to all facets of the Medicare beneficiary population, we not limit information to the Internet and telephone, but that we also utilize community organizations, public buildings, and physician's offices to disseminate our educational messages.

Response: We understand the divergent needs of the nation's 40 million Medicare beneficiaries, and that a multi-faceted education program that recognizes different cognitive levels, literacy levels, languages, racial and ethic backgrounds and socioeconomic status is necessary as part of this initiative. We will support education on the Medicare-Endorsed Prescription Drug Card Assistance Initiative via paid print media and television advertisements, disseminating information via our local information intermediaries in the State Health Insurance Programs (SHIPs) and via our national and regional partner organizations across the nation. These include a number of consumer advocates and organizations representing specific racial and ethnic backgrounds.

Comment: One commenter expressed the concern that it would be the pharmacies, not policymakers, who would be largely responsible for explaining and discussing the costs of medication under the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Response: We recognize that pharmacists often serve as a source of information for people with Medicare, and pharmacists are likely to be approached by beneficiaries with questions about this initiative. The discount card market today is essentially unorganized, and consumers may have multiple discount cards. Therefore, consumers understandably ask questions about their discount card programs at the point of retail sale. We believe that certain features of this initiative, for example, enrollment exclusivity, and the focus on outreach and education, will minimize the need for beneficiaries to rely on their pharmacists for information about the endorsed card programs.

We believe that beneficiaries will seek information largely from their card sponsors, as well as the Medicare program, because of our role in conducting national outreach and education activities. Therefore, we do not believe that pharmacies will be unduly burdened by this initiative.

11. Oversight and Reporting

As a condition of endorsement, and in addition to the information that card sponsors will provide in their applications, card sponsors will be required to report on major features of their programs that correspond to the qualifications for endorsement, such as savings to beneficiaries and customer service, and we will ask card sponsors to certify the validity of their reported data. During the endorsement period, drug card program sponsors will be required to notify us of any material modifications to their programs if the modifications could put them at risk of no longer meeting any of the terms of endorsement.

We will ask card sponsors to report on the aggregate level of rebates or discounts shared with beneficiaries and the participation of independent pharmacies in the card program's network.

The information to be reported will generally consist of performance measures and indicators typically provided by third party administrators of pharmacy benefits in the current drug insurance industry.

We will provide a reporting tool in the solicitation for a Medicare endorsement of discount card sponsors to ensure consistent and comparable reporting by card sponsors. In developing this tool, we will make an effort to minimize reporting burden on card sponsors. These reports will allow us to assess card sponsors' performance relative to the endorsement qualifications. We intend, after obtaining some experience, to report on our web site the card sponsor's performance on reliable quality and satisfaction standards pertaining to key aspects of the card program related to endorsement in order to help beneficiaries make informed decisions when choosing their discount card programs.

We intend to develop and operate a complaint tracking system to monitor and manage complaints brought to our attention that are not satisfactorily resolved through the card sponsors' customer complaints process. We anticipate tracking complaints related to deceptive education, outreach, and enrollment practices, violations of the privacy provisions, persistent inconsistencies in formulary or pricing information compared to what is available at the point of sale, inadequate card sponsor customer service, persistent problems with pharmacy network services or providers, and any additional changes which put the card sponsor at risk of failing to continue to meet the endorsement requirements.

We will also refer complaints to Federal and State authorities where violations of laws under the jurisdictions of these agencies are in question.

We will reserve the right to terminate any endorsement at any time for violations of the terms of the endorsement, as well as to take appropriate intermediate corrective actions to correct persistent problems in a card sponsor's performance in cases in which immediate termination is not warranted.

Card sponsors may also terminate the endorsement, but we will require a 90-day advance notice of termination to us. Also card sponsors must notify all Medicare enrollees of termination within 10 days of either providing us with notice of termination, or within 10 days of receiving a notice of termination from us. In addition, in cases in which a card sponsor chooses to terminate its participation in the initiative or in which we terminate a card sponsor, we will require that card sponsors provide beneficiaries with notice of termination at least 90 days before discount card program operations cease, and that card sponsors suspend information and outreach activities and enrollment after sending enrollees notice of termination.

We will consider drug card program sponsor performance under an existing Medicare endorsement as one factor in determining eligibility for endorsement in future annual cycles.

a. Reporting

Comment: One commenter indicated that rebate formulas should be open to all and not be considered proprietary, while several commenters indicated that rebates (and other proprietary information) are strictly confidential and should not be shared with us.

Response: We agree that proprietary information should not be shared with the public. We do not consider all aspects of rebate reporting to be proprietary, including aggregate measures of rebates as a share of total savings to beneficiaries.

Comment: One commenter asked if we will track how often enrollees switch to different programs.

Response: We will track, in the aggregate, how many times beneficiaries switch to different programs. Data to support this analysis will be included in the expected uses and disclosures as part of normal operations of the enrollment exclusivity system. Also individual cards will be required to report enrollments and disenrollments.

In the proposed rule, we requested comments on, and information about, available quality measurements, including whether they are standardized and reliable, how they are, or could be, reported, and whether they would be meaningful to beneficiaries in their selection of a drug discount card program.

Comment: A number of commenters supported card sponsor reporting and monitoring of card sponsor performance on rebates or discounts to ensure that card sponsors are accountable to us for the manufacturer rebates or discounts they agree to pass on to beneficiaries. These commenters expressed various concerns and provided suggestions regarding how card sponsors should report this information to us, the types of information that should be reported to us, and how we should convey information about card program rebates or discounts to beneficiaries. Several commenters were opposed to card sponsor reporting on rebates or discounts, citing potential complications such as the proprietary nature of some of this information and the typically retrospective reporting of rebates. Two commenters discussed the need to find an appropriate balance in oversight of this initiative such that card sponsors worthy of endorsement were approved while avoiding excessive conditions of endorsement relating to program design and service delivery.

Response: We agree that periodic reporting for card sponsors is necessary in order to monitor card sponsors' performance related to the qualifications for the Medicare endorsement and use of the Medicare name. We believe the reporting requirements should be balanced relative to the risks associated with this initiative in the event of poor performance, which do not include the loss of benefits under a beneficiary entitlement or to the Medicare trust funds. We plan to rely on a variety of mechanisms to ascertain performance of individual card programs and the initiative overall, including reviewing certified card sponsor reports, operating a complaints tracking system, and surveying beneficiaries. It is our position that reporting on aggregate levels of rebates or discounts will be necessary in order to ensure that card sponsors continue to meet the endorsement qualifications and provide the program they agree to in their endorsement agreement with us. We do not believe that all the information reported to us will be immediately useful to beneficiaries in their selection and use of a card program, but that generally information will be valuable to beneficiaries once reviewed and analyzed by us and ultimately disseminated in some form to beneficiaries.

Comment: Two commenters supported measuring card sponsors' performance in terms of whether they achieve genuine cost savings for beneficiaries. They also recommended that we discontinue our endorsement of card programs that do not offer significant cost savings, that market more expensive brand name drugs instead of less expensive generic drugs, and that fail to pass manufacturer rebates on to beneficiaries. Another commenter suggested that, as part of oversight of card sponsors, we establish target generic utilization rates and evaluate sponsors' performance against those targets.

Response: This program is an endorsement of private sector drug discount programs that meet our defined criteria. While we will maintain reporting and other minimal requirements, we believe the level of government involvement should be as minimal as possible. While we believe that reporting on the level of generic drug utilization rates may be informative for both beneficiaries and us, we do not think it is appropriate to impose certain thresholds on generic

drug utilization and to require reporting related to those thresholds. By providing useful information to beneficiaries so that they can make informed comparisons, card sponsors will compete on value to beneficiaries which we believe will drive programs to offer prescription drugs, pricing, and other services favorable to beneficiaries.

Comment: One commenter recommended that we use the finalized section on "Measuring Quality of and Access to Pharmacy Services in Managed Care Plans" developed for *HCFA's Managed Care Pre-Implementation Review Guide.* The commenter states that the guide measures quality of and access to pharmacy services in managed care plans and delineates the government's role in oversight, access to good patient care, and quality of pharmacy services.

Response: We have reviewed this document, which appears to be a collection instrument for information regarding managed care plans' pharmacy network services. We agree that it captures important elements regarding the quality of and access to pharmacy services, and that some of these elements might be relevant to card sponsors' pharmacy networks. We will take the information in this document under advisement as we finalize the measures we will use to ensure that card sponsors continue to meet the endorsement qualifications.

Comment: Two commenters recommend that we require sponsors to demonstrate their financial solvency by filing quarterly financial reports, and that such reports should be posted on the consortium's Web site.

Response: We do not believe that quarterly financial reporting from a sponsor is needed. Applicants will be periodically reporting on certain performance-oriented data (for example, enrollment and disenrollment data, and complaints data reported to the card sponsor customer service centers). These data are likely to be more timely and useful indicators of specific service problems than evidence of financial problems reflected in historical financial reporting. Also, annual independently audited financial reports (balance sheet; revenue and expense statement; and a cash flow statement) will be required from the sponsor as part of the endorsement qualification application.

Regarding the suggestion that we post quarterly financial reports on the consortium's Web site, it is not our intention to require that card sponsors post financial reports on the consortium Web site. We believe that beneficiaries will be interested in comparing program features, including specifically prices on drugs offered for a discount. We will monitor card sponsor financial status through the endorsement application process. Additionally, once endorsements are awarded, we intend to post on our Web site card sponsor-specific performance measures related to the operation of the program that are useful to beneficiaries. Further guidance on performance measures will be included in the solicitation for card program applications.

b. Other Oversight

Comment: One commenter stated that Federal agencies should have jurisdiction and access to the necessary information to prevent abuse of the program or anticompetitive practices.

Another organization commented that it could not discern any significant role for us in this initiative beyond simply selecting and endorsing card sponsors and providing informational materials.

Response: We agree with the first commenter. We believe we have an important responsibility to beneficiaries to ensure that card sponsors continue to meet the qualifications for a Medicare endorsement after they have become Medicare endorsed. In order to protect the Medicare name and assure that the terms of the card sponsors' endorsement agreements are met, we must perform some level of oversight. This oversight will consist of: ensuring that card sponsors have a complaints process and provide periodic reports on various key aspects of the their program related to endorsement qualifications; considering a card sponsor's performance in future endorsement cycles; reviewing card sponsors' information and outreach materials in the first year of the endorsement to ensure that our guidelines are being followed; operating a complaints tracking and management process; taking any intermediate corrective actions we believe are necessary to improve deficiencies in a card sponsor's performance; and terminating the endorsement for persistent or egregious failure to comply with the qualifications for endorsement and the program that the card sponsor agrees to make available in its endorsement agreement.

Comment: Two commenters recommended that we create a process for beneficiaries and others to submit complaints or evidence of card sponsor non-compliance and stated that a compliance review process is essential to ensuring that card programs and sponsors are, in fact, qualified for Medicare endorsement. In addition, the commenters thought that we should create an administrative process such that beneficiaries and pharmacies could challenge the representations made by card sponsors and the consortium in their information and outreach materials.

Response: We agree with the commenters. As proposed in the proposed rule, we will develop and operate a system to track and manage complaints by beneficiaries and others. We expect that beneficiaries will first attempt to resolve their complaints through their card sponsor's customer complaints process. To the extent that beneficiary complaints are not satisfactorily resolved by the card sponsors and are called to our attention, our complaints tracking system will monitor and attempt to resolve those issues. Among the types of complaints we will track include those related to deceptive education, outreach, and marketing practices. We will use data from the complaints tracking system, as well as information reported to us on key aspects of card sponsors' programs, to ensure that card sponsors continue to meet the qualifications for endorsement.

Comment: Two commenters recommended that we revise the regulation text in the final rule to mandate withdrawal of endorsement if a card sponsor fails to meet or maintain the standards for endorsement or makes false or misleading statements to beneficiaries or pharmacies.

Response: We agree with the commenter that failing to meet the standards for endorsement or making false or misleading statements are potentially valid reasons for us to terminate an endorsement. However, we believe we should have the necessary flexibility to invoke intermediate corrective actions upon a card sponsor instead of automatically terminating the sponsor. We anticipate that there could be violations of the endorsement agreement that are not persistent or egregious enough to warrant immediate termination of a Medicare endorsement. To the extent that we can work with a card sponsor, for example, by taking intermediate corrective actions designed to ensure that card sponsor is able to correct its problem and bring the organization back into compliance with the terms of the endorsement agreement, we would like to maintain our flexibility to terminate an endorsement and maintain access to an otherwise useful card program for beneficiaries.

Comment: One commenter recommended that card sponsors notify enrollees at least 90 days prior to a termination to enable beneficiaries to research other options and select an alternative discount card program.

Response: We agree with the commenter that a 90-day advance notice of termination will facilitate the selection of a new card sponsor by beneficiaries. In § 403.804 of the proposed rule, we require that card sponsors notify all Medicare enrollees of termination within 10 days of either providing us with notice of termination, or within 10 days of receiving a notice of termination from us. In addition, in cases in which a card sponsor chooses to terminate its participation in the initiative or in which we terminate a card sponsor, we will require that card sponsors provide beneficiaries with notice of termination at least 90 days before discount card program operations cease, and that card sponsors suspend outreach and enrollment after sending enrollees notice of termination.

Comment: Two commenters asked that we provide more specificity regarding how we will measure a card sponsor's performance when deciding whether to re-endorse a card sponsor.

Response: We will require that card sponsors report on key aspects related to endorsement, such as aggregate level of manufacturer rebates, customer service, and discount card program operations, such as call center performance, complaints processes, and enrollment and disenrollment. As stated earlier, we will provide a reporting tool in the solicitation for Medicare endorsement of discount card sponsors to ensure consistent and comparable reporting by card sponsors. In developing this tool, we will seek to minimize reporting burden on card sponsors. We will utilize this information, as well as any data trends captured through our complaints tracking system, as one factor in determining whether to endorse a card sponsor beyond the initial endorsement.

12. Other

a. Standardized Identification Cards

Comment: Several commenters supported the use of standard benefit identification cards. Inconsistent or non-standard information can create barriers or delay in receiving necessary care, as well as inefficiencies for pharmacies, which must be able to process a variety of different cards with a variety of different formats and data fields. The commenters recommended that we adopt the identification card standards developed through the industry's national council for standards development, the National Council for Prescription Drug Programs (NCPDP). This council has broad representation from across the industry, as well as from relevant government agencies. It was noted that, since 1998, the industry has seen widespread implementation of the standardized ID card format with legislation for adopting these standards introduced or passed in 40 states. To date, 22 States have enacted legislation requiring the use of standardized cards.

Response: We agree that standardized identification card technology has the potential to promote significant efficiencies in this industry. We will ask the consortium to determine whether a standardized identification card should be used by all Medicare-endorsed card programs. Since the industry has already established guidelines for standardization through NCPDP, the consortium and its membership are best situated to determine whether standardization will create an undue burden on any particular card program or members of its pharmacy network.

b. Best Price

Comment: One commenter indicated that discount card sales should be exempt from Medicaid best price calculations; otherwise, manufacturers will keep discounts levels lower than they otherwise would.

Response: We do not have statutory authority to exclude manufacturer prices under this initiative from the Medicaid best price calculation.

c. Partnering With States

This initiative is targeted to the private sector marketplace and the conditions for endorsement are tailored to reflect the strengths of the private marketplace, as well as to protect the integrity of the initiative, beneficiaries, and the Medicare name.

Under this initiative, States could partner with private drug card program sponsors by selecting a Medicare-endorsed program and offering its own endorsement, and having a distinct card. One restriction is that the endorsed card program must continue to operate in the State (as well as in the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the U.S. Territories) as it is defined in the sponsor's agreement with us. Under this initiative, the endorsed discount card program will have to be made available to all Medicare beneficiaries in a State. The Medicare-Endorsed Prescription Drug Card Assistance Initiative may not be restricted to only certain Medicare beneficiaries, such as those age 65 and over, or those with certain levels of income. However, different populations could be segmented for information and outreach purposes, provided that such activities will not mislead or intentionally misrepresent to the public the nature of the endorsed program, and that such activities will include beneficiaries with disabilities, beneficiaries with End-Stage Renal Disease (ESRD), and beneficiaries age 65 and over.

Comment: One commenter stated that partnering between States and endorsed card programs, as well as between purchasing groups, Medicare+Choice (M+C) and Medigap plans could be of benefit to beneficiaries, making it easier potentially to identify and enroll Medicare beneficiaries. The commenter also indicated that States may be interested in offering additional discounts through these cards. Another commenter supported Medicare endorsement of State based programs under provisions that maximize State experimentation which could allow certain discount card programs that do not meet the requirements of this rule (for example, to negotiate and share with beneficiaries manufacturer rebates) to possibly be a program for endorsement by a State.

Response: We agree that there are potential synergies between States, private payers, including Medicare+Choice plans and the Medicare-Endorsed Prescription Drug Card Assistance Initiative, that could benefit beneficiaries. To inform future policy making in this area, we will monitor what States and private payers, including Medicare+Choice plans, do to partner with Medicare-endorsed card programs, and how the rapidly evolving discount card market is used and influenced by these parties.

d. Managed Care Organizations

Comment: One commenter recommended that, because managed care organizations (MCOs) currently offer drug discount cards, and because they have played a leadership role in providing beneficiaries access to prescription drugs, MCOs should have the option to participate in the Medicare-Endorsed Prescription Drug Card Assistance Initiative or to continue to offer their discount programs independently. The commenter identified a number of the initiative's provisions that will have to change, so that MCOs will likely qualify for endorsement or simply to accommodate the structures and processes in place for their health plans.

Response: We determined that MCOs should not be treated differently from other applicants for endorsement. As the commenter points out, prescription drug discount cards offered by managed care organizations are provided in the context of a system of care; the discount card is one of many integrated elements that allow managed access to a system

of care for a plan's enrollees. This is not unique to Medicare+Choice plans. Many employer and other types of health insurance use the leverage available to the plan through the volume the plan generates with enrollment and through drug utilization management schemes, in order to maintain low prices at the point of sale for an enrollee when, for example, drug coverage has been exhausted—this in effect serves the purpose of a discount card even though typically the enrollee does not have a separate card for discounts. We agree that discount cards provided in the context of a system of care are and should be a coordinated component of the health care benefit, with the health care benefit design driving the parameters of the drug discount program features. However, the target audience for this initiative is Medicare beneficiaries who do not have or want access to drug coverage or discounts in the context of a managed health care benefit; the requirements for this initiative have been established accordingly. As Medicare+Choice plans already have the imprimatur of Medicare's name, we believe that the best approach to recognizing that drug discounts may be a feature of a plan is to educate Medicare beneficiaries about that. We believe it is important to educate beneficiaries that drug coverage rather than discounts is likely to be of greatest benefit, and that many Medicare+Choice plans offer one or both.

e. Blood Glucose Monitoring Equipment and Supplies

Comment: One commenter recommended that we clarify that applicants should not include as features in their programs self-monitoring blood glucose equipment and supplies. The commenter noted that glucose strips are already covered by Medicare and do not need to be part of the initiative. Further, to the extent that an applicant includes blood glucose test strips as a non-endorsed feature of their card programs, we should require that the supplier of such strips be recognized as a Medicare supplier and that claims for these services be filed as required by Medicare Part B rules.

Response: We agree with the commenter that the Medicare endorsement of drug discount card programs is for prescription drug products. Glucose strips are already covered under Medicare and are not expected to be part of this initiative.

f. Low-Income-Only Programs

We asked for comments regarding whether the Medicare drug card program could provide easier access for eligible beneficiaries to several recently announced drug manufacturer discount programs. Since January 2002, a number of manufacturers have announced discount programs designed to help low-income individuals access prescription drugs. Lilly, Pfizer and Novartis announced programs that feature a flat "copay" for each monthly supply of a particular drug. Seven manufacturers (Abbott Laboratories, AstraZeneca, Aventis, Bristol-Myers Squibb, GlaxoSmithKline, Johnson & Johnson, and Novartis) have partnered together to form Together Rx, which offers discounted prices to eligible persons. Individuals enrolling in these programs are able to purchase prescription drugs offered under the programs at discounted prices at retail pharmacies. Many other prescription drug manufacturers also offer programs designed to help low-income individuals, although many of these programs do not offer the discount at the point of sale. The income requirements of these programs differ somewhat among the programs, but all are targeted at low-income individuals without coverage from other sources.

The Medicare web site and 1–800–MEDICARE already offer information about these programs. We plan to continue to highlight these programs in an attempt to raise beneficiary awareness about them. These programs may be of help to many low-income beneficiaries without drug coverage from another source.

Comment: Two commenters indicated that we should provide for endorsement of prescription drug discount cards that are targeted to low-income beneficiaries. One commenter indicated that, if we consider Medicare endorsement of low-income card programs, the same level of patient protection and value should be expected of them (including plan standards, pharmacy network, formulary requirements and drug safety programs). Another commenter indicated that we should not offer endorsement to manufacturer-based plans that direct discounts to only or principally low-income individuals because these programs do not meet the requirements on endorsement, and doing so will not be in the best interests of this initiative.

Response: Manufacturer-sponsored programs are welcome to apply for Medicare endorsement, but must meet the requirements that all card sponsors must meet to qualify for endorsement (for example, enroll all Medicare beneficiaries wishing to enroll and offer a discount on at least one drug in each of the therapeutic categories identified elsewhere in this preamble). We believe that all Medicare beneficiaries without prescription drug insurance would greatly benefit from being educated about methods of lowering their out of pocket costs for prescription drugs, and we will encourage all Medicare beneficiaries without prescription drug insurance coverage to consider enrolling in a Medicare-endorsed discount card program.

This Administration strongly supports providing assistance for low-income individuals regarding the purchase of prescription drugs. The President has proposed major programs to help low-income individuals gain access to prescription drug coverage (including Pharmacy Plus waivers under Medicaid, which has drawn much interest from states). The Administration continues to work with the Congress to enact prescription drug coverage for all Medicare beneficiaries in the context of overall Medicare reform, with additional assistance for low-income beneficiaries. However, this initiative is intended to be of assistance to all Medicare beneficiaries without drug coverage, not only low-income beneficiaries.

It is possible that manufacturer-sponsored discount programs could seek and secure Medicare endorsement of discount programs by making some changes to their programs, either alone or by partnering with other organizations. We believe that Medicare endorsement will help these programs reach as many eligible beneficiaries as possible.

Comment: Several commenters suggested that initial efforts by Medicare (either in the context of a Medicare drug benefit or this initiative) should focus on low-income beneficiaries first.

Response: As discussed above, we believe that all Medicare beneficiaries without prescription drug coverage could and should benefit from this particular initiative. This Administration has proposed and/or implemented a number of efforts to assist low-income individuals purchase prescription drugs. A Medicare drug benefit is not the subject of this final rule.

Comment: One commenter indicated that the final regulation should expressly require existing manufacturer-sponsored patient assistance programs to continue.

Response: These manufacturer-sponsors programs are voluntary efforts on the part of manufacturers. We do not have statutory authority to impose such a requirement.

Comment: One commenter indicated that we should ensure that eligible low-

income seniors receive benefits through programs such as Medicaid before enrolling in a Medicare-endorsed discount card program.

Response: We strongly support the efforts of states and others to conduct outreach to Medicaid-eligible individuals who are not currently enrolled in Medicaid. We do not require that card sponsors screen potential enrollees for Medicaid eligibility; we believe this is better done by the states. Part of the beneficiary education efforts we will undertake under this initiative will be to educate beneficiaries that if they have or are eligible for insurance coverage for prescription drugs, including Medicaid coverage, then they are better off having insurance coverage. We will be clear that this initiative is not insurance coverage, but a discount program. It is possible that our education efforts (that are the cornerstone of this initiative) will prompt some beneficiaries to consider whether or not they may be eligible for Medicaid, or state-sponsored low-income drug insurance programs.

13. Mechanics of Endorsement

A solicitation for applications for Medicare endorsement will follow this final rule. In order to qualify for Medicare endorsement, applicants will be required to submit complete applications 60 days after the OMB-approved solicitation for applications is published. Following publication of the approved solicitation, the public will have time to comment and we will entertain any questions from potential applicants seeking clarification of the final application. All applicants who qualify for Medicare endorsement will be announced by the Administrator.

The endorsement in Year One will be for a period of at least twelve months but fewer than 24 months. We anticipate card program sponsors will have six months following our announcement of endorsed programs to implement their card programs, including finalizing their pharmacy network contracts, negotiating manufacturer rebates or discounts, obtaining a signed agreement with us, operationalizing their call centers, obtaining approval for their information and education materials, and completing contracts for all aspects of the program as specified under the qualifications for endorsement. Sponsors will also use this time to organize and activate the administrative consortium.

Comment: One commenter noted that the timeline in the proposed rule is unrealistic. We should instead establish a date at least 45 days before the first day outreach is allowed to announce the endorsement of card sponsors because card sponsors will need at least this much time to finalize their materials, obtain our comments and approval of their materials, incorporate any changes, secure internal legal review of any changes, and print information and education materials and enrollment kits. The commenter recommends that, if the program is ready for enrollment on October 1, 2002, endorsement should be granted no later than August 15, 2002 to avoid the possibility that card sponsors will be unprepared to provide information and education materials and enrollment kits to interested beneficiaries by October 1, 2002. Presuming that a 60-day response time is established for interested sponsors, and we require a reasonable amount of time to turn around public comments and review the proposals, the commenter recommends that the program begin no earlier than November 1, 2002.

Response: We have revised our timeline and we anticipate card program sponsors will have six months following our announcement of endorsed programs to implement their card programs. We believe our new timeline addresses the commenter's concerns and provides potential card sponsors with ample time to implement their programs following our endorsement.

II. Provisions of the Proposed Rule

In part 403 of Title 42 of the Code of Federal Regulations we proposed to add a new subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative, the provisions of which were as follows:

- We proposed to add a new § 403.800 to describe the basis and scope of the initiative and set forth the requirements for the initiative.
- We proposed to add a new § 403.802 to define the initiative as a mechanism whereby we solicit applications for Medicare endorsement of prescription drug card programs, review them, offer agreements to program sponsors who meet all of the requirements for endorsement, and award Medicare endorsements to program sponsors who sign the agreement. We define a Medicare-endorsed prescription drug card program as a program developed by an organization or groups of organizations endorsed by us under the Medicare-Endorsed Prescription Drug Card Assistance Initiative to educate Medicare beneficiaries about prescription drug programs available in the private marketplace and to provide prescription drug assistance cards to Medicare beneficiaries. We define the administrative consortium as a private entity financed by the Medicare-endorsed prescription drug card program sponsors to carry out a set of specific administrative tasks required under this initiative.
- We proposed to add a new § 403.804 to set forth the general rules for obtaining Medicare endorsement of prescription drug card programs, including meeting the requirements, submitting an application, and agreeing to the terms and conditions of the agreement with us.
- We proposed to add a new § 403.806 to set forth the requirements for eligibility for obtaining Medicare endorsement under the initiative.
- We proposed to add a new § 403.807 to set forth the application process for organizations wishing to obtain Medicare endorsement under the initiative.
- We proposed to add a new § 403.808 to set forth that each prescription drug card program sponsor eligible for Medicare endorsement must enter into an agreement with us agreeing to meet the terms and conditions in the agreement.
- We proposed to add a new § 403.810 to set forth the responsibilities of the administrative consortium.
- We proposed to add a new § 403.811 to set forth the requirement that a beneficiary only be allowed to be enrolled in one drug card program at a time.
- We proposed to add a new § 403.812 to set forth the conditions under which the Medicare endorsement will be withdrawn from an endorsed drug card program sponsor.
- We proposed to add a new § 403.820 to set forth our oversight and beneficiary education responsibilities.

III. Provisions of the Final Rule

In part 403 of Title 42 of the Code of Federal Regulations, we are adding a new subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative, the provisions of which are as follows:

- We add a new § 403.800 to describe the basis and scope of the initiative and set forth the requirements for the initiative.
- We add a new § 403.802 to define the initiative as a mechanism whereby we provide information, counseling, and assistance to beneficiaries by soliciting applications for Medicare endorsement of prescription drug card programs, reviewing them, offering agreements to program sponsors that meet all of the requirements for endorsement, and awarding Medicare endorsements to program sponsors who

sign the agreement, and educating beneficiaries about the options available to them in the private marketplace. We define a Medicare-endorsed prescription drug card program as a program developed by an organization or group of organizations endorsed by us under the Medicare-Endorsed Prescription Drug Card Assistance Initiative to educate Medicare beneficiaries about prescription drug programs available in the private marketplace and to provide prescription drug assistance cards to Medicare beneficiaries. We define the administrative consortium as a private entity established and financed by the Medicare-endorsed prescription drug card program sponsors to carry out a set of specific administrative tasks required under this initiative.

- We add a new § 403.804 to set forth the general rules for obtaining Medicare endorsement of prescription drug card programs, including meeting the requirements, submitting an application, and agreeing to the terms and conditions of the agreement with us.
- We add a new § 403.806 to set forth the requirements for eligibility for obtaining Medicare endorsement under the initiative.
- We add a new § 403.807 to set forth the application process for organizations wishing to obtain Medicare endorsement under the initiative.
- We add a new § 403.808 to set forth that each prescription drug card program sponsor eligible for Medicare endorsement must enter into an agreement with us agreeing to meet the terms and conditions in the agreement.
- We add a new § 403.810 to set forth the responsibilities of the administrative consortium.
- We add a new § 403.811 to set forth the requirement that a beneficiary only be allowed to be enrolled in one drug card program at a time.
- We add a new § 403.812 to set forth the conditions under which CMS may take intermediate actions or withdraw the Medicare endorsement.
- We add a new § 403.820 to set forth our oversight and beneficiary education responsibilities.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

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

Section 403.804 General Rules for Medicare Endorsement

In this final rule, the burden associated with the application for endorsement is addressed in the discussion in § 403.806.

In this final rule, under paragraphs (g) and (h) of § 403.804, a Medicare-endorsed prescription drug card program sponsor may choose not to continue participation in the Medicare-Endorsed Prescription Drug Card Assistance Initiative and will have to notify us of its decision. It will also have to notify its Medicare beneficiaries that they may enroll in an alternative Medicare-endorsed drug discount card program. This notice must be provided within 10 days of the effective date of termination.

As stated in the final rule, we do not believe that 10 or more card program sponsors will terminate their agreement on an annual basis. Therefore, this requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c). However, if in the future CMS has reason to believe that this collection requirement meets the definition under 5 CFR 1320.3(c) we will submit this collection requirement to OMB for PRA approval.

Section 403.806 Requirements for Eligibility for Endorsement

In this final rule, under paragraph (a) of this section, an applicant must submit an application demonstrating that it meets and will comply with the requirements described in this section.

As stated in the final rule, the requirements described in this section include various disclosure, recordkeeping, and privacy policies. We anticipate that it will take each applicant approximately 120 hours to complete each application. We anticipate that we will receive approximately 30 applications, for a total burden of 3,600 hours.

We generally believe that either the card sponsors or the contractors who administer the programs will be required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to comply with the privacy provisions under HIPAA, either as a covered entity or as a business associate, as defined by HIPAA. Therefore, the burden associated with these collection requirements is captured under HIPAA compliance activities, and is transparent to the requirements referenced in this rule. Therefore, we assign one token hour of burden for these collection requirements. Based upon our knowledge of the industry, we have determined that fewer than 10 card sponsors would not be subject to HIPAA Privacy requirements and, therefore, not subject to the PRA as stipulated under 5 CFR 1320.3(c). In the future, if we anticipate that more than 10 card sponsors would not be subject to the HIPAA Privacy Rule, we will submit this collection requirement to OMB for approval.

In paragraph (d)(2), the applicant must develop, implement, and update periodically a written data security plan. We consider this requirement to be a reasonable and customary function of a card sponsor. Therefore, this information collection requirement is exempt from the PRA, as stipulated under 5 CFR 1320.3(b)(2).

Section 403.808 Agreement Terms and Conditions

In this final rule, under this section, in order to receive a Medicare endorsement, an applicant that complies with all of the application procedures and meets all of the requirements described in this subpart must enter into a written agreement with us. The agreement will include a statement by the applicant that it has met the requirements of this subpart and will continue to meet all requirements for so long as the agreement is in effect.

It is anticipated that it will take each applicant approximately 8 hours to complete the agreement. We anticipate that 15 card sponsors will enter into an agreement with us for a burden of 120 hours.

We consider all of the information collection requirements associated with complying with this section to be usual and customary business, with the following exception. As stated elsewhere in the preamble, card sponsors may update their formularies and price lists six times per year. We consider maintenance of formulary and price data to be a reasonable and customary business practice; the only new requirement is the transmittal of such information to the administrative consortium. We believe it would take 15 minutes to transmit each formulary and

price change to the consortium. While we do not believe that a majority of card sponsors would change their formularies and prices as much as six times per year, for purposes of estimating the maximum burden associated with this requirement, we estimate that each of the 15 card sponsors would transmit data to the consortium 6 times per year, and estimate 15 minutes for each transmittal. Therefore, the maximum burden associated with this requirement is 22.5 hours.

The total burden associated with card sponsors entering into a written endorsement agreement with us is 142.5 hours. This total includes the burden associated with each of the 15 card sponsors completing their agreements and the hours associated with the requirement, to be reflected in this agreement, that card sponsors provide formulary and price updates to the administrative consortium.

Section 403.810 Administrative Consortium Responsibilities and Oversight

The administrative consortium will be responsible for a number of information collection requirements, as stipulated under this section.

Since there will only be one administrative consortium under this initiative, these requirements are not subject to the PRA in accordance with 5 CFR 1320.3(c).

Section 403.811 Beneficiary Enrollment

In this final rule, under this section, in paragraph (b), Group enrollment, card sponsors may accept group enrollment from health insurers. Card sponsors will be required to assure disclosure to Medicare beneficiaries of the intent to enroll them as a group. They must also assure disclosure to the beneficiaries of the enrollment exclusivity restrictions and other rules of enrollment of the initiative. The burden associated with these requirements is the time and effort required to disclose the information to beneficiaries before enrolling them in the drug card program.

We believe these disclosures will be among other communications that the health insurer would usually and customarily provide at the time of enrollment or reenrollment of a beneficiary for their health insurance. As such, the only additional burden will be the cost of producing an insert that describes the discount card program and what enrollment into the card program means for the beneficiary. We estimate the burden of developing the insert to be 8 hours per health plan. We estimate that 178 plans may offer group enrollment into a Medicare-endorsed prescription drug card program for a burden of 1,424 hours.

Section 403.820 Oversight and Beneficiary Education

In the final rule, in paragraph (a) of this section, a Medicare-endorsed prescription drug discount card program sponsor must report to us on the major features of its program(s) that correspond to the qualifications for endorsement.

As stated in the final rule, the burden associated with this requirement is the time it would take to report to us. We believe that it would take approximately 45 minutes per report. We anticipate requiring 2 reports per year, per card sponsor, for 15 sponsors, for a total annual burden of 22.5 hours. This section also requires sponsors to establish and maintain a customer service process, which is designed to track and address in a timely manner enrollees' complaints about any aspect of the drug card program. While this requirement is subject to the PRA, we believe that sponsors maintain a customer service process as a matter of normal business practice. Therefore, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2).

The total burden associated with the collection requirements referenced in this rule is 5,189 annual hours.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 403.804, 403.806, 403.808, 403.810, 403.811, and 403.820. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and recordkeeping requirements, please mail one original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Attn: John Burke, CMS–4027–F,

and,

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

V. Regulatory Impact Analysis and Regulatory Flexibility Act Analysis

A. Overall Impact

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

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). While the ultimate impact will depend upon the final designs of endorsed card sponsors' programs, our estimate (based on our assumptions about manufacturer discounts) is that the savings to beneficiaries under the Medicare-Endorsed Prescription Drug Card Assistance Initiative will represent a total economic impact ranging from $1.214 billion to $1.619 billion in 2004, the first full year of operation. In 2005, the total estimated savings to beneficiaries under the initiative will range from $1.364 billion to $1.819 billion. In 2008 (the fifth year of the estimate period), total estimated savings to beneficiaries will range from $1.907 billion to $2.542 billion. This represents less than 1 percent of projected total retail prescription drug spending for 2004 ($203.8 billion), 2005 ($227.8 billion), and 2008 ($309.3 billion) based on the most recent published projections released in March 2002 by our Office of the Actuary. Depending on the final design features and the magnitude of additional manufacturer discounts realized, actual savings to beneficiaries could be larger.

This final rule is a major rule as defined in Title 5, United States Code, section 804(2). Accordingly, we have prepared an impact analysis for this final rule.

B. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have

determined that this final rule is not an unfunded mandate as defined by the UMRA. In particular, section 101 of the UMRA only requires estimation of direct costs to comply with the definition of a private sector unfunded mandate. While the rule will have an impact on the private sector, we do not expect that this will require direct costs or outlays approaching UMRA's $110 million threshold. In addition, this final rule does not mandate any requirements for State, local, or tribal governments.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct costs on State and local governments, will not preempt State law, or have any Federalism implications. However, as noted earlier in this preamble, States may choose, on a voluntary basis, to partner with private drug card sponsors by selecting a Medicare-endorsed drug card program and offering State endorsement of it as well. This is a voluntary opportunity for States, and has no Federalism implications.

D. Limitations of Our Analyses

The following analyses present projected effects of this final rule on Medicare beneficiaries, the Medicare program, total national retail prescription drug spending, small entities, and drug card sponsors.

Because this will be the first year of the Medicare-Endorsed Prescription Drug Card Assistance Initiative, we do not have the benefit of the experience of prior years. Therefore, we present a range rather than a single estimate for the impact of the prescription drug rebate and discount requirements of the initiative. Another limitation of this particular analysis is that our most recent available data on beneficiary use of prescription drugs come from self-reported survey data from the 1999 Medicare Current Beneficiary Survey (MCBS). We note, however, that we have updated our analysis from the proposed rule, which used 1998 data, with 1999 data that recently became available. The MCBS is a continuous multipurpose survey of a representative sample of the Medicare population. We have adjusted the data for trends in drug spending and for under reporting.

Another limitation of our analysis is that we develop an estimate of the number of beneficiaries with standardized Medigap drug coverage who enroll in the initiative. This estimate, however, is imprecise. As discussed in more detail later in the analysis, we believe beneficiaries who have drug coverage through standardized Medigap policies are likely to enroll in the initiative. The MCBS provides data on the number of beneficiaries with "individually purchased" insurance policies, which includes but is not limited to the standardized Medigap policies. Using data on beneficiaries who have drug coverage through individually purchased insurance policies, we developed a rough estimate of the number of beneficiaries with Medigap standardized drug coverage by excluding from this group individuals who appeared unlikely to have standardized Medigap drug coverage. In particular, we excluded individuals whose out-of-pocket drug spending was less than $250 and whose individually purchased insurance plan covered some drug costs, since this is inconsistent with the benefit structure of the standardized Medigap plans. However, some beneficiaries with individually purchased policies that are not the standardized Medigap drug coverage policies are still likely to be included in our estimates. In addition, some beneficiaries have multiple sources of coverage, for example, some beneficiaries are enrolled in Medicare+Choice but also report having individually purchased supplemental insurance. Therefore, we also excluded anyone who was enrolled in Medicare+Choice during at least one month of the year since we believe that the drug coverage was more likely to come from a Medicare+Choice plan than from a Medigap plan.

As we discuss later in this preamble, additional limitations to our analysis include that we have made no adjustments to take into account: current discounts obtained by some beneficiaries, possible effects of the initiative on beneficiary drug utilization, possible changes in the type of outlets through which beneficiaries purchase prescription drugs, or potential enrollment of low-income beneficiaries in the new manufacturer-sponsored cards. We did not believe that we had adequate data to inform assumptions concerning these issues.

E. Impact of the Rebate and Discount Requirements

1. Medicare Beneficiary Estimated Enrollment

Although the Medicare-endorsed prescription drug card programs will be available to all Medicare beneficiaries, we believe that those most likely to benefit from the initiative will be the approximately 9 million Medicare beneficiaries without prescription drug coverage at any point in a year (based on 1999 MCBS data). We anticipate that beneficiaries without prescription drug coverage who spend over $250 per year (the point at which a $25 maximum enrollment fee could be recouped over a 1-year period assuming at least 10 percent savings) will be more likely to enroll than those with lower spending. To the extent that card sponsors offer lower or no-cost enrollment, we expect more beneficiaries to take advantage of the savings opportunity. We also anticipate that some beneficiaries will take into account that the $25 maximum fee is a one-time only fee (for as long as they remain in the same card program) when evaluating the net savings potential offered by Medicare-endorsed discount cards.

In Table 2, we show the assumptions regarding the percentage of beneficiaries without drug coverage enrolling in a Medicare-endorsed drug card program. We assume that beneficiaries without drug coverage who have relatively higher drug spending will be more likely to enroll than those with generally very low or no spending. Based on the assumptions in Table 2 and the distribution of drug spending among beneficiaries without drug coverage, we estimate that about 75 percent of the beneficiaries without drug coverage will enroll in the Medicare-endorsed drug card programs.

Another group of beneficiaries likely to benefit from the Medicare-endorsed discount card programs will be beneficiaries with Medigap drug coverage. The standardized Medigap plans that offer prescription drug coverage (standardized plans H, I, and J) are designed with a cap on the amount of drug spending covered by the plan. The drug benefit in standardized plans has a $250 deductible, 50 percent coinsurance, and a benefit cap of $1,500 (plans H and I) or $3,000 (plan J). Because many Medigap plans do not actively negotiate discounts for enrollees, we believe that Medicare beneficiaries with standardized Medigap drug coverage will benefit from a discount card program, particularly for spending above the benefit cap.

Using the 1999 MCBS, we estimate that a little more than 2 million beneficiaries had drug coverage from a Medigap policy. We assume that 95 percent of beneficiaries with Medigap drug coverage, regardless of expenditure level, will enroll in a Medicare-endorsed card program. We believe that

beneficiaries with Medigap coverage for prescription drugs will be more risk averse than the average beneficiary and will therefore be more likely to enroll in a drug discount card program.

These estimates of Medicare beneficiary enrollment in the Medicare-endorsed card programs are one of the elements in the Office of the Actuary's estimates of the impact of the initiative.

TABLE 2.—ESTIMATED ENROLLMENT RATE OF MEDICARE BENEFICIARIES WITH NO DRUG COVERAGE 2004 TO 2008

Annual drug spending	Percent enrolling
$0–200.00	55
$200.01–300.00	80
$300.01–400.00	85
$400.01–500.00	90
$500.01+	95

During the first half of 2002, several drug manufacturers established drug card programs that offer low-income Medicare beneficiaries without drug coverage significant discounts or low copayments on drugs they manufacture. Novartis, Pfizer, and Eli Lilly have each established co-pay cards. Seven drug manufacturers (Abbott Laboratories, AstraZeneca, Aventis, Bristol Myers, GlaxoSmithKline, Johnson & Johnson, and Novartis) have established Together Rx, a discount card. The income limits of the manufacturer cards vary, ranging from $18,000 to $28,000 for individuals and from $24,000 to $38,000 for couples. With these income criteria, millions of Medicare beneficiaries without drug coverage could be eligible for one or more of the manufacturer programs.

While many beneficiaries who might benefit from the Medicare-Endorsed Prescription Drug Card Assistance Initiative may also be eligible for the manufacturer card programs, we have not factored this into our assumptions concerning beneficiary enrollment in Medicare-endorsed card programs for several reasons. First, it is unknown whether the manufacturer card programs will seek Medicare endorsement. If these programs do seek and obtain Medicare endorsement, their enrollees will be included in the enrollment count for the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Second, even if the manufacturer programs do not seek Medicare endorsement, available data suggest that, so far, enrollment in manufacturer card programs is a small portion of the total enrollment we expect in Medicare-endorsed discount card programs. Together Rx enrolled about 140,000 individuals as of August 2002, the Pfizer co-pay card enrolled 179,000 individuals as of July 2002, the Eli Lilly co-pay card enrolled 50,000 through May 2002, and the Novartis co-pay card enrolled 15,000 as of April 2002. We expect that some individuals have enrolled in more than one manufacturer program. Since these programs are in their infancy, their ultimate enrollment levels are unknown. Enrollment in these programs is also difficult to anticipate because means-tested programs do not typically garner full uptake among eligible populations. We will be interested to see over time how enrollment grows in the manufacturer drug card programs, the types of outreach conducted, and the results of those efforts.

Finally, if manufacturer card programs do not seek Medicare endorsement, some beneficiaries may opt to enroll in both the manufacturer cards and a Medicare-endorsed drug card. Since the manufacturer cards provide savings only on specific manufacturers' drugs and the Medicare-endorsed cards have a low one-time fee, we believe that some beneficiaries, depending on the mix of prescription drugs they use, may find it beneficial to enroll in both types of programs.

We received one comment concerning our assumptions about enrollment in Medicare-endorsed cards.

Comment: One commenter stated that the assumptions about the percent of beneficiaries without drug coverage and with Medigap drug coverage that will enroll in the program were extremely optimistic.

Response: As mentioned elsewhere in the preamble, we expect that Medicare-endorsed prescription drug card programs will obtain significant beneficiary enrollment due to the recognition and acceptance of the Medicare name among beneficiaries, the outreach and educational efforts planned, and the low enrollment fee. As shown in Table 2, the enrollment assumptions for beneficiaries without drug coverage are graduated based on the level of annual drug spending, ranging from 55 percent for those with spending not exceeding $200 to 95 percent for those with spending exceeding $500. We assume 95 percent enrollment among beneficiaries with Medigap drug coverage, regardless of expenditure level, because we believe Medigap plans offering drug coverage tend to attract enrollees who either have high drug expenses or who are more risk averse than average. As stated previously, for a number of reasons, we have not incorporated the manufacturer drug card programs into our assumptions about beneficiary enrollment in Medicare-endorsed card programs. In the future, as the new manufacturer programs gain operational experience and enrollment levels in these programs become clear, as well as their decision to participate in the Medicare initiative, we will be interested in assessing their effects on and interaction with the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

While we expect there will be a phase-in of beneficiary enrollment in the Medicare-endorsed prescription drug card programs, we believe that because of the recognition and acceptance of the Medicare name and the educational efforts undertaken, beneficiaries wishing to enroll will do so over a relatively short period of time. For the purposes of this impact analysis, we assume full enrollment of 9.7 million beneficiaries by 2004. We use 2004 as the beginning point for the estimates because it will be the first full year of operation.

2. Estimated Portion of Drug Spending Included

For purposes of estimating the impact of the Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative, it is necessary to make some assumptions concerning the portion of spending that will be affected by the discounts under the drug card programs. The requirements for endorsement include provision of a discount on one brand name or generic drug in each therapeutic grouping commonly used by Medicare beneficiaries. However, we expect that the card programs probably will provide discounts on more than one drug per grouping and be highly likely to provide discounts on commonly used drugs.

In the proposed rule, we estimated the percent of total drug spending accounted for by the most commonly used drugs among Medicare beneficiaries based on analysis of the top drugs in terms of both utilization and spending using the 1998 MCBS data (including a special analysis related to disabled beneficiaries). In this final rule, we update that analysis using 1999 MCBS data. As of 1999, the drugs most commonly used or having the greatest spending by Medicare beneficiaries accounted for approximately 70 percent of total drug spending for beneficiaries without drug coverage (which is up slightly from 66 percent found in the analysis of 1998 MCBS data).

The drug classification listing in Table 1, for which card sponsors must

include at least one drug, is more extensive than the specific top drug list that was used to estimate 70 percent. In addition, we assume that many card sponsors will choose to include more than one drug for the required drug grouping. Consequently, we set our lower bound estimate of the share of drug card enrollees' total drug spending that will be affected by the initiative at 75 percent, which is the same as the lower bound estimate used in the proposed rule. Since the percent of drug spending accounted for by the most commonly used drugs among Medicare beneficiaries increased only slightly from 1998 to 1999, we felt it was reasonable to maintain our 75 percent lower bound estimate from the proposed rule, particularly since we also use an upper bound estimate.

We also assume that it is possible that programs will include a discount on all drugs. To calculate this upper bound, we assume that all beneficiary drug expenditures will be affected by the Medicare-Endorsed Prescription Drug Card Assistance Initiative. We note, however, that we have made no adjustment to take into account that some beneficiaries currently receive discounts and that a large portion of the savings to beneficiaries will come from generic substitution and not just price reductions.

3. Estimated Beneficiary Savings

An April 2000 study prepared by HHS entitled, "A Report to the President: Prescription Drug Coverage, Spending, Utilization and Prices," indicated a significant price differential between individuals paying cash for prescriptions at a retail pharmacy versus individuals with insurance. This was true for both the Medicare and non-Medicare populations. According to the study, in 1999 the price paid by cash customers was nearly 15 percent more than the total price paid under prescription drug insurance, including the enrollee cost sharing. For 25 percent of the most commonly prescribed drugs, this price difference was higher—over 20 percent. Thus, in today's market, individual Medicare beneficiaries without drug coverage and the related market purchasing leverage, not only face having to pay the full cost for medications from their own pockets, but ironically are also charged the highest prices. Furthermore, the HHS study did not include the effect of rebates on total prices paid. It did, however, note industry experts as indicating that insurers and employers typically receive 70 to 90 percent of the rebates negotiated for their enrollees. While currently, rebates in insured products may not necessarily reduce prices paid at the retail point of sale, the rebates do lower the per-prescription cost for plan sponsors, and thus tend to lower premiums or program costs for insured beneficiaries.

We anticipate that the estimated savings for Medicare beneficiaries in a Medicare-endorsed drug card program will be a first step toward the savings that could be achieved under an insurance product. Based on information on savings from insurance products and information on the current discount card market, we assumed that beneficiaries enrolling in the Medicare-endorsed prescription drug discount card programs will save, on average, between 10 and 13 percent of their total drug costs compared to their spending in the absence of this initiative. The percentage savings on particular prescription drugs will vary and may be substantially higher for certain products, particularly generics, due to their lower prices. While the impact analysis uses an assumption of savings of 10 to 13 percent off total drug spending, we believe that savings of 15 percent may be possible, depending on the ultimate design of card sponsors' programs. If Medicare-endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates or discounts will be greater in response.

The savings to beneficiaries will be attributable to the combination of lower prices paid at the point of sale as a result of manufacturer and pharmacy discounts, as well as the effects of beneficiary education leading to greater use of generic drugs and more effective management of prescription drug expenses by beneficiaries. Because pharmacy discounts are increasingly available to beneficiaries through existing voluntary card programs, we expect that manufacturer rebates or discounts and savings from a better understanding of generic alternatives and managing prescription drug expenses will be important sources of savings in this initiative. For purposes of calculating the estimates of beneficiary savings, we assumed an average overall drug spending savings to beneficiaries of 12.4 percent. These estimates do not take into account possible increased use of prescription drugs by Medicare beneficiaries resulting from paying reduced out-of-pocket amounts for drugs.

In a December 2001 report from the General Accounting Office (GAO) entitled "Prescription Drugs: Prices Available Through Discount Cards and From Other Sources", the GAO collected specific price data on 12 brand name and 5 generic commonly used prescription drugs from one regional and four large discount card programs, as well as pharmacies' prices for the same prescription drugs in four selected geographic areas. Some of the pharmacies' prices reported included pharmacy discounts; others did not. The GAO simply reported prices on the 17 drugs; they did not calculate average discount card savings. The average discounts that could be calculated from the GAO reported data are difficult to compare to our estimate of roughly 10 to 13 percent savings off total beneficiary drug spending for several reasons.

First, while the impact analysis is built on an assumption of savings of 10 to 13 percent off total drug spending, we believe that more savings may be possible, depending on the ultimate design of card sponsors' programs. If Medicare-endorsed discount card programs rely heavily on the use of formularies, we expect that manufacturer rebates or discounts will be greater in response.

Second, savings for the initiative are not estimated on a per-prescription basis. For certain drugs for which manufacturer rebates or discounts are secured, we expect to see, under this initiative, drug-specific discounts comparable to insured products, which are often 25 to 30 percent, or sometimes more, per prescription.

Finally, the price data collected by the GAO do not include all drugs or indicate the relative market share that each drug represents; that is, they are not weighted. Savings estimates calculated by simply averaging selected drug prices do not account for the differences in utilization, and thus, market share.

Because the Medicare-endorsed drug card programs will be modeled after insured products in terms of enrollment and the use of formularies, combined with the competitive model and the requirement of manufacturer rebates or discounts, we expect that the Medicare-endorsed drug card programs will achieve new beneficiary savings from manufacturer rebates or discounts. The share of savings will vary depending on the drug, but savings from manufacturers are expected to be substantially greater than those available through existing voluntary cards. According to the HHS study, industry experts report that private insurance plans garner rebates on individual brand name drugs ranging from 2 to 35 percent. We assume that the portion of beneficiary savings attributable to manufacturers may increase over time as competition forces

card sponsors to secure manufacturer rebates or discounts in order to remain competitive. To the extent that card program sponsors design formularies to mimic those of insured products, the ability to garner manufacturer rebates or discounts will increase.

We received several comments concerning our estimates of the potential savings from the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Comment: Several commenters asserted that the Medicare-Endorsed Drug Card Assistance Initiative will provide fewer savings or no greater savings than can be obtained through shopping around or through senior discounts at community pharmacies. Another commenter contended that a well-designed discount card will yield tangible savings for beneficiaries.

Response: We agree with the commenter who asserted that a discount card program has the potential to yield tangible savings for beneficiaries. We disagree with the commenters who claimed that the initiative will not yield greater savings than currently available through community pharmacies. We expect that the initiative will garner greater savings than typically available through community pharmacies due to the role of manufacturer rebates or discounts in the initiative. As a condition of endorsement, card sponsors must obtain manufacturer rebates or discounts on brand and/or generic drugs and pass a substantial share through to beneficiaries. As mentioned previously in the preamble, we believe card sponsors will have both the ability and the incentive to negotiate significant manufacturer rebates or discounts and pass them through to beneficiaries due to aspects of the initiative such as market leverage stemming from large enrollment, exclusivity, and market competition.

Comment: One commenter asserted that discounts of 10 to 13 percent are minimal given that drug prices are rising at 17 percent per year.

Response: According to National Health Expenditures data from our Office of the Actuary (OACT), prescription drug spending grew at 17 percent between 1999 and 2000. A combination of increased prices, increased utilization, changes in the mix of drugs, and growth in the population resulted in the overall spending increase of 17 percent. Increased drug prices were responsible for slightly more than a quarter of the increase in drug spending between 1999 and 2000. By its structure, a discount card program provides assistance with prescription drug expenditures through discounted prices. We believe that the initiative, which is expected to yield average savings of 10 to 13 percent, possibly up to 15 percent, will provide beneficiaries with needed assistance with prescription drug costs.

Comment: One commenter asserted that discounts of 15 percent are unrealistic for pharmacy and drug stores that have profit margins of 2 to 3 percent on average.

Response: As mentioned elsewhere in the preamble, the average savings estimate of 10 to 13 percent, possibly up to 15 percent, does not reflect the expected level of pharmacy discounts. Rather, it reflects estimated combined savings from manufacturer rebates or discounts and pharmacy discounts, as well as increased use of generic drugs. We believe manufacturer discounts or rebates will be an important component of the savings from the Medicare-Endorsed Prescription Drug Card Assistance Initiative as well as increased use of generics. As a condition of endorsement, card sponsors must obtain manufacturer rebates or discounts and pass a substantial share through to beneficiaries either directly or indirectly through pharmacies. We believe that competitive market forces, together with other aspects of the initiative, will encourage endorsed discount card programs to secure the highest manufacturer rebates or discounts possible and to pass those through to enrollees.

4. Projection Assumptions

Since our data on Medicare beneficiary prescription drug spending are based on 1999 MCBS data, it is necessary to make several adjustments in order to prepare 2004 estimates. In order to trend 1999 spending to 2004 dollars, we use prescription drug spending projections based on per capita drug expenditure growth from the Office of the Actuary's National Health Expenditure (NHE) Projections 1980 to 2011. These projections can be found on our Web site at: *http://cms.hhs.gov/statistics/nhe/projections-2001/t11.asp*.

MCBS data on prescription drug utilization are self-reported by beneficiaries, and consequently are subject to under reporting. We are studying this under reporting in order to develop adjustment factors to be used for estimating purposes. For purposes of the estimates in this final rule, the spending data from the MCBS are adjusted to account for the estimated 16.4 percent in under reporting that has been identified through our research thus far.

It is also necessary to adjust for growth in the Medicare beneficiary population. The adjustments are made based on the assumptions used for the Medicare Trustees Reports, March 26, 2002.

These assumptions are detailed in Table 3, which shows the projected increase in Medicare enrollment and per capita drug expenditures from 1999 to 2004, and annually from 2004 to 2008, using 1999 as the base year for the projections. As discussed in more detail in later sections of the impact analysis, the table also shows projections for total national aggregate retail drug expenditures, drug expenditures involved in the initiative, beneficiary savings from the initiative (both upper bound and lower bound estimates), and the impact of beneficiary savings as a percent of total national aggregate retail drug sales.

As mentioned previously, beneficiary retail prescription drug spending involved in the Medicare-Endorsed Prescription Drug Card Assistance Initiative is estimated using 1999 MCBS data, projected forward to 2004 to 2008 based on expected growth in per capita prescription drug spending and the Medicare population. For beneficiaries with Medigap coverage, estimated prescription drug spending involved in the Medicare-Endorsed Prescription Drug Card Assistance Initiative may be understated because our projection method implicitly assumes that the Medigap drug benefit structure (deductible and coverage limits) grows as per capita spending grows. However, we believe that this does not significantly alter the overall findings in the impact analysis because it is likely counterbalanced by other assumptions that tend to overstate the discount card programs' impact on retail prescription drug sales through pharmacies. For example, as discussed subsequently, the use of National Health Accounts estimates of prescription drug spending net of manufacturer rebates provided to health insurers overstates the impact of the Medicare-endorsed drug cards on total pharmacy revenues.

To estimate the impact of the initiative on national retail prescription drug sales, we use the Office of the Actuary's National Health Expenditures projections of retail prescription drug sales, which are part of the National Health Accounts. To prepare the estimates, OACT obtains data on prescription drug sales from a variety of sources, including the National Prescription Audit conducted by IMS Health. OACT has data on retail prescription drug spending through 2000, and prepares 10-year projections.

OACT adjusts the data from the National Prescription Audit to take into account a number of factors. The major factors involved in these adjustments include: benchmarking to the Economic Census, subtracting prescription drug sales to nursing homes (which are accounted for in nursing home spending), and adjusting the data to subtract an estimate of manufacturer rebates provided to health insurers related to insurance coverage for prescription drugs. Thus, in some respects, the National Health Accounts' estimate of prescription drug spending reflects a sales level that is somewhat lower than the revenue actually received by pharmacies, drug stores, and other retail business outlets selling prescription drugs.

Consequently, when National Health Accounts' figures are used as the denominator in calculating the percentage impact on revenues (as we do later in this impact analysis), the result is somewhat larger than is actually the case. Nevertheless, we believe that OACT's projections for prescription drug spending are the most appropriate to use for analysis of the impact of this initiative on prescription drug revenues. OACT's estimates are specific to the prescription drug market, and the National Health Accounts are recognized as a public source of data on health care spending.

TABLE 3.—ESTIMATED IMPACT

	1999	2004	2005	2006	2007	2008
Total Medicare Enrollment (millions)	39.2	41.3	41.8	42.4	43.2	44.1
Increase in Total Medicare Enrollment	....	5.4%	1.3%	1.4%	1.8%	2.1%
Increase in per Capita Drug Expenditures	.....	88.2%	10.9%	10.1%	9.8%	9.7%
Total National Aggregate Retail Drug Expenditures ($ billions)	$103.9	$203.8	$227.8	$252.9	$279.9	$309.3
Projected Prescription Drug Spending Under the Drug Discount Card Programs ($ billions)	$6.6	$13.1	$14.7	$16.4	$18.3	$20.5
Upper Bound Impact of Estimated Beneficiary Savings ($ millions)	.....	$1,619	$1,819	$2,031	$2,269	$2,542
Upper Bound Impact as a Percent of Total National Aggregate Retail Drug Expenditures	.....	0.79%	0.80%	0.80%	0.81%	0.82%
Lower Bound Impact of Estimated Beneficiary Savings ($ millions)	.....	$1,214	$1,364	$1,524	$1,702	$1,907
Lower Bound Impact as a Percent of Total National Aggregate Retail Drug Expenditures	.....	0.60%	0.60%	0.60%	0.61%	0.62%

Note: For 2004, the increase in Medicare enrollment and per capita drug expenditures shown in the table reflect the percent change between 1999 and 2004.

5. Anticipated Effects on Medicare Beneficiaries

Among the primary purposes of the Medicare-Endorsed Prescription Drug Card Assistance Initiative are to:

- Educate beneficiaries about the private market methods for securing discounts on the purchase of prescription drugs.
- Encourage beneficiary experience with the competitive discount approaches that are a key element of Medicare prescription drug benefit legislative proposals.
- Assist beneficiaries in accessing lower cost prescription drugs through new competitive manufacturer rebates or discounts and better understanding of how to manage their prescription drug needs.

We estimate that 9.7 million Medicare beneficiaries will enroll in Medicare-endorsed drug card programs by 2004. This figure is somewhat lower than was estimated in the proposed rule. The reason for the change is that we are now using the 1999 MCBS data as a basis for analysis, and a somewhat smaller number of Medicare beneficiaries did not have drug coverage in 1999. The 1999 MCBS are the most recent data available on drug coverage in the Medicare beneficiary population. It should be noted, however, that the 1999 data precede the changes that have occurred in drug coverage through the Medicare+Choice program, in which fewer beneficiaries are now enrolled.

We anticipate that Medicare beneficiaries with no drug coverage who enroll in a Medicare-endorsed prescription drug card program will save between 10 and 13 percent of their total drug costs. However, this will vary by the mix of drugs beneficiaries use, and as noted previously, may be even higher depending on the ultimate program design used by card sponsors.

Beneficiaries with Medigap insurance that includes drug coverage who enroll in a Medicare-endorsed drug card program will also experience savings, particularly before the Medigap drug deductible is reached, and after the spending cap is exceeded. We also believe that the education beneficiaries receive concerning drug prices, formularies, drug-to-drug interactions and other pharmacy counseling, generic substitution, and pharmacy networks, will provide an opportunity for beneficiaries to maximize their savings.

As shown in Table 3, for the estimated 9.7 million beneficiaries who will enroll in the Medicare-endorsed drug card programs by 2004, the base for total drug expenditures involved in the Medicare-Endorsed Prescription Drug Card Assistance Initiative is projected to be $13.1 billion in 2004, $14.7 billion in 2005, and $20.5 billion in 2008 before the savings achieved through the card initiative. Total estimated savings for these beneficiaries range from $1.214 billion to $1.619 billion in 2004, $1.364 billion to $1.819 billion in 2005, and $1.907 billion to $2.542 billion in 2008.

Beneficiaries may be required to pay a one-time enrollment fee of up to $25 to join a Medicare-endorsed drug card program. If all 9.7 million Medicare beneficiaries estimated to enroll by 2004 pay the maximum $25 enrollment fee (a scenario we do not expect because of competition among endorsed card programs), the total beneficiary savings will be reduced by a maximum of $270 million in 2004. (We note that these beneficiaries will have likely paid the enrollment fee in 2003; however, we are counting that fee against savings in 2004 because it is the first full year of operation and the first year of our 5-year estimate period.) As mentioned earlier, to the extent that a beneficiary stays in the same drug card program beyond the first year, the more value the card represents in savings to the beneficiary. In 2005, based on our estimates of growth in the Medicare population and the disenrollment rate (discussed later in this analysis), we estimate that if beneficiaries paid the maximum $25 enrollment fee, total beneficiary savings will be reduced by a maximum of $31 million in 2005.

A beneficiary enrolled in a Medicare-endorsed card program will be free to purchase prescription drugs outside the drug discount card program, either at a

non-network pharmacy or a non-formulary drug. Thus, beneficiaries without drug coverage who choose to enroll in an endorsed discount card program can only be helped by the educational efforts and savings from the initiative.

We received one comment concerning support for this initiative from beneficiaries as well as pharmacies and drug stores.

Comment: One commenter believes the initiative is ill conceived and does not have support from beneficiaries, pharmacists, or drug stores.

Response: In response to the proposed rule, we received comments from representatives of beneficiaries, physicians, drug stores, pharmacies, and pharmacists as well as others. The majority of beneficiary and physician groups were supportive of the initiative.

We received comments from a few chain and supermarket pharmacy companies as well as a number of representatives of pharmacies, drug stores, and pharmacists. Most of these commenters opposed the initiative, with one of the chief concerns being the financial impact of the initiative on pharmacies and drug stores. As mentioned later in the impact analysis, we have taken a number of steps to mitigate the financial impact of the initiative on pharmacies.

We believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative is a highly effective way to educate beneficiaries about the tools used by private insurance programs to lower the cost of prescription drugs. We believe that through real world experience with drug card programs, Medicare beneficiaries will be better educated about private sector approaches for lowering drug costs that are a key element of all Medicare prescription drug benefit legislative proposals. This initiative will also provide beneficiaries with immediate help with the cost of prescription drugs, and also will improve access to better quality prescription-drug-related services. We believe that access to prescription drugs is so fundamental in today's health care environment that beneficiaries should receive information and assistance regarding prescription drug discount programs until a Medicare prescription drug benefit is enacted and implemented.

6. Anticipated Effects on the Medicare Program

We will be responsible for reviewing applications and awarding endorsements so that these card programs can begin operating to provide lower prices to cash paying beneficiaries. While not quantifiable, a positive impact of the rebate and discount requirements of the initiative will be to provide us with experience in understanding issues in the pharmaceutical industry before enactment of a Medicare drug benefit. We will increase our knowledge concerning pricing and payment issues, information technology requirements, and increasing the effectiveness of pharmacy quality improvement programs. The pharmaceutical industry will also gain more experience in working with the Medicare population before implementation of a drug benefit. We expect that this experience will make the transition to a Medicare prescription drug benefit faster and more efficient.

Because this initiative is not a Medicare benefit, we do not anticipate any significant change in the Medicare baseline as a result of its implementation.

7. Anticipated Effects on National Retail Prescription Drug Spending

Total national retail spending (spending for total population, not just Medicare beneficiaries) on prescription drugs is projected to be $203.8 billion in 2004, $227.8 billion in 2005, and $309.3 billion in 2008. *(http://www.cms.hhs.gov/statistics/nhe/projections-2001/t11.asp).*

In 2004, the first full year of the initiative, the total economic impact of the Medicare-Endorsed Prescription Drug Card Assistance Initiative is estimated to range from $1.214 billion to $1.619 billion, representing 0.60 percent to 0.79 percent of total national aggregate retail prescription drug expenditures. In 2005, the total impact is estimated to range from $1.364 billion to $1.819 billion, or 0.60 percent to 0.80 percent of total national aggregate retail expenditures for prescription drugs. In 2008, we estimate the total impact to range from $1.907 billion to $2.542 billion, or 0.62 percent to 0.82 percent of total national aggregate retail drug expenditures. Thus, the economic impact is estimated to be less than 1 percent of total retail prescription drug spending.

We expect that the various sectors involved in the prescription drug industry will adjust to the impact without significant disruption, just as the industry adjusted to discounts being extended to the privately insured population during the 1990s. The 1990s saw a significant increase in reliance on pharmacy benefit management and the tools commonly used to manage pharmaceutical benefit costs.

For example, evidence of market adjustment can be seen in the changes in pharmacies' acquisition costs during the 1990s. In the August 2001 HHS Office of Inspector General (OIG) Report entitled "Medicaid Pharmacy-Actual Acquisition Cost of Brand Name Prescription Drug Products," the OIG reports on changes in pharmacy acquisition costs for both single source and multi-source brand name drugs. The OIG uses the common industry pricing metric of average wholesale price (AWP). The findings from the OIG study indicate that the acquisition prices pharmacies face for a broad spectrum of brand name drugs have been declining as the percentage of AWP during the period 1994 to 1999. Based on 1994 pricing data, the OIG estimates that pharmacies acquired brand name drugs (both single source and multi-source) at a discount of 18.30 percent below AWP. For 1999 pricing data, the OIG estimates a discount of 21.84 below AWP. The OIG reports that this represents an increase of 19.3 percent in the average discount below AWP for which pharmacies were able to purchase a mixture of single source and multi-source brand name drugs. The OIG conducted a similar analysis on the pharmacy acquisition costs related to generic drugs. The OIG March 2002 report "Medicaid Pharmacy—Actual Acquisition Cost of Generic Prescription Drug Products" reported that for generic drugs there was an increase of over 55 percent in the average discount below AWP from 1994 to 1999 at which pharmacies were able to acquire generic drugs (from 42.45 percent below AWP in 1994 to 65.93 percent below AWP in 1999). Thus, during the 1990s, as more customers secured discounts on the purchase of prescription drugs, pharmacies acquired drugs at larger discounts from AWP.

The acquisition costs reported by the OIG are similar to those reported in the PricewaterhouseCoopers (PWC) study conducted for us entitled "A Study of Pharmaceutical Benefit Management," June 2001. That study reported that pharmacies generally now acquire brand name drugs at AWP minus 20 to 25 percent. According to the PWC report, absent a discount arrangement (such as a pharmacy-sponsored senior discount), pharmacies, on average, sell to the uninsured population at full retail price, roughly AWP plus a dispensing fee (generally $2 to $3).

We also believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative will accelerate the use of generic drugs. The HHS study reports that, generally, pharmacies earn higher margins on generic drugs. In

addition, PWC found that generic manufacturers sometimes provide pricing incentives to pharmacies based on generic volume or market share. These are other examples of adjustments that take place related to the market place in pharmaceuticals.

Our expectation is that the discounts offered by retail pharmacies and drug manufacturers will be no greater than the discounts already offered to insured individuals, including insured Medicare beneficiaries, unless there is a legitimate business reason for the pharmacies and the drug manufacturers to offer a greater discount. It is possible that the requirements of final price publication and the establishment of a large number of competing discount cards will lead to greater manufacturer discounts. We expect that access to modern competitive tools will assist in controlling prescription drug costs and improving the quality and efficiency of prescription drug services. We also expect that this initiative will somewhat level the playing field between the insured and uninsured, and the current differential in pricing between populations with drug coverage and Medicare beneficiaries without drug coverage will be ameliorated.

Further, since this initiative is not a Medicare benefit, we do not expect that this effort will have any impact on the number of Medicare beneficiaries with drug coverage through employer-sponsored health insurance. We do not anticipate that employers will alter their drug coverage in response to this initiative.

We received a few comments concerning the impact of the initiative on pharmacy and drug store revenues.

Comment: A couple of commenters voiced concern that card sponsors that operate mail order pharmacies may steer business away from community pharmacies toward their mail order business, leading to a decline in revenues for community pharmacies.

Response: We recognize the value of both in-person pharmacy services provided by community pharmacies and mail order pharmacy services. We believe that most Medicare beneficiaries rely on their community pharmacies, and thus mail order only programs are not permitted. We have included a specific retail pharmacy access standard for Medicare endorsement purposes, and in this final rule have provided for a more stringent standard for MSA geographic areas of 90 percent of beneficiaries being within 5 miles of a network pharmacy, and for non-MSA areas 90 percent of beneficiaries being within 10 miles of a retail network pharmacy. We also believe that beneficiaries should have options of both retail and mail order available to them, and that beneficiary choice should dictate the venue through which they obtain pharmacy services. Thus, card sponsors have the option of also offering mail order services. Mail order pharmacy sales, like supermarket and mass merchant pharmacy sales, have been a growing share of total prescription drug sales in the U.S. over the last 10 years. These alternative sources for prescription drugs provide additional convenient access, and the Medicare-Endorsed Prescription Drug Card Assistance Initiative is simply recognizing the nature of the existing market.

Comment: A few commenters cited a claim by Stephen W. Schondelmeyer, Pharm.D., Ph.D., in his declaration in *National Association of Chain Drug Stores* v. *Thompson*, No. 01–1554 (D.D.C. 2001) that the initiative will cause $2 billion in revenue losses for pharmacies and result in 2,500 to 10,000 community pharmacy closures.

Response: We note that Dr. Schondelmeyer's declaration cited by the commenters relates to the discount card initiative that was proposed in July 2001, and the initiative has been revised significantly since that time. Thus, the commenters are using an analysis that predates the proposed rule that we published in the **Federal Register** on March 6, 2002 (67 FR 10262).

Dr. Schondelmeyer's estimate of a $2 billion revenue impact on community pharmacies is substantially higher than our estimate for the combined beneficiary savings from manufacturer rebates or discounts and pharmacy discounts. From the information provided in Dr. Schondelmeyer's declaration that was cited by the commenters, we believe that his estimates significantly overstate the impact of the initiative on community pharmacies in several ways.

First, his estimates are based on the assumption that the initiative will yield 15 to 25 percent savings, which will come entirely from pharmacy discounts—assumptions that are not reflective of the structure of the Medicare-Endorsed Prescription Drug Card Assistance Initiative as described in this final rule. As we note elsewhere in this preamble, it is important to distinguish between estimated savings on individual drugs and savings calculated over total drug spending. While the initiative may yield savings of 15 to 25 percent or even higher on specific drugs, overall the initiative is expected to generate average savings on beneficiaries' total drug spending of 10 to 13 percent, possibly up to 15 percent depending on the design of card sponsors programs (for example, the degree to which formularies are used).

Second, Dr. Schondelmeyer also uses in his analysis an average utilization figure of 28.5 prescriptions for discount card enrollees. This level of utilization is characteristic of a population with drug coverage, and represents a utilization level that is higher than found in a population without drug coverage. Since individuals without drug coverage are expected to be the predominant group enrolling in the initiative, we believe Dr. Schondelmeyer's use of this higher utilization level is another factor contributing to the overestimate of impact.

Dr. Schondelmeyer's assumptions concerning enrollment in the initiative may be another factor contributing to the overestimate. As discussed elsewhere in the preamble, we have projected that about 9.7 million Medicare beneficiaries will enroll in the initiative by 2004. This represents about 75 percent of beneficiaries without drug coverage and 95 percent of beneficiaries with Medigap drug coverage. While we believe there will be significant enrollment because of the Medicare endorsement, we believe that enrollment above the level we assume would be unrealistic. Dr. Schondelmeyer indicates in his declaration that it would be reasonable to assume that between 7 and 15 million Medicare beneficiaries would enroll in the card programs. While the specific enrollment assumption Dr. Schondelmeyer uses in his impact estimates is not clear from his declaration, if he uses a figure in the middle to high end of the 7 to 15 million range, we believe that would be an overestimate.

Additionally, Dr. Schondelmeyer, in his declaration, claims that discounts under the initiative will come entirely from pharmacies for several reasons including: the program announced in July 2001 did not require manufacturer rebates or discounts, discount card sponsors do not usually share manufacturer rebates or discounts with enrollees or pharmacies, and card sponsors will not have the technology to pass rebates or discounts through to enrollees. We agree that historically discount card sponsors have not passed manufacturer rebates or discounts through to enrollees or pharmacies, but we believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative represents a significant improvement on the current market, with manufacturer rebates or discounts being an important component of

beneficiary savings. We have modified the initiative from that proposed in July 2001 and added a requirement that, as a condition of Medicare endorsement, card sponsors must obtain manufacturer rebates or discounts on brand name and/or generic drugs and pass a substantial share through to beneficiaries. Furthermore, we believe Medicare-endorsed card sponsors will have both the ability and the incentive to negotiate significant manufacturer rebates or discounts and pass them through to beneficiaries due to aspects of the initiative such as market leverage stemming from large enrollment, exclusivity, and market competition. We also believe the recent development of manufacturer drug cards has demonstrated that technology does not pose a barrier to card sponsors passing through discounts to beneficiaries or pharmacies.

Looking specifically at the estimates in Dr. Schondelmeyer's statement, we note that he provides some broad information about the assumptions used to develop his impact estimates, but does not document the specific assumptions used in the calculation of the $2 billion estimate. In addition, it is unclear on which year the $2 billion estimate is based. Possibly, Dr. Schondelmeyer is using 2000 data since he cites a figure of $140.7 billion for industry sales, which is consistent with 2000 data from the National Association of Chain Drug Stores.

As mentioned previously in the preamble, we estimate that the initiative will result in beneficiary savings from a combination of manufacturers rebates or discounts and pharmacy discounts of $1.2 billion to $1.6 billion in 2004, representing 0.60 to 0.79 percent of total national retail prescription drug sales. Dr. Schondelmeyer estimates a $2 billion dollar impact on community pharmacies alone. Using the total sales figure he provides of $140.7 billion, this represents 1.4 percent of industry sales.

If, in fact, he is using 2000 data on which to base his estimate, for comparison purposes our estimate of savings in year 2000 dollars ranges from $719 to $958 million, representing 0.59 to 0.79 percent of total national aggregate retail prescription drug sales.

In sum, we believe that Dr. Schondelmeyer's estimate of a $2 billion impact on community pharmacies overestimates the impact of the initiative on community pharmacies described in this final rule. Dr. Schondelmeyer's analysis, cited by commenters, predates the initiative's provision related to manufacturer rebates or discounts and the recent developments of manufacturer discount programs. Dr. Schondelmeyer assumes higher overall savings than we expect from this initiative. He also assumes that all beneficiary savings will come as a result of pharmacy discounts. We disagree with this assumption because in the Medicare initiative, manufacturer rebates or discounts are a pre-requisite for endorsement, and thus will be an important source of beneficiary savings, along with increased use of generic drugs.

8. Regulatory Flexibility Act Analysis of Effects on Small Entities

a. *General*

The Regulatory Flexibility Act (RFA) requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If a rule is expected to have a significant economic impact on a substantial number of small entities, the RFA requires that a regulatory flexibility analysis be performed.

The Medicare-Endorsed Prescription Drug Card Assistance Initiative may involve some impact on a substantial number of small businesses. The current market for delivery of pharmaceutical products, by its nature involves small businesses, similar to other professional health care services such as physician services. The current health insurance market demonstrates that insurance companies, pharmaceutical benefit managers, and others such as health maintenance organizations (HMOs) have been able to enter into arrangements similar to those in this Medicare initiative involving the participation of large and small pharmacy and drug store firms. These arrangements have resulted in lower prescription drug prices being made available to consumers who have insurance coverage for prescription drugs. There is evidence that both large and small pharmacies and drug stores participate in these arrangements with pharmaceutical benefit managers, and that pharmaceutical benefit managers are able to offer (employer) clients pharmacy networks containing the majority of retail pharmacy outlets. In addition, many pharmacies, including small pharmacies, offer senior discounts, and doing so in the context of this Medicare initiative may not be significantly different than current practice for some pharmacies.

The role of individual pharmacies, including small pharmacies, in this Medicare initiative is a critical one: they will be an integral part of the pharmacy networks of Medicare-endorsed card programs, serving Medicare beneficiaries at the point of retail sale. The objectives of the initiative and the related design requirements will preclude an individual pharmacy or drug store from operating the full scale of the contemplated drug card assistance initiative that will be necessary to obtain an endorsement. Individual pharmacies could participate in the initiative by voluntarily entering into a drug card program's network with other pharmacies. Individual pharmacies are not in a market position to meet the requirements for endorsement, including the ability to serve a large number of enrollees and to garner manufacturer rebates. Retail pharmacy chains could possibly be organized to meet the requirements of Medicare endorsement explained elsewhere in this final rule because of their size, type of experience and infrastructure.

Convenient access to retail pharmacies, regardless of size or ownership, by Medicare beneficiaries will be an important feature of the initiative. As discussed elsewhere in this final rule, a discount card sponsor will have to have a contracted pharmacy network of sufficient size to demonstrate that at least 90 percent of Medicare beneficiaries in metropolitan areas served by the program live within 5 miles of a contracted pharmacy (90/5) and at least 90 percent of Medicare beneficiaries in non-metropolitan areas served by the program live within 10 miles of a contracted pharmacy (90/10). This access ratio standard is consistent with the access standard of most insured products, and we believe it will require card sponsors to support an extremely broad network of retail pharmacies.

Given the access ratio requirements and the provision that Medicare-endorsed programs will not be allowed to offer a mail order only option, we believe that most pharmacies and drug stores (both chain and independent) will be invited and encouraged to participate in card programs' networks, particularly small pharmacies in rural areas. This is generally the case in the current insured market, and we do not anticipate significantly narrower networks in the Medicare-endorsed card programs. There are over 55,000 retail pharmacies in the United States. According to a report prepared for us by PricewaterhouseCoopers (PWC) ("Study of the Pharmaceutical Benefit Management Industry," June 2001), pharmacy benefit managers (PBMs) offer, as a general practice, standard national pharmacy networks, with 42,000 pharmacies in the typical network. The PWC study also reports that one leading PBM has 50,000 pharmacies in its more restricted

network. Also, according to PWC, two large national PBMs have 98 percent of all pharmacies in the United States in their standard networks.

The inclusive access standard required for Medicare endorsement, coupled with the industry norm for pharmacy networks under insured products as reported by PWC, lead us to believe that a very large number of small pharmacies and drug stores will be included in the networks of Medicare-endorsed drug discount card programs. Further, we believe that small entities in rural areas especially will be included in order to meet the non-metropolitan 90/10 standard for endorsement. Card sponsors will be expected to report on the participation of independent pharmacies in their networks.

We received a comment concerning the role of small pharmacies in the initiative and a comment about outreach to small pharmacies during the regulatory development process.

Comment: One commenter voiced concern that small pharmacies and drug stores will have difficulty meeting the criteria for Medicare endorsement of card sponsors and asserted that we should consider alternatives such as endorsing small pharmacies as card sponsors or granting small pharmacies the right to join any card sponsor's drug card program. The commenter also recommended that we consider ways to facilitate small pharmacies pooling together for the purposes of obtaining Medicare endorsement, such as developing a database to help small pharmacies identify others that are interested in pooling together, offering small pharmacies guidance and templates related to pooling together, and minimizing administrative costs borne by small pharmacies pooling together.

Response: As stated previously, small pharmacies will play a critical role in the initiative by being an integral part of the card sponsors' pharmacy networks. However, we do not believe that individual pharmacies are in a position to be a Medicare-endorsed card sponsor. Individual pharmacies will not have the capacity nor the market position to leverage the purchasing power of a large number of beneficiaries to obtain manufacturer rebates or discounts—one of the key objectives of the initiative. The commenter's proposal that small pharmacies and drug stores be permitted to join any card sponsors' program of their choosing is addressed in more detail elsewhere in the preamble. In short, we believe card sponsors will invite and encourage most pharmacies to participate in their card programs, making this proposal unnecessary.

The commenter offered a number of suggestions for making it easier for small entities to pool together to become a Medicare-endorsed card sponsor. We have made several changes to the years of experience and covered lives criteria for endorsed card sponsors, making it easier for more organizations, including smaller entities pooling together and working with other organizations, to gain Medicare endorsement. These changes are discussed in more detail previously in this preamble.

With respect to the commenter's suggestions that we create a database of small entities interested in pooling together and offer small pharmacies guidance and templates related to pooling together, we believe that this function in this private sector-based initiative is more appropriate for trade associations. However, with regard to guidance to potential applicants as discussed earlier in the preamble, following publication of the solicitation, we will entertain questions from potential applicants to clarify the final application requirements.

Finally, with respect to the commenter's assertion that administrative costs borne by small pharmacies pooling together should be minimized, we believe that by pooling together, entities will be able to spread the administrative costs across a number of organizations, thereby reducing the burden on any one entity. In addition, card sponsors can charge beneficiaries a one-time $25 enrollment fee and use manufacturer rebates to support administrative costs. As discussed elsewhere in this preamble, to the extent that small entities pooling together form regional card programs, they will be responsible for a smaller share of the initial start-up costs than national programs. The allocation of administrative costs beyond the initial start-up costs is left to the discretion of the consortium.

Comment: One commenter stated that we had not adequately reached out to small businesses during the rulemaking process, as required by the RFA. The commenter encouraged us to conduct outreach and develop a dialogue with small businesses throughout the regulatory development process.

Response: We believe that input from small business in the regulatory development process is important. We did receive comments from representatives of small businesses in response to the proposed rule. In addition, in May 2002, our Administrator made a presentation about the proposed Medicare-Endorsed Prescription Drug Card Assistance Initiative and other of our efforts to improve Medicare beneficiary access to prescription drugs, including a question and answer period, at the National Community Pharmacists Association's Annual Conference on National Legislation and Public Affairs. We also have met with the Small Business Administration to more generally look at how we can improve our process and analyses related to the Regulatory Flexibility Act.

b. Estimated Impact on Small Entities

HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To assess whether the Medicare-Endorsed Prescription Drug Card Assistance Initiative meets these HHS criteria, we estimated the number of small entities affected and the average percentage impact on revenues. We also conducted a sensitivity analysis to estimate the impact on revenues for pharmacies with a higher than average rate of customer participation in the Medicare-Endorsed Prescription Drug Card Assistance Initiative. These analyses found that while the initiative is expected to have some impact on a substantial number of small entities, it is not expected to have a significant economic impact. Based on these analyses, we certify that the Medicare-Endorsed Prescription Drug Card Assistance Initiative does not have a significant economic impact on a substantial number of small entities.

As a result, we are not required to perform a regulatory flexibility analysis. Nevertheless, due to the concerns voiced by some commenters about the potential effects of the rule on small businesses, we have included in this section or in other sections of the preamble the various issues that are to be included in a regulatory flexibility analysis. To avoid repetition, we have not duplicated each of them here. In preceding sections of the preamble, we have included a description of the initiative and its objectives. In this and subsequent sections of the preamble, we include an estimate of the number of small entities affected and a description of the alternatives considered to minimize the economic impact on small pharmacies. We have not included a discussion of reporting, recordkeeping, and other compliance requirements for small pharmacies because we make no such requirements on small pharmacies—only for card sponsors.

We received comments concerning the HHS standard for economic impact and concerning requirements related to regulatory flexibility analyses.

Comment: Several commenters expressed concern that the HHS standard for significant economic impact does not take into account the impact on small pharmacies' and drug stores' profit margins and their financial viability.

Response: HHS uses revenues rather than profit margins to estimate the economic impact of a rule on small entities because in our experience reliable data on profit margins are very difficult to obtain, while reliable data on revenues are much more readily available and straightforward.

One example of the difficulties in obtaining reliable profit margin data and in how to interpret those data in the case of small businesses relates to how owners' salaries are treated. Profit margin estimates can vary substantially depending on how one considers the owner's salary relative to the profits of the business. For example, a 2002 study on the pharmacy industry conducted by Booz Allen Hamilton for us cites data from the National Community Pharmacist Association (NCPA), which indicate that independent pharmacies had average profit margins, in 2000, of nearly 8 percent when owners' salaries were included and about 3 percent when owners' salaries were excluded. Furthermore, when the Internal Revenue Service (IRS) determines income tax liability for sole proprietorships, it considers the businesses incomes to be profits plus the owners' salaries. In the case of pharmacies and drug stores, IRS data on sole proprietorships show fairly similar profit margin levels with NCPA—about 7 percent including owners' salaries in the late 1990s. Thus, if profit margins were used to determine the economic impact of rules on small businesses, how the owners' salaries are treated could significantly alter findings. Furthermore, data are generally not available to separate the portion of an owner's salary that compensates for labor versus the portion that reflects profit taking in the form of salary, which makes developing an accurate estimate of small businesses' profit margins very difficult.

While the HHS standard for significant economic impact focuses on revenues rather than profit margins, as stated elsewhere in the preamble, we have taken a number of steps to mitigate the financial impact on small pharmacies and drug stores.

Comment: A few commenters asserted that the proposed rule should have included an initial regulatory flexibility analysis (IRFA). One of the commenters contended that the proposed rule did not certify that the Medicare-Endorsed Prescription Drug Card Assistance Initiative would not have a significant economic impact on a substantial number of small entities, and as a result an IRFA was required.

Response: The proposed rule included an analysis of the effect of the initiative on pharmacies' and drug stores' revenues both on average and for pharmacies and drug stores with a higher than average share of their customers enrolled in the program. Based on these analyses, the proposed rule stated: "the impact of the proposed Medicare endorsement initiative, on average, is estimated to be well below the 3 to 5 percent of revenues that HHS uses as the measure of significant economic impact. Furthermore, our sensitivity analysis indicates that even taking into account significantly different market characteristics, and even if all of the impact were assumed to be coming from pharmacies rather than our proposed program design that requires manufacturer rebates or discounts, we did not generate a scenario that reaches the HHS test for significant economic impact." (67 FR 10281, March 6, 2002) Section 605(b) of the RFA permits an agency to certify in the proposed rule or the final rule. The final rule includes a certification.

c. Number of Small Entities Affected

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. The Small Business Administration (SBA), on its Web site (*http://www.sba.gov/size/naicstb2-ret.html*), provides a size standard for pharmacies and drug stores (NAICS code 446110 or SIC code 5912) of revenues of $6 million or less annually for the purpose of determining whether entities are small businesses. The revenue standard for small pharmacies and drug stores was recently increased from $5 million to $6 million in February 2002 to account for inflation.

To assess the number of small entities affected by this initiative, and the amount of revenue involved for these entities, we analyzed data from several sources. We examined data from the U.S. Census Bureau's 1997 Economic Census (Table 4 on Retail Trade—Subject Series), which provides data on the number of pharmacies and drug stores by level of revenue. To identify small pharmacies and drug stores, we looked at firms with less than $5 million in revenues. Although SBA's revenue standard for small pharmacies and drug stores was increased to $6 million in 2002 to account for inflation, we use $5 million as the standard in our analysis because we are working with 1997 data so an inflation adjustment is not needed. According to the Census Bureau data, there were a total of 20,815 business firms that were pharmacies and drug stores that operated for the entire year in 1997. Those 20,815 firms operated 41,228 establishments (some entities selling prescription drug products are not included in this count, including supermarkets and mass merchants). Of the total firms, 20,126 (or 96.7 percent) were firms that had sales of less than $5 million, and these same firms operated 21,226 establishments or 51.5 percent of the pharmacies and drug store class of trade in the Census Bureau data.

In addition to traditional pharmacies and drug stores, prescription drugs are sold through supermarkets and mass merchants. The National Association of Chain Drug Stores (NACDS) offers data that include these outlets, so we examined this data source as well. The NACDS analyzes industry data from a variety of sources, including IMS Health, the National Council of Prescription Drug Programs, and American Business Information, and reports industry statistics on their Web site (*http://www.nacds.org*). For 1997, NACDS reports a total of 51,170 community retail pharmacy outlets, of which 20,844 were independent and 19,119 were chain drug stores (for a total of 39,963)—a number very similar to the Census Bureau's 1997 count of 41,228 pharmacy and drug store establishments. We assume that there is a great deal of overlap between the 21,226 establishments that the Census Bureau identifies as those with sales of less than $5 million and the NACDS report of 20,844 independent pharmacies in 1997. For 2001, NACDS reports 55,581 community retail pharmacy outlets, of which 20,647 are identified as independent drug stores.

In addition to the number of outlets, we examined revenues. The Census Bureau data indicate that, in 1997, total pharmacy and drug store sales for firms operating the entire year were $97.47 billion, of which firms with $5 million or less in sales accounted for 25.5 percent ($24.82 billion). However, these sales include more than just prescription drugs, as most pharmacies and drug stores sell other products. Since firms may differ in the proportion of revenues obtained from prescription drugs, we think that the analysis should focus, to the extent possible, on revenues from prescription drugs, rather than the broader set of sales occurring through pharmacies and drug stores, so

we also examined information prepared by our Office of the Actuary (OACT). It is important to note that focusing only on prescription drug sales, rather than all sales through this class of trade, yields an estimated impact that is larger than the actual impact on total sales.

From IMS' National Prescription Audit data obtained by OACT, it is possible to estimate the portion of sales occurring through independent and chain pharmacies. The data obtained by OACT do not permit analysis by firm size. However, these data are specific to prescription drug sales for a more recent time period. Furthermore, we believe that there is a great deal of overlap between the firms identified as independent pharmacies and the small pharmacy and drug store firms identified in the Census data. Consequently, we think that the data from the Prescription Drug Audit are an appropriate source for analysis.

For 1997, those data indicate that 29.2 percent of sales were through independent drug stores—a figure slightly higher than the share (25.5 percent) indicated by the Census data. For 2001, the data obtained by OACT indicate that 23.7 percent of sales were through independent pharmacies. For purposes of calculating the share of revenues from prescription drug sales through small firms, we think it is reasonable to use the more recent estimate of prescription drug sales through independent pharmacies obtained from our analysis of the Prescription Drug Audit for 2001.

The Census Bureau data contain information on supermarkets (NAICS code 445110) and mass merchants (discount or mass merchandising department stores-NAICS code 4521102, and warehouse clubs and superstores-NAICS code 45291). We assume that for both supermarkets and the mass merchants, prescription drug sales comprise a small share of sales, and consequently have not included them in this small business analysis. This assumption is supported by data from the Census Bureau, Prescription Drug Audit, and NACDS web site. The 1997 Census data indicate that total supermarket product sales were $351.4 billion. OACT's analysis of 1997 data from the Prescription Drug Audit indicates that $8.8 billion in prescription drug sales occurred through food stores, or 2.5 percent of total product sales. Similarly, the 1997 Census data indicate that total product sales for these two categories of mass merchandisers were $208 billion. Since data from the Prescription Drug Audit obtained by OACT include mass merchants with other chain stores, we used prescription drug sales data from the NACDS web site. The NACDS web site indicates that prescription drug sales through the mass merchant category were $8.9 billion in 1997, or 4.3 percent of total product sales. Furthermore, the fact that businesses are identified as supermarkets and mass merchandisers seems to indicate that prescription drugs are not their major line of trade.

We received one comment concerning analysis of the number of small business affected by the initiative.

Comment: One commenter asserted that the proposed rule did not include an assessment of the number of small entities affected by the proposed Medicare-Endorsed Prescription Drug Card Assistance Initiative, as required by the RFA.

Response: Both the proposed rule and this final rule include an analysis of the number of small entities potentially affected by the Medicare-Endorsed Prescription Drug Card Assistance Initiative. The number of small or independent pharmacies and drug stores affected is estimated using data from the Economic Census (1997) and NACDS (1997 and 2001). Both of these data sources indicate that there are about 21,000 small or independent pharmacies and drug stores in the United States.

d. Average Estimated Economic Impact on Small Pharmacies

As indicated previously, HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent. To develop an estimate of the impact of the initiative on prescription drug retail sales associated with small pharmacies and drug stores, we take our national estimates in Table 3 and make assumptions about the percent of total retail prescription drug sales through small pharmacies. In addition, we make assumptions about the distribution across large and small pharmacies and drug stores of prescription drug sales to Medicare-endorsed discount card enrollees.

Assuming that 23.7 percent of total retail pharmacy sales are through small pharmacies (based on OACT's estimate of the share of total retail sales through independent pharmacies in 2001), the share of total national prescription drug sales through small pharmacies and drug stores will be $48.3 billion in 2004, $54.0 billion in 2005, and $73.3 billion in 2008. If we assume that the population most likely to enroll in the Medicare-endorsed drug discount card programs splits its purchases between large and small pharmacies in the same proportion as the total population, then the estimated sales involved in the Medicare-Endorsed Prescription Drug Card Assistance Initiative through small pharmacies and drug stores will be $3.1 billion for 2004, $3.5 billion in 2005, and $4.9 billion in 2008—accounting for less than 7 percent of prescription drug sales. Consequently, the portion of the estimated beneficiary savings related to retail prescription drug sales occurring through small pharmacies and drug stores ranges from: $288 to $384 million in 2004, $323 to $431 million in 2005, and from $452 million to $603 million in 2008. These amounts, as a share of the national retail prescription drug sales occurring through small pharmacies and drug stores, represent a range of 0.60 percent to 0.79 percent in 2004, from 0.60 to 0.80 percent in 2005, and from 0.62 to 0.82 percent in 2008.

This is likely to be an overestimate of the economic impact on small pharmacies and drug stores, as this economic impact will not be borne entirely by pharmacies. Card sponsors will be required to obtain substantial manufacturer rebates or discounts that will defray the cost to pharmacies of providing discounts on retail drug prices. In addition, to the extent that the discount card programs achieve larger savings from drug manufacturers than are reflected in our estimate, the additional beneficiary savings could come from drug manufacturers and not local pharmacies. In addition, because of the education initiative, some of the savings to beneficiaries will come as a result of increased use of generic drugs.

Other caveats to consider are the following: Our spending estimates assume no effects of the Medicare-Endorsed Prescription Drug Card Assistance Initiative on beneficiary drug use. It is possible that lower drug prices will lead to greater use, resulting in a smaller impact on pharmacy revenues. It is also possible that pharmacy services associated with the card will lead to some drug substitution, simplification of drug regimens, or avoidance of complications that require further drug therapy, leading to a somewhat greater impact on pharmacy revenues.

e. Sensitivity Analysis

In order to assess the potential for differing distributional impacts among pharmacies, we conducted a sensitivity analysis. We estimate that the total prescription drug spending involved in the Medicare-Endorsed Prescription Drug Card Assistance Initiative will comprise, on average, less than 7 percent of revenues, with the economic

impact of the initiative on total revenues related to prescription drugs estimated at less than 1 percent. For purposes of a sensitivity analysis, we estimate that in order to reach the HHS measure of significant economic impact of 3 to 5 percent of revenues, it will be necessary to have prescription drug revenues resulting from the initiative account for at least 24 percent of a business's revenues. In the sensitivity analysis, we developed a hypothetical geographic locality skewed to contain a very large share of Medicare beneficiaries who enroll in the initiative. Under this highly skewed assumption, we estimated a maximum share of 17.7 percent of a business's total prescription drug revenues would be associated with the Medicare-endorsed discount card, with an economic impact of the initiative of 2.2 percent of prescription drug sales.

As noted previously, this economic impact will not be borne entirely by pharmacies, because card sponsors will be required to obtain manufacturer rebates or discounts that will defray the cost of pharmacies providing discounts on retail drug prices. In addition, part of the savings to beneficiaries also comes from increased use of generic drugs. Thus, the sensitivity analysis still yielded an impact level below the 3 to 5 percent of revenues used by HHS to measure significant economic impact. The following discussion describes the assumptions and supporting data used in the sensitivity analysis.

In order to prepare the sensitivity analysis, we identified key variables that could change the market share of revenues accounted for by enrollees in this initiative and the consequent impact resulting from the Medicare-Endorsed Prescription Drug Card Assistance Initiative. One key variable is the Medicare population as a portion of a pharmacy's geographic locality customer base. We assume that a pharmacy's customer base is derived in large part from the population in close geographic proximity to its business location. Therefore, we examined the variation in the geographic distribution of the Medicare population. On average nationally, Medicare beneficiaries were 13.6 percent of the total population as of July 2000. Using several States with the highest Medicare population rates, we examined, at the county level, the percent of the population over age 65 based on Census Bureau data. For counties with high elderly population compositions, we obtained the actual counts of Medicare enrollment (aged and disabled) and calculated Medicare enrollment as a percentage of the counties' populations. Based on this analysis at the county level, we estimate in a high-end scenario that Medicare beneficiaries could potentially comprise up to approximately 36 percent of a geographic area's population.

A second key variable that we assume could alter the revenues being impacted is the percent of the Medicare population in an area that may enroll in the Medicare-endorsed discount card programs. As discussed previously, we think that the beneficiaries most likely to enroll in the Medicare-endorsed discount card programs will be those without insurance coverage for prescription drugs (including those with supplemental insurance coverage that does not include prescription drugs) and those with Medigap drug coverage. In terms of demographic variables, the highest rates of Medicare beneficiaries without drug coverage occur among Medicare beneficiaries in non-metropolitan areas (36 percent as of 1999). Our analysis of the 1999 MCBS data also indicates that 13 percent of beneficiaries in non-metropolitan areas have individually purchased insurance policies that provide drug coverage. While individually purchased insurance policies include, but are not limited to, standardized Medigap policies, for the sake of creating an upper bound estimate of the percent of Medicare beneficiaries in a geographic area that might have Medigap standardized drug coverage, we use 13 percent.

For purposes of a sensitivity analysis, we developed a hypothetical geographic location with a large share of Medicare beneficiaries that also had a high portion of beneficiaries without drug coverage. We assumed that 36 percent of people in the hypothetical geographic area were Medicare beneficiaries and 36 percent of those beneficiaries had no drug coverage. We also assumed that the hypothetical Medicare population would have a higher portion (13 percent) of beneficiaries who obtained drug coverage through Medigap.

We estimate that nationally approximately 9.7 million Medicare beneficiaries will enroll in the Medicare-endorsed discount card programs by 2004, accounting for an estimated 3 percent of the total U.S. population. Adjusting the data, using the population and drug coverage weighting factors for the sensitivity analysis and using the overall uptake assumptions (about 75 percent overall uptake in the Medicare population without drug coverage and 95 percent in the Medigap population with drug coverage), results in the hypothetical area having approximately 14 percent of its total population participating in the Medicare-Endorsed Prescription Drug Card Assistance Initiative. Therefore, about 86 percent of the total hypothetical area's population will not participate in the initiative, including both Medicare beneficiaries and non-Medicare beneficiaries.

To estimate the impact of the initiative on prescription drug revenues in the hypothetical locality, we estimated the per capita drug spending for participants in the initiative and non-participants in the initiative in the hypothetical area. We estimated per capita drug spending to be $1,289 for participants and $1,001 for non-participants in the hypothetical locality in 2004. These figures differ from per capita estimates for participants and non-participants at the national level due to the skewed demographic composition of the hypothetical area (which would have a large Medicare population and have beneficiaries with Medigap drug coverage comprising a slightly greater share of drug discount card program participants than at the national level). The per capita spending estimates for both participants and non-participants include individuals without drug expenditures.

For participants in the Medicare-endorsed prescription drug card programs, the per capita value consists of the estimated total spending for enrolled beneficiaries without drug coverage plus the share of spending for the Medigap enrollees that is purchased through the initiative, divided by the total number of participants.

For purposes of calculating the per capita spending for non-participants in the Medicare-Endorsed Prescription Drug Card Assistance Initiative, we used prescription drug spending data from the National Health Accounts and estimates from the MCBS to develop per capita drug spending estimates for the non-Medicare population and for the Medicare population not participating in the initiative. These two per capita values for non-participants in the initiative were then weighted relative to the population distribution they represented in the hypothetical area's non-participant population to create a per capita drug spending for non-card participants.

We then adjusted per capita drug spending for non-participants to include participants' drug spending that was not purchased through the discount card initiative (the portion of drug spending covered by Medigap plans) to yield an estimate of total drug spending outside of the drug discount card initiative. Consequently, this inclusion of the Medigap covered drug spending means that the per capita drug spending figure for non-participants is this adjusted per

capita (including the Medigap related spending) for the hypothetical area rather than the actual per capita for the non-participant population in the hypothetical area. For purposes of the sensitivity analysis calculation of the impact of the discount card initiative, we used the upper bound figure of all drug spending as a high-end assumption.

The results of the sensitivity analysis are shown in Table 4. For the hypothetical area that is skewed to have a very high Medicare beneficiary population composition and a high enrollment in the discount card initiative, the negative impact on revenues from prescription drugs reached 2.2 percent, still below the HHS measure for significant economic impact of 3 to 5 percent of revenues. Furthermore, as noted above, not all of the 2.2 percent will be borne by the pharmacy, since discount card sponsors will be required to obtain manufacturer rebates or discounts and pass those through to beneficiaries and pharmacies in order to receive Medicare endorsement. In addition, part of the savings also comes as a result of beneficiary use of lower cost generic drugs.

We recognize that reliance on nationally calculated per capita averages weighted for different demographic compositions has limitations, and pharmacies may have customer populations with per capita drug spending levels that differ from the population specific averages calculated at a national level. We solicited comments, and particularly data, that could help to inform further analysis of distributional effects. We also solicited comments and information on whether there is evidence that Medicare beneficiaries without drug coverage use small pharmacies and drug stores more or less than the share of revenues that these firms represent in terms of the overall market.

Comment: We received only one comment germane to these issues. One commenter cited testimony in *National Association of Chain Drug Stores* v. *Thompson,* No. 01–1554 (D.D.C. 2001) by a pharmacy that claimed that almost all of its patients would be eligible for the initiative. The pharmacy testified that it delivered medicines to 20 long-term care facilities and 35 residences daily.

Response: The pharmacy cited has a substantial long-term care business. We believe that the effect on the pharmacy will not be as significant as anticipated because we do not expect many long-term care facility residents to enroll in the Medicare-Endorsed Prescription Drug Card Assistance Initiative. As discussed in more detail elsewhere in the preamble, while long-term care facility residents are not prohibited from participating in this initiative, most residents of long-term care facilities will not benefit from the initiative. In addition, many long-term facility residents are Medicaid beneficiaries and have their prescription drugs paid for through that program. We plan to explicitly state in beneficiary outreach and educational materials that the initiative will not be beneficial for most long-term care facility residents.

Because we received no other data or comments to inform the distributional analysis, we believe that the sensitivity analysis constitutes a strong test of the initiative's distributional effects. Furthermore, our sensitivity analysis indicates that even taking into account significantly different market characteristics, and even if all of the impact were assumed to be coming from pharmacies rather than our program design that requires manufacturer rebates or discounts, we did not generate a scenario that reaches the HHS test for significant economic impact.

TABLE 4.—NATIONAL AVERAGE VERSUS SENSITIVITY ANALYSIS—HYPOTHETICAL EXAMPLE

[In percent]

2004	Discount card participants	Discount card non-participants	Total population
National Average for Comparison Purposes:			
Percent of Total Population	3.34	96.66	100.00
Percent of Total Prescription Drug Sales	6.41	93.59	100.00
Estimated Beneficiary Savings as a Percent of Drug Sales	12.40	0.00	0.79
Hypothetical Example:			
Percent of Total Population	14.30	85.70	100.00
Percent of Total Prescription Drug Sales	17.68	82.32	100.00
Estimated Beneficiary Savings as a Percent of Drug Sales	12.40	0.00	2.19

We received several comments concerning the potential impact of the initiative on small pharmacies.

Comment: Several commenters expressed concern that the Medicare-Endorsed Prescription Drug Card Assistance Initiative could have an adverse financial effect on small pharmacies and drug stores and could result in business closures. A few commenters contended that the initiative will adversely affect small community pharmacies' finances, resulting in less access to medicines or pharmacists services for beneficiaries, particularly, one commenter noted, in rural areas.

Response: We believe that the Medicare-Endorsed Prescription Drug Card Assistance Initiative will not significantly harm the financial viability of small pharmacies and drug stores. The amount of revenue involved in the initiative and the amount of beneficiary savings expected represents a small share of overall national retail prescription drug sales. Total prescription drug spending for individuals expected to enroll in this initiative represents less than 7 percent of national retail prescription drug sales, and estimated beneficiary savings from the initiative represents less than 1 percent of national retail prescription drug sales. In addition, there are many forces in today's market influencing the delivery of prescription drugs, including expansion in the types of sources through which individuals can obtain prescription drugs (for example, pharmacies in supermarkets and mass merchants, mail order pharmacies, and most recently, Internet pharmacies). Furthermore, prescription drugs are one of the fastest growing components of health care. Thus, pharmacy revenues can be expected to continue to grow because of increased spending on prescription drugs. Also, the savings to beneficiaries under this initiative will not be borne fully by pharmacies, but come in part from manufacturer rebates and discounts and increased use of

generics. As mentioned elsewhere in this preamble, manufacturer rebates and discounts will be an important component of the savings generated by this initiative.

We have taken a number of steps to mitigate the effect of the initiative on small pharmacies and drug stores. This includes modifying the access ratio to 90/5 in metropolitan areas and 90/10 in non-metropolitan areas, which makes it necessary for card sponsors to have a broad, inclusive pharmacy network; prohibiting Medicare-endorsed card sponsors from providing services only by mail order; requiring that card sponsors obtain manufacturer rebates or discounts and pass a substantial share through to beneficiaries directly or through pharmacies; and requiring card sponsors to sign contracts with pharmacies for their Medicare-endorsed discount card business separate from their other lines of business. Taken together, these features of the initiative give pharmacies negotiating leverage with card sponsors who need pharmacies in order to qualify for Medicare endorsement. The alternatives considered to mitigate the effect on small pharmacies are discussed in greater detail elsewhere in this preamble.

We disagree with commenters who claimed that the initiative will result in less access to prescription drugs or pharmacist services, particularly in rural areas. We believe that the initiative promotes access to prescription drugs by offering beneficiaries reduced prices. The initiative also promotes access to pharmacy services by requiring that card sponsors pass a substantial share of manufacturer rebates or discounts on to beneficiaries directly or indirectly through pharmacies, with enhanced pharmacy services being one of the ways card sponsors can pass discounts on to beneficiaries. With respect to rural areas in particular, we expect that the discount card initiative will promote, not reduce, access in rural areas for the previously stated reasons. In addition, we expect that card sponsors will, as the current market does today, use special arrangements to encourage the participation of rural pharmacies, especially given the specific 90/10 access standard for non-metropolitan areas. We also believe that this Medicare initiative can help the market place adjust to a future Medicare drug benefit.

Comment: One commenter expressed concern that drug card sponsors might retain the manufacturer discounts or rebates, leaving small pharmacies and drug stores to absorb the full discount. The commenter recommended a fixed negotiating fee for card sponsors to prevent this from occurring.

Response: Since this is an educational initiative based on current private market methods for lowering drug costs, we believe that a fixed negotiating fee for card sponsors is inappropriate. In addition, we believe that it is unnecessary because market competition among card sponsors will spur them to pass along the maximum amount possible of rebates and discounts to beneficiaries.

f. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This final rule will not affect small rural hospitals since the initiative will be directed at outpatient prescription drugs, not drugs provided during a hospital stay. Prescription drugs provided during hospital stays are covered under Medicare as part of Medicare payments to hospitals. Therefore, we are not providing an analysis.

F. Alternatives Considered Relative to Pharmacies, Particularly Small Pharmacies

We considered alternatives to a number of decisions made during the development of this initiative, including several that are relevant to small pharmacies. Several policy decisions were made to mitigate the potential impact on small pharmacies and drug stores.

We considered not pursuing this initiative at all. We clearly are committed to working with the Congress on a prescription drug benefit in the context of Medicare reform. We considered not pursuing any other immediate effort to assist and educate Medicare beneficiaries about how to lower their out-of-pocket costs before the enactment and implementation of a Medicare prescription drug benefit. However, we concluded that the Medicare-Endorsed Prescription Drug Card Assistance Initiative is a highly effective way to educate beneficiaries about the tools used by private insurance programs to lower the cost of prescription drugs. We believe that through real world experience with drug discount card programs, Medicare beneficiaries will be better educated concerning the economic and quality decisions made by private sector purchasers and individuals with drug coverage. A Medicare prescription drug benefit will involve the private sector tools currently used by health insurers to lower prescription drug costs and provide higher quality pharmaceutical services. Experience through the Medicare-Endorsed Prescription Drug Card Assistance Initiative will better prepare Medicare beneficiaries, particularly those without drug coverage, to make informed decisions about which drug plan is best for them. Additionally, we will gain experience in educating Medicare beneficiaries about prescription drugs. Pursuing this initiative will also provide beneficiaries with immediate help with the cost of prescription drugs, and also will improve access to better quality prescription-drug-related services. We believe that access to prescription drugs is so fundamental in today's health care environment that beneficiaries should receive information and assistance regarding prescription drug discount programs until a Medicare prescription drug benefit is enacted and implemented.

Since we believe it is in the best interest of Medicare beneficiaries to pursue this initiative, we considered alternatives to major features of the initiative to mitigate its potential effects on pharmacies. First, we considered whether or not to require Medicare-endorsed card sponsors to secure manufacturer rebates. We decided that Medicare-endorsed card sponsors must meet the threshold of garnering manufacturer rebates or discounts from brand name and/or generic manufacturers. In deciding to require manufacturer rebates, we underscore our commitment to mitigating the effect on pharmacies and drug stores, particularly small entities. Since card sponsors will not rely solely on pharmacy discounts to compete for customers, pressure will be relieved from pharmacies. Card sponsors endorsed by Medicare will not be permitted to only negotiate discounts with retail pharmacies.

In addition to requiring manufacturer rebates, we require that a substantial portion of manufacturer rebates and discounts be shared with beneficiaries, either directly or indirectly through pharmacies. Rebates and discounts may be shared in the form of lower prices, pharmacy counseling, incentives for pharmacy participation, or other valuable pharmacy services. Permitting card sponsors to use rebates to fund pharmacy services that ultimately benefit the beneficiary has the potential

to be a positive feature for both pharmacies and beneficiaries.

Another feature that we think can be useful to securing manufacturer rebates or discounts and thus also mitigate the effects on small pharmacies is our proposal for a Gold Star designation, described elsewhere in this preamble and to be forthcoming in a notice of proposed rulemaking. Under this proposal, we would award a Gold Star to those Medicare-endorsed card sponsors securing the highest levels of manufacturer rebates or discounts and passing them through to beneficiaries. Thus, card sponsors would have additional incentives to pass through the highest possible share.

We also considered permitting a mail order-only option. Mail order programs have some popularity and may be a convenient option for some beneficiaries. However, we decided not to propose a mail order-only option because we believe that requiring strong access to retail pharmacies will be in the best interests of beneficiaries; the majority of whom rely on retail pharmacies. Requiring retail access also mitigates the impact of the initiative on small pharmacies that rely on Medicare beneficiaries to make purchases on non-prescription drug items when they enter the pharmacy to fill prescriptions.

We also considered alternatives to ensure access to pharmacies, including small pharmacies. The proposed rule proposed that for the area to be served by the card program sponsor (either national or regional), 90 percent of the beneficiaries would have to live within 10 miles of a contracted pharmacy. However, in this final regulation, we change this standard to be 90 percent of the beneficiaries in metropolitan statistical areas (MSAs) must be within 5 miles of a participating pharmacy (90/5), while 90 percent of beneficiaries in non-MSAs must be within 10 miles of a participating pharmacy (90/10). This more stringent access standard requires card sponsors to establish more inclusive pharmacy networks in order to qualify for Medicare endorsement. Beneficiary access to retail pharmacies is a critical component of this initiative, and we believe that this new standard will preserve beneficiary access to the retail pharmacies that they trust. We believe that changing the access standard to provide for separate criteria for MSA and non-MSA geographic areas will help preserve participation of both small, inner-city pharmacies, some of which are culturally sensitive and linguistically appropriate to the needs of the diverse Medicare beneficiary population, as well as garnering the participation of small rural pharmacies that serve geographically dispersed populations.

We also considered whether or not to require Medicare-endorsed card sponsors to have contractual arrangements with pharmacies, specifically incorporating elements relative to this Medicare initiative. We decided that card sponsors must have contractual arrangements with brand name and/or generic drug manufacturers for rebates or discounts and a contractual mechanism for passing on the bulk of rebates or discounts that are not required to fund operating costs to beneficiaries or pharmacies. In addition, card sponsors must have, specific to this Medicare initiative, contractual agreements with pharmacies ensuring that the rebates or discounts be passed through to the Medicare beneficiaries in the form of lower prices or enhanced pharmacy services. We believe that these provisions protect small pharmacies from changes being made in business relationships with card sponsors without the knowledge and permission of the pharmacy. It provides an opportunity for small pharmacies to negotiate payment for services provided to Medicare beneficiaries in the context of this initiative. The combination of the more stringent access standard discussed previously and the provision for pharmacy network contracts specific to the Medicare initiative provides pharmacies with additional negotiating leverage with card sponsors regarding participation in a card sponsor's pharmacy network. Card sponsors will be expected to report on the participation of independent pharmacies in their networks.

Finally, we also considered whether or not to require that card sponsors negotiate discounts on all drugs. We decided to require that card sponsors offer a discount on at least one drug in the therapeutic categories representing the drugs most commonly needed by beneficiaries. This requirement relieves the pressure on pharmacies since card sponsors are less likely to negotiate discounts on every drug dispensed. In addition, it is not reasonable to expect that manufacturers will provide a rebate or discount on every drug since market share will not move if this is the case.

As noted previously, we believe it is in the best interest of Medicare beneficiaries to pursue this initiative. In doing so, we believe we identified and incorporated major design features that are specifically directed at mitigating the potential impact on small pharmacies and drug stores.

G. Estimated Administrative Costs and Anticipated Benefits

The following cost and benefit analysis is prepared in 2003 dollars; it reflects the major administrative costs to discount card programs that are not a part of usual and customary practice, and the benefits we anticipate in the first and second years of this initiative. The major costs are associated with the start-up and activities of the administrative consortium, the production and distribution of information and outreach materials specific to the Medicare-endorsed discount card programs, and the operation of the customer service call centers. We did not estimate card sponsor costs associated with compliance with the privacy provisions under this rule because we believe card sponsors or organizations contracted by card sponsors to operate the drug card program will very likely be either a covered entity or business associate under the Privacy Rule and the costs for compliance will have already been incurred.

We estimate significantly higher costs in Year One than in Year Two of implementation because of the start-up of the administrative consortium and a very large initial enrollment that is assumed in the first year only. One cost reflected in Year Two that is not in the Year One estimate is the review of card sponsors' information and outreach materials, which will be our responsibility the first year of the initiative; the administrative consortium will assume this responsibility in the second year.

For purposes of this analysis, and consistent with the methodology used in the impact analysis, we assume that Year One enrollment is equal to 100 percent of the number of beneficiaries that the impact analysis assumes will be enrolled by the first full year of operation (9.7 million beneficiaries). We apply a 1.3 percent growth factor to estimate Year Two enrollment. The basis of this growth factor is Table 3 of the Medicare Trustees Reports, March 26, 2002.

Table 5 reports the per-card program sponsor costs and the per new enrollee costs for national and regional card programs for each group of administrative functions associated with a significant cost, as well as the total costs. These costs are also presented in relation to the number of new enrollees expected to enroll in each of Year One and Year Two to demonstrate these costs relative to one possible revenue stream for the card programs, a one-time enrollment fee of up to $25.

While any entity that meets all of the requirements in this regulation will be eligible to enter into an agreement with us to receive a Medicare endorsement, for purposes of estimating these costs, we assume that 15 drug card programs will be endorsed. Of those 15, we assume, for the purpose of this analysis, that 10 will be national programs (including 50 States and Washington, DC) and 5 will be regional programs (including 4 States). We do not make adjustments for differences in Medicare population per State, which would cause the actual impact on regional programs to vary.

1. Private Sector Administrative Consortium, Its Start-Up and Activities

Drug card sponsors are required, as a term of endorsement, to agree to, and demonstrate the ability to, jointly administer, abide by the guidelines of, and fund a private administrative consortium with other Medicare-endorsed prescription drug card sponsors. It is expected that the consortium will be fully operational when the card programs begin outreach and enrollment in Year One.

Included in the following cost and benefit estimate are: (1) The start-up costs of the consortium and its activities, (2) staffing of the consortium, and (3) hardware costs for systems to be developed and maintained by the consortium.

A cost estimate was produced for key activities associated with the start-up of the administrative consortium, and the development of the specifications and software to run the enrollment exclusivity system as well as the price comparison web site. These activities and their estimated costs include:

- Analysis and development of recommendations for an appropriate organizational structure and governance, including review of legal considerations, $.48 million.
- Specification of requirements for the enrollment exclusivity system and software development, $.35 million.
- Options development for financial management for the administrative consortium, $.41 million.
- Development of a transition plan from consortium formation through full operation, $.12 million.
- Specification of requirements for the price comparison web site and software development, $.31 million.
- Contract support to the consortium during transition for management functions, $.22 million.
- Contract support for the consortium webmaster to implement the enrollment exclusivity system and the price comparison web site (hardware not included), $54,106.

These activities and their estimated costs equal $1.94 million for the start-up of the administrative consortium.

As an additional cost in the first year of operation, we assume that the administrative consortium will hire or retain the services of several professionals. We use national mean hourly wage data produced by the U.S. Department of Labor, Bureau of Labor Statistics, and reported in "Occupational Employment Statistics, 2000 National Occupational Employment and Wage Estimates." Administrative consortium staff and their estimated 2000 national mean hourly wage rates are as follows:

- Public Relations Manager—$29.54
- Lawyer—$43.90
- Computer Programmer—$29.31
- Pharmacist—$33.39
- Executive Secretary or Administrative Assistant—$15.63

We age these wages to 2003 dollars using a 2001 adjustment of 5.6 percent, a 2002 adjustment of 3.1 percent, and 2003 adjustment of 4.6 percent found in Table III.A1 of the 2002 Annual Report of the Board of Trustees of the Federal Hospital Insurance Trust Fund *(http://www.hcfa.gov/pubforms/tr/hi2002/tabiiial.htm)*. We adjust these wages upward to include compensation (non-wage benefits) using an adjustment factor of 1.357, based on Table 6 of a U.S. Department of Labor, Bureau of Labor Statistics report entitled "Employer Costs for Employee Compensation—March 2002," which reports that national wages and salaries for white collar occupations represent 73.7 percent of total wages and compensation. We assume that the administrative consortium will hire or retain the services of each type of employee on a full-time basis of 2,080 hours per year, except the lawyer and the pharmacist, whom we assume will work one-half of that time. These first year costs actually reflect a 15-month period to accommodate a 3-month consortium start-up before card programs becoming operational. Therefore, we have adjusted the first year estimates upward to reflect 3 additional months of wages, compensation, overhead, and rent for the consortium staff. The estimated first year wages and compensation will therefore be as follows:

- Public Relations Manager—$118,678
- Lawyer (1/2 time)—$88,185
- Computer Programmer—$117,754
- Pharmacist (1/2 time)—$67,073
- Executive Secretary—$62,794

The estimated total first year costs for wages and compensation is $.45 million.

We estimated overhead costs for these employees using a factor of .5 applied to the total wage and compensation rates for an additional amount of $.23 million. This amounts to a total of $.68 million for consortium staff wages and compensation and overhead. In Year Two, we expect these staff wages and compensation, as well as overhead costs to be equal to a 12-month period in Year One, $.54 million.

We estimate the cost (in 2003 dollars) of leasing space for the administrative consortium staff of five using a 2002 estimate provided by a commercial real estate broker of $20 per square foot for full service space leased in a metropolitan area. We apply this rate to an estimated 150 square foot office per worker, an estimate provided by the staff of the Government Services Administration (GSA), over a 15-month period for a total amount of $.23 million. In Year Two, costs associated with leasing space for the administrative consortium staff are based on a 12-month period, or $.18 million.

Following are the systems specifications we used to estimate the costs of hardware to run an enrollment exclusivity system and a price comparison web site. One administrative responsibility of the consortium will be to ensure that beneficiaries are not enrolled in more than one Medicare-endorsed prescription drug card program at the same time. We assume that this will require the administrative consortium to develop and maintain a secure electronic enrollment exclusivity system that will be populated by and accessible only by the administrative consortium and endorsed sponsors; as stated previously, we assume 15 card sponsors will be endorsed.

For the purpose of defining the capacity needed for this system, we also assume that the system will maintain a unique record for each beneficiary enrolled by a card sponsor. The record will contain such information as name, address, telephone number, a unique number identifier, date of enrollment, date of disenrollment, card program identifier, provision for enrollment changes, and whether the beneficiary was group enrolled through the sponsor. We estimate the number of system transactions, most of which will occur in any year in a 2-month period, based on the estimated 9.7 million beneficiaries who will likely join, adjusted for disenrollment and reenrollment as well as for lost cards as described below. We do not know what

the actual rate of voluntary disenrollment will be for this initiative; it could be lower or higher than the 2000 Medicare+Choice disenrollment rate used below, depending, for example, on how much a beneficiary's card program changes its formulary and drug prices within the limits we established and whether these changes affect the drugs the beneficiary takes. Also, the voluntary disenrollment rate will depend on the diligence of beneficiaries in tracking any changes to the formularies and drug prices of the card programs they join and the perceived value of these changes relative to comparable information available to them on other card programs.

We assume that of the 9.7 million beneficiaries who will enroll in the first year, 11.5 percent will disenroll and reenroll in another Medicare-endorsed drug card program. This disenrollment and reenrollment adjustment is based on the 2000 Medicare+Choice voluntary disenrollment rate of 11.5 percent. We also assume that card sponsors will access the system to check enrollment records for an additional 10 percent of beneficiaries for reasons such as a lost discount card. We assume the system will be updated in real time and be of web-based technology. We assume this system will be maintained by a webmaster hired by the administrative consortium. We also assume reports, such as enrollment rates in a particular time frame by a particular card and percent of beneficiaries enrolled as a group, could be generated off this system by the consortium's webmaster.

Another administrative responsibility of the consortium will be to facilitate the publication of, or to publish, information, including comparative price information on discount drugs, that will assist beneficiaries in determining which Medicare-endorsed prescription drug card program is the most appropriate for their needs. This will require the administrative consortium to develop and maintain a web-based, searchable database accessible to the public so that interested Medicare beneficiaries or their advocates can access comparable price data on the drugs they take for the drug discount card programs available in their zip code area. We assume that each of 15 card sponsors will update its formulary and price lists six times a year. As indicated previously, we assume that 10 of the estimated 15 sponsors endorsed by Medicare will be national programs (having a network in all 50 States and Washington, DC), and the remaining 5 programs will be regional programs (comprised of 4 States each). Because formularies could vary geographically, we assume that each card program will have a unique formulary and price list for each State, differentiated by urban and rural areas. Based on these numbers, we estimate that the price comparison web site will house as many as 1,060 unique formularies and pricing listings. We assume that only the administrative consortium will have direct interface with the system; card sponsors will submit files in a uniform format to the consortium's webmaster to be uploaded. We assume reports, such as price comparisons for a list of drugs within a geographic area, could be generated off this system by the consortium's webmaster.

To fulfill these specifications for both the enrollment exclusivity and price comparison systems, our Office of Information Services (OIS) developed a cost estimate for the first year in the amount of $.44 million for lowest common denominator technology which will permit the system to be hosted virtually anywhere by a professional Internet technology organization. The estimate includes the costs of a database server, redundant database server, application server, redundant application server, and the cost for an Internet service provider. Second year costs will be significantly less, $80,000, reflecting maintenance rather than purchase of hardware.

A third responsibility of the administrative consortium will not begin until Year Two. The consortium will be responsible for ensuring the integrity of the information distributed by the Medicare-endorsed prescription drug discount card programs. We will conduct the information and outreach material review for the first year of endorsements. The administrative consortium's reviews in future years will be based on guidelines prepared by us. Based on a cost estimate developed by our Center for Beneficiary Choices (CBC), we assume that the cost of developing the guidelines will be $.24 million. We assume the cost of conducting the review from the estimated 15 endorsed sponsors and tracking the status of the review and approval process, including the cost of a database for this activity, will be $.29 million. We assume that the cost of transitioning the review to the administrative consortium will be $45,320. We assume reporting on the status of the information and outreach material review and findings under the review will cost $29,870. This first year cost, totaling $.61 million, will be borne by us in the context of our existing budget. In Year Two, information and outreach material review will be the consortium's responsibility, not ours, with the exception of costs associated with the development of the information and outreach guidelines and the costs associated with transitioning the information and outreach material review responsibility to the consortium. As noted, we will develop the information and outreach guidelines, not the consortium. Second year costs to be borne by the administrative consortium total $.32 million.

The total estimated Year One cost to be borne across all Medicare-endorsed card program sponsors for the administrative consortium start-up, its staffing and administrative activities will be $3.29 million (this includes $1.94 million for start-up activities plus $.68 million for consortium staff wages and compensation and overhead plus $.44 million for hardware plus $.23 million for leased space). We expect that drug card sponsors will share the costs of starting-up and maintaining the consortium and its activities. As shown in Table 5, we estimate the Year One per-card program sponsor costs for the administrative consortium, its associated start-up costs, and staffing and activities to be $.32 million for a national program, and $24,879 for a regional program. We divide those total costs for the consortium by the estimated number of new enrollees per national and regional card in the same year, since it is our policy that a one-time enrollment fee of up to $25 can be charged to a beneficiary. This allows an examination of estimated administrative costs relative to estimated enrollment fees. The estimated per new enrollee cost of the consortium start-up and Year One administrative activities, is estimated to be $0.30.

As stated previously, we estimate that the second year administrative consortium costs to be borne by all card sponsors of the consortium will be significantly lower than first year costs. Specifically, the relevant estimates for second year costs include: (1) Maintenance of the enrollment exclusivity and price comparison systems, $80,000; (2) information and outreach material review, $.29 million; (3) reporting on status of information and outreach material reviews and findings, $29,870; (4) consortium staff wages, compensation and overhead, $.54 million; and (5) leased space, $.18 million, for a total of $1.12 million. As shown in Table 5, for Year Two, we estimate the total per-card program sponsor costs for a national program will be $108,843, and for a regional

program to be $8,537, with a per new enrollee cost of $0.90.

In these estimates for the administrative consortium and its activities, we have captured the activities required in the final regulation and have attempted to reflect the significant costs associated with them.

We presume that sponsors will recover these costs in enrollment fees or by holding back a share of the pharmaceutical manufacturing rebates or discounts. The likely effect therefore is to either increase the one-time enrollment fee to as high as $25, or to lower the amount of the manufacturer rebates shared directly or indirectly with beneficiaries through pharmacies.

We believe that card program sponsors will benefit in preparation for a future Medicare drug benefit by developing the infrastructure necessary for the activities detailed above.

We believe that the administrative consortium's price comparison system and information and outreach material review will significantly assist beneficiaries as they seek information about selecting a drug discount card program. These activities will help beneficiaries make informed decisions and protect them from misleading information. Further, the role of the exclusivity system in ensuring that beneficiaries only belong to one drug discount card program at a time, as well as the price comparison information, will help optimize card sponsor negotiations for manufacturer rebates or discounts as sponsors compete for Medicare market share. Also, the secure exclusivity system will assist in protecting the privacy of beneficiary-specific information.

In addition, we will benefit by learning from the implementation of the requirements involving information technology, information and outreach material review, beneficiary enrollment, and education using the price comparison web site and through the card programs' enrollment.

There are several limitations to the consortium cost analysis. Since we have no experience implementing this initiative, our estimates of the number of card programs that will be endorsed is based on the number of applications we received during the 2001 solicitation process (28). While we did not complete our review of the applications before the initiative was enjoined by the court, we assume for estimating purposes that approximately half (15) would have been endorsed. If the number of actual endorsements is significantly lower or higher, then cost estimates for the consortium start-up and its administrative activities will be affected upward or downward accordingly. (This limitation also applies to the per-card cost estimates presented below for outreach and telephonic customer service.) Another limitation of the consortium cost estimate is that its actual organization and ongoing operations are not known at this time as these will be determined largely by representatives of the endorsed drug card sponsors.

Comment: We received numerous comments on the costs of the consortium, which are summarized under the first comment in section I.D.9.a of this preamble.

Response: Our response follows the summary of comments in section I.D.9.a of this preamble.

Comment: Several commenters were concerned that two-thirds of the estimated $2.75 million for start-up and administrative activities of the consortium, as delineated in the proposed rule, will be spent on the enrollment exclusivity system.

Response: Based on our estimates, we do not believe that the exclusivity system will require two-thirds of the estimated consortium costs. To qualify for Medicare endorsement, an applicant or its subcontractor must demonstrate experience with and substantial existing capacity for enrollment, as measured by the 1 million covered lives criterion. With this requirement for endorsement met, we believe that certain costs for ensuring exclusive enrollment, in particular, the costs associated with the enrollment process itself (not including outreach costs and costs associated with customer service call centers, which are addressed later in this analysis), will be part of usual and customary practice. Our costs reflect the development, maintenance, and operation of the enrollment exclusivity database only.

We believe 50 percent of the costs we have identified for developing and maintaining the enrollment exclusivity and price comparison systems will be needed for enrollment exclusivity. Our estimate for specifying the requirements for the enrollment system and software development is $.35 million. Further, of the $.44 million we identified for the cost of hardware for the two systems, we estimate that 50 percent, or $.22 million will be for the enrollment exclusivity system hardware. In addition, 50 percent, or $40,000 will be necessary in Year Two for maintenance of the enrollment exclusivity system. We assume that the consortium will hire a full time computer programmer whose salary and compensation is estimated at $118,678 in Year One (for a 15 month period), and whose office space will cost approximately $46,350 for a 15-month period; we believe that 50 percent of the programmer's time in Year One (approximately $59,339) will be spent on enrollment exclusivity. Finally, we anticipate the need for some additional technical support for the implementation of this system, in the amount of $27,500 (one-half the cost of support for both the enrollment exclusivity and price comparison systems). These costs total $.74 million.

2. Production and Distribution of Information and Information and Outreach Materials

Under this initiative, there will be a significant incremental cost associated with information and outreach materials for each Medicare beneficiary enrollee. For the purpose of this estimate, we assume that 15 drug card programs will be endorsed. We assume that a total of 9.7 million beneficiaries will enroll for the first time. Using the 2000 Medicare+Choice (M+C) disenrollment rate, we assume an additional 11.5 percent of these beneficiaries will disenroll and reenroll for a total of approximately 10.8 million enrollments in Year One.

We develop an estimate that reflects three types of information and outreach material: pre-enrollment, post-enrollment, and an annual notice of changes to the program for beneficiaries who stay enrolled into a new year. The total number of pre-enrollment mailings sent out by card sponsors will be three times the number of beneficiaries enrolling in the initiative. Pre-enrollment mailings from a card program will include such items as a cover letter, membership form, privacy notice, a summary of card program features (including prices for selected drugs commonly used by the Medicare population), a 1-page listing of network pharmacies in the beneficiary's zip code area, and return envelope with postage paid.

Further, we assume that 100 percent of beneficiaries who would actually enroll in each year will receive a post-enrollment package including items such as a cover letter, a prescription drug discount card, member handbook (including a complete directory of network pharmacies), and formulary applicable to the zip code area. Finally, we assume that currently enrolled beneficiaries will receive, beginning in Year Two, a package to include a cover letter and an annual notice of changes to the card program.

Including the costs of printing these materials, mailing them, and paying for return mail of enrollment and notice forms, we estimate a total Year One cost of $38.09 million. We estimate a per

national card program cost of $3.66 million, per regional card program cost of $.29 million, and per new enrollee cost of $3.52.

We estimate a total Year Two cost of $9.03 million. We estimate a cost per national program of $.87 million, per regional program of $68,157, and per new enrollee of $7.19.

3. Customer Service Call Center

The following estimates reflect costs for both an interactive voice-response system and access to customer service representatives by telephone. We believe that beneficiaries will have access to a variety of communication channels for receiving card program information including: Medicare outreach and education through, for example, *http://www.Medicare.gov* and the Medicare toll-free telephone number (Medicare 1–800), the consortium price comparison web site, and the card program's own outreach through its web site, which could allow beneficiaries or their caregivers to request printed material or download it, or through its print material or its own customer service 1–800 line. The cost of some of these information channels, such as Medicare 1–800, will not be borne by the card programs, and information channels such as the printed information and outreach materials produced by the card program and an interactive web site maintained by the card program will likely be less expensive than the cost of the card program's 1–800 customer service representative's time. Therefore, we assume that card programs will maximize their outreach through non-telephonic communication channels.

We also assume that the card program's 1–800 customer service line will include an interactive voice-response system where beneficiaries can receive basic information about the program and can order print material. We assume that 80 percent of beneficiaries or their caregivers will obtain print material through a communication channel that does not involve the card program's interactive voice-response system, and the remaining 20 percent will seek print material through the card program's interactive voice-response system. Additionally, we assume another 5 percent of enrolled beneficiaries will seek information through the card sponsor's interactive voice-response system that is not related to enrollment, but other types of straightforward requests, such as to receive an updated formulary listing. The following estimates reflect the marginal cost of each additional call, as we assume that each drug card program sponsor will already have the basic call center infrastructure in place. Using our experience, we estimate the cost of each additional interactive voice-response call to be $3.

For Year One, we estimate total per national card program costs for the interactive voice-response system of $.76 million, and per regional card program costs of $59,957. The estimated per new enrollee cost is $0.73.

For Year Two, we estimate total per national card program costs for the interactive voice-response system of $.21 million and per regional card program costs of $16,812. The estimated per new enrollee cost is $1.77.

In estimating the costs of access to customer service representatives by telephone, we assume that of the newly enrolled beneficiaries in a Medicare-endorsed card program in any given year, 20 percent will speak to a customer service representative either for additional enrollment information or other general program information. For this analysis, a newly enrolled beneficiary could be a first-time enrollee or a beneficiary who has disenrolled and reenrolled in a different card program. We also assume that 11.5 percent of enrolled beneficiaries will disenroll, and that each of these beneficiaries will speak to a customer service representative. We assume one-half of these disenrollees (5.75 percent) will lodge a complaint through a customer service representative. In Year One, this represents a total of approximately 3.84 million calls, across all card programs. In Year Two, we make the same assumptions as for Year One. This amounts to a total of approximately 1.95 million calls across all card programs.

To further build this estimate, we use wage and compensation data produced by the U.S. Department of Labor, Bureau of Labor Statistics. The national mean hourly wage rate of $12.75 for a customer service representative was taken from a report entitled, "2000 National Occupational Employment and Wage Estimates, Office and Administrative Support Occupations." (*http://www.bls.gov/oes/2000/oes_43Of.htm*). We age this wage rate to 2003 using the same factors (5.6 percent for 2001, 3.1 percent for 2002, and 4.6 percent for 2003) used to age the wages for the administrative consortium staff. We use a compensation factor of 1.357 obtained from the same report used to calculate compensation for the consortium staff, for a total 2003 wage and compensation rate of $40,979 per customer service representative. We apply a factor of .5 to this rate to provide an overhead amount of $20,489.

We estimate lease space per customer service representative using 150 square feet per office at $20 per square foot (in 2002 dollars) for full service space leased in a metropolitan area. This estimate was obtained from a commercial real estate broker. In 2003 dollars, we estimate a total per office amount of $37,080, for a 12-month period. The total cost per customer service representative for wages, compensation, overhead, and leased space will be $98,548.

Assuming that each customer service representative works 7 hours per day, 5 days per week, 50 weeks per year, each representative will work 105,000 minutes per year. This will permit each representative to respond to 10,500 beneficiaries per year (105,000 divided by 10 minutes per call).

We estimate for Year One that for all 3.84 million enrollees who will talk to a customer service representative, a total of 365 customer service representatives will be hired or retained across all Medicare-endorsed card sponsors. As Table 5 shows, the estimated Year One cost for a national card program sponsor will be $3.46 million, and for a regional card program sponsor, $.27 million, with a per new enrollee cost of $3.33.

In the second year, we estimate that approximately 1.95 million beneficiaries will talk to a customer service representative. The number of customer service representatives needed will be 185 across all card sponsors. As Table 5 shows, the estimated Year Two cost for a national card program sponsor will be $1.76 million, and for a regional card program sponsor, $.14 million, with a per new enrollee cost of $14.54.

4. Other Considerations Concerning Production and Distribution of Information and Outreach Materials and the Customer Service Call Center

We presume that sponsors will recover their costs associated with the production and distribution of information and outreach materials and with the customer service call center by charging enrollment fees or by holding back a share of the pharmaceutical manufacturing rebates or discounts. The likely effect of these costs on a card sponsor, therefore, will be a decision to either increase the one-time enrollment fee to as high as $25, or to lower the amount of the manufacturer rebate or discount shared directly or indirectly with beneficiaries through pharmacies.

We believe that beneficiaries will benefit significantly from access to print materials, an interactive voice-response system, and customer service

representatives to inform their decision about what card to join and to facilitate enrollment. We also believe that access to customer service representatives to manage complaints will improve the quality of the card program and serve to limit the number of disenrollments, as a person-to-person mechanism will be in place to handle beneficiaries' questions and concerns.

Comment: We solicited comments on different methods to efficiently enroll beneficiaries in the context of our requirements to provide information and ensure that beneficiary personal information is kept confidential. We received several comments about our proposed requirement that written consent to the expected uses and disclosures of a beneficiary-specific information be obtained from each beneficiary and its effect on enrollment by telephone or Internet. Commenters indicated that obtaining written consent could require additional steps in the enrollment process, interfering potentially with an efficient enrollment system by requiring access to the enrollment database more than once to verify enrollment status and again to execute actual enrollment after receiving written consent. One commenter stated that enrollment should be effective at the same step in the enrollment process as the card program's procedure for verifying that the beneficiary is not already enrolled in another Medicare-endorsed card program, rather than at the time that written consent is obtained. Further, the commenters noted that this requirement for written consent is not consistent with pending regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and that it is unnecessary.

Response: Our policy concerning consent for expected uses and disclosures is discussed in section I.D.8.d of this preamble.

Comment: One commenter stated that enrollment costs are higher than they would be without an enrollment exclusivity provision. Also, this commenter indicated that they would expect 5, not 15, minute phone calls by beneficiaries to the customer service 1–800 line, as estimated in the proposed rule. One commenter indicated that enrollment costs estimated in the proposed rule are significantly underestimated; that, in addition to a 15 minute call, the commenter would expect beneficiaries unfamiliar with the program to call multiple times. Also, this same commenter pointed out that fax, phone, mail, and Internet channels specific to the program need to be developed and that these costs are not reflected in the estimate. One commenter stated that individual enrollment and the frequency and length of calls for the senior population are likely to have a significant cost impact on the call center. These commenters stated that these costs suggest an annual renewal fee of up to $25 should be allowed.

Response: We agree that the enrollment costs as expressed in the exclusivity system and time and materials needed to inform beneficiaries about this requirement are higher than if enrollment exclusivity were not required; however, we believe that the benefit in negotiated rebates that will be shared with beneficiaries under this initiative far outweighs this additional cost. Concerning the estimated time for a customer service call, we believe that card sponsors will provide as much information through the most efficient communication channels to limit the potential impact on the customer service call center. We believe that a well thought out outreach strategy and the effective use of various communication channels, in addition to the information that we and the consortium's price comparison system make available, will serve to minimize the amount of time that is needed on the phone when a beneficiary does contact a customer service representative, as well as the portion of beneficiaries or their caregivers who will call to speak to a card sponsor's customer service representatives. In circumstances where the same beneficiary calls the call center, we believe each call will be for a different purpose, such as to clarify information to make an enrollment choice, to complain, or to disenroll. Our estimate accommodates what we believe is a reasonable expectation for multiple calls from a beneficiary. We did not include fax and Internet costs in this estimate because the use of these technologies by the card program sponsors is less expensive than the use of hard copy production and mail; therefore, we believe the costs of these communication channels are at least covered, if not over-represented, in our information and outreach production and distribution cost estimate. Having estimated these major administrative costs and reflecting them in terms of new enrollees, we have demonstrated that these costs can be covered with a one-time enrollment fee of up to $25, leaving potentially substantial reserve to cover other, less significant costs not expressed in this estimate. Therefore, we do not agree that an annual fee is necessary to support the administrative costs of this initiative.

5. Total Estimated Major Administrative Costs to Card Sponsors

This analysis is different from that of the proposed rule; it has been refined to more closely reflect alternative communication channels card sponsors are likely to employ to conduct outreach and enroll beneficiaries. Further, we significantly adjusted upward the size of the population in Year Two to accommodate communications attributable to disenrollments and complaints.

As shown in Table 5, we have totaled all the costs for Year One and Year Two represented in this analysis: (1) the administrative consortium, its start-up and activities; (2) information and outreach materials (production and distribution); (3) and the customer service call center. We estimate total Year One costs of $85.33 million; these costs are to be borne by the endorsed card sponsors. We estimate a per national card sponsor cost of $8.21 million, and a per regional card sponsor cost of $.64 million, with a per new enrollee cost of $7.89.

In the second year, we estimate total costs of $30.66 million across all card sponsors. We estimate a national card program sponsor cost of $2.95 million, and a regional card program sponsor of $.23 million, with a per new enrollee cost of $24.41.

For national and regional programs, this cost analysis for both the first and second year of operation demonstrates that a one-time enrollment fee of $25 (a new fee could be charged if the beneficiary switches programs) can cover the card program's major administrative costs, including costs associated with the operation of the consortium. Alternatively, a drug card program sponsor could choose to charge a lower or no enrollment fee and support operating expenses through a portion of the manufacturer rebates.

The numbers in Table 5 do not add exactly due to rounding.

TABLE 5.—SUMMARY OF COST ESTIMATES FOR MAJOR ADMINISTRATIVE ACTIVITIES

Year one	Per sponsor cost	Per new enrollee cost (10.8 million enrollments, including first time and disenrolled/re-enrolled beneficiaries)
Consortium its start-up and activities:		
National	$317,212	$0.30
Regional	$24,879	$0.30
Information and outreach materials production & distribution:		
National	$3,664,892	$3.52
Regional	$287,443	$3.52
Call Center—Interactive Voice Response (IVR):		
National	$764,452	$0.73
Regional	$59,957	$0.73
Call Center—Customer service representative costs:		
National	$3,464,755	$3.33
Regional	$271,746	$3.33
Total:		
National	$8,211,311	$7.89
Regional	$644,024	$7.89

Year two	Per sponsor cost	Per new enrollee cost (1.2 million enrollments, including first time and disenrolled/re-enrolled beneficiaries)
Consortium its start-up and activities:		
National	$108,843	$.90
Regional	$8,537	$.90
Information and outreach materials production & distribution:		
National	$869,000	$7.19
Regional	$68,157	$7.19
Call Center—Interactive Voice Response (IVR):		
National	$214,352	$1.77
Regional	$16,812	$1.77
Customer Service Call Center:		
National	$1,757,709	$14.54
Regional	$137,859	$14.54
Total:		
National	$2,949,903	$24.41
Regional	$231,365	$24.41

6. Manufacturer Rebates or Discounts

We do not estimate the administrative costs of negotiating manufacturer rebates or discounts and sharing them with beneficiaries as we believe that the experience criteria for endorsement ensures that the infrastructure for this activity will already be available to the card sponsors and that this is part of usual and customary practice for the organizations likely to apply and be endorsed. We require that these rebates or discounts will have to be shared with beneficiaries either directly or indirectly through pharmacies. We anticipate that this requirement will promote better drug prices for beneficiaries or enhance pharmacy participation in a drug card program's network. Further, we anticipate that sharing indirectly with pharmacies could promote enhanced pharmacy services.

7. Medicare's Beneficiary Education and Outreach Plans

Medicare beneficiaries will benefit from the education and outreach plans we outline in this final rule. In addition to information that we anticipate will be available through the endorsed card sponsors, the information we will impart on our web site, through brochures, and in beneficiary calls to the 1–800–Medicare telephone number will assist beneficiaries in gaining knowledge about whether and how to participate in a Medicare-endorsed prescription drug card program. In addition, beneficiaries will benefit from the basic information imparted regarding how to use tools to manage drug costs. Also, we will benefit from the infrastructure built for, and the experience gained from, educating beneficiaries about using private sector tools to lower their out-of-pocket prescription drug costs and enhance the pharmacy services they will receive in preparation for a Medicare prescription drug benefit.

Comment: Two commenters made the point that development of new manufacturer discount cards, which

provide substantial savings to low-income Medicare beneficiaries, make the Medicare-Endorsed Prescription Drug Card Assistance Initiative unnecessary. The commenters indicate that the initiative will create additional administrative burden and may undermine the new manufacturer cards.

Response: We agree generally that the new manufacturer discount cards can provide substantial savings to low-income Medicare beneficiaries. We disagree that their availability makes this initiative unnecessary. We believe there is important value for Medicare beneficiaries in the education and assistance made available under this initiative that does not exist in the current discount card market. We believe that enrollment exclusivity will provide meaningful savings and limit beneficiary confusion associated with beneficiary participation in multiple card programs. Further, there are a significant number of beneficiaries who do not qualify for manufacturer card programs who will benefit under this initiative. While we agree that there is administrative burden associated with this initiative, we believe there are counter costs in time and effort to beneficiaries and administrative inefficiencies in the performance of the discount card market associated with beneficiaries participating in multiple card programs that will be minimized by this initiative. Moreover, we have demonstrated that the administrative costs of this initiative will likely be more than offset through a one-time enrollment fee. We do not believe that this initiative will undermine manufacturer card programs, as they offer obvious and significant discounts for beneficiaries who qualify. Rather, some of the impediments to participation by beneficiaries in the manufacturer cards appear to be lack of uniformity in eligibility requirements, complexity of demonstrating eligibility, and perceived stigma associated with low-income initiatives. We believe our initiative offers an important new choice for beneficiaries that is not encumbered by these impediments.

H. Conclusion to Impact Analysis

Evidence of trends in prescription drug use and spending, changes in pharmacy acquisition costs for drugs at a time of increased presence of pharmacy benefit management strategies, and strategies for varying drug prices and manufacturer rebates or discounts indicate a dynamic market that adjusts and returns to equilibrium. Pharmacy benefit management tools are a feature of the current prescription drug market and are used to lower drug costs. The implementation of the Medicare-Endorsed Prescription Drug Card Assistance Initiative in this environment will educate Medicare beneficiaries and provide them with experience with the private sector tools used to lower drug prices.

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

List of Subjects in 42 CFR Part 403

Grant programs-health, Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 403 as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

1. The authority citation for part 403 is revised to read as follows:

Authority: 42 U.S.C. 1359b–3 and secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Add a new subpart H, consisting of §§ 403.800 through 403.820, to part 403 to read as follows:

Subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative

Sec.

403.800 Basis and scope.
403.802 Definitions.
403.804 General rules for Medicare endorsement.
403.806 Requirements for eligibility for endorsement.
403.807 Application process.
403.808 Agreement terms and conditions.
403.810 Administrative consortium responsibilities and oversight.
403.811 Beneficiary enrollment.
403.812 Withdrawal of endorsement.
403.820 Oversight and beneficiary education.

Subpart H—Medicare-Endorsed Prescription Drug Card Assistance Initiative

§ 403.800 Basis and scope.

(a) *Provisions of the legislation.* This subpart implements, in part, the provisions of section 4359 of the Omnibus Budget Reconciliation Act of 1990 (OBRA). Section 4359 of OBRA requires the Secretary to establish a health insurance advisory service program (the beneficiary assistance program) to assist Medicare beneficiaries with the receipt of services (including both covered and uncovered benefits) under the Medicare and Medicaid programs and other health insurance programs. The subpart is also based on sections 1102 and 1871 of the Act.

(b) *Scope of subpart.* This subpart sets forth the standards and procedures CMS uses to implement the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

§ 403.802 Definitions.

For purposes of this subpart, the following definitions apply:

Administrative consortium means a private entity established and financed by the Medicare-endorsed prescription drug card program sponsors to carry out a set of specific administrative tasks required under the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

Applicant means the organization or entity (along with any subcontractors or others with whom it has legal arrangements for the purpose of meeting the requirements for endorsement) that is applying for Medicare endorsement of its prescription drug discount card program.

Application means the document submitted to CMS by an applicant that demonstrates compliance with the requirements specified in this subpart in order to obtain Medicare endorsement of the applicant's drug card program.

Formulary means the list of specific drugs for which the Medicare-endorsed prescription drug card program offers discounts to Medicare beneficiaries enrolled in the Medicare-endorsed prescription drug card program.

Medicare-Endorsed Prescription Drug Card Assistance Initiative means an effort whereby CMS provides information, counseling, and assistance to Medicare beneficiaries by soliciting applications for Medicare endorsement of prescription drug card programs, reviewing them, offering agreements to program sponsors that meet all of the requirements for endorsement, awarding Medicare endorsements to program sponsors who sign the agreement, and educating beneficiaries about the options available to them in the private marketplace.

Medicare-endorsed prescription drug card program means a program developed by an organization or group of organizations, endorsed by CMS under the Medicare-Endorsed Prescription Drug Card Assistance Initiative, to educate Medicare beneficiaries about tools to lower their prescription drug costs and to offer prescription drug discount cards to Medicare beneficiaries.

Medicare-endorsed prescription drug card program sponsor means any applicant that has received endorsement

from Medicare for its prescription drug card program.

Solicitation means a notice published in the **Federal Register** announcing a request for applications from applicants seeking Medicare endorsement for their prescription drug card programs.

§ 403.804 General rules for Medicare endorsement.

(a) *Applications.* Applicants must submit applications by the deadline announced in the solicitation to participate in the Medicare-Endorsed Prescription Drug Card Assistance Initiative and become a Medicare-endorsed prescription drug card program sponsor.

(b) *Number of programs sponsored.* An organization or entity may sponsor no more than two drug card programs. The same organization or entity may have operational responsibilities in multiple drug card programs.

(c) *Requirements.* In order to be eligible for endorsement, applicants must submit applications and meet all of the requirements specified in § 403.806.

(d) *Eligibility to receive endorsement.* Any applicant that submits an application by the deadline announced in the solicitation that contains all information necessary for CMS to determine whether the applicant meets all of the requirements in § 403.806, and whose application meets all of the requirements in § 403.806, will be eligible to enter into an agreement with CMS to receive a Medicare endorsement.

(e) *Period of endorsement.* In Year One of the initiative, the Medicare endorsement will be effective for a period of at least 12 months but fewer than 24 months. Beginning in Year Two, the endorsement will be effective at least 12 months, but fewer than 15 months. CMS will consider card program sponsor performance under an existing Medicare endorsement as a factor in determining eligibility for endorsement in future annual cycles.

(f) *Termination of endorsement by CMS.* CMS may terminate the endorsement at any time.

(g) *Termination of participation by Medicare-endorsed drug card sponsor.* A Medicare-endorsed prescription drug card program sponsor may choose not to continue participation in the Medicare-Endorsed Prescription Drug Card Assistance Initiative.

(h) *Notification to beneficiaries of termination of participation.* (1) In the event of termination of participation in the initiative by the drug card program sponsor, or termination by CMS, the Medicare-endorsed prescription drug card program sponsor must notify all of its Medicare beneficiary enrollees in writing that they may enroll in an alternative Medicare-endorsed prescription drug card program. This notice must be provided by United States mail within 10 days of providing CMS with notice of termination or within 10 days of receiving notice of termination from CMS.

(2) In the event of termination by the drug card program sponsor, or termination by CMS, drug card programs must remain available to beneficiaries for 90 days after beneficiaries are provided with notice of termination. In the event of termination by the drug card program sponsor, or termination by CMS, drug card program sponsors must suspend information and outreach and enrollment of beneficiaries once beneficiaries have been notified of the termination.

§ 403.806 Requirements for eligibility for endorsement.

(a) *General.* To be eligible for Medicare endorsement, an applicant must submit an application by the deadline announced in the solicitation, demonstrating that it meets and will comply with the requirements described in this section.

(b) *Applicant structure, experience, and participation in administrative consortium.* (1) A single organization or entity that is either the applicant or a subcontractor or under other legal arrangement with the applicant must have no less than 3 years experience in pharmacy benefit management, in administering a prescription drug discount program, or in administering a low income drug assistance program that provides prescription drugs at low or no cost;

(2) A single organization or entity that is either the applicant or a subcontractor or under other legal arrangement with the applicant must, at the time of application for endorsement, manage at least 1 million covered lives in an insured pharmacy benefit, prescription drug discount program, or a low income drug assistance program that provides prescription drugs at low or no cost.

(3) A single organization or entity that is either the applicant or a subcontractor or under other legal arrangement with the applicant must—

(i) Have a pharmacy network serving all 50 States and the District of Columbia to qualify as a national program; or

(ii) Have a regional pharmacy network serving at least 2 contiguous States (with the exception of Hawaii and Alaska, which can partner with 2 or more contiguous States) to qualify as a regional program.

(4) The applicant must demonstrate that it is financially solvent.

(5) The applicant must have a satisfactory record of integrity and business ethics.

(6) The applicant must agree to, and demonstrate the ability to, jointly administer, abide by the guidelines of, and fund a private administrative consortium with other Medicare-endorsed prescription drug card program sponsors in accordance with the requirements of this subpart.

(7) The applicant must comply with all applicable Federal and State laws.

(c) *Customer service.* The applicant must comply with the following customer service requirements:

(1) Limit its one time enrollment fee in Year One to no more than $25. In future years, CMS may adjust the fee based on a determination of what is a reasonable amount to defray costs of the applicant's administrative activities.

(2) Enroll only Medicare beneficiaries, and all Medicare beneficiaries who wish to participate in its Medicare-endorsed prescription drug card program.

(3) Provide information and outreach materials regarding its Medicare-endorsed prescription drug card program to all enrolled Medicare beneficiaries.

(4) Maintain a toll free customer call center that is open during usual business hours and that provides customer telephone service, including to pharmacists, in accordance with standard business practices.

(d) *Privacy and confidentiality of beneficiary-specific information.* (1) The applicant must comply, beginning at the time of Medicare endorsement, with 45 CFR 160.103, 160.202, 164.501 through 164.514, and 164.520, subject to the following modifications:

(i) All references to covered entities will be applicable to the drug card sponsor, and health care operations means the routine activities, including providing information and outreach, as provided under the Medicare endorsement; and

(ii) For the purpose of authorization in 45 CFR 164.508, marketing means any use or disclosure of protected health information to be outside the scope of Medicare endorsement.

(2) The applicant must develop and implement a written data security plan for protected health information.

(3) The requirements of this paragraph (d) are enforceable by CMS under the provisions of § 403.812.

(4) Nothing in this paragraph (d) modifies the applicability of 45 CFR 160.103, 160.202, 164.501 through

164.514, and 164.520 to organizations or entities independently subject to the mandates of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(e) *Discounts, rebates, and access.* The applicant must comply with the following discount, rebate, and access requirements:

(1) Offer a discount on at least one brand name or generic prescription drug in each of the therapeutic drug classes, groups, or subgroups representing the prescription drugs commonly needed by Medicare beneficiaries.

(2) Obtain pharmaceutical manufacturer drug rebates or discounts on brand name or generic drugs or both, and ensure that a substantial share is provided to beneficiaries either directly or indirectly through pharmacies.

(3) Ensure that a specific drug offered under the program is not dropped from the formulary nor its price increased for periods of at least 60 days, starting on the first day of the program's operation, and notify CMS, the consortium, and the network pharmacies of these changes 30 days before the change becomes effective.

(4) Guarantee that for the drugs for which the applicant will offer discounts, Medicare beneficiaries enrolled in its Medicare-endorsed prescription drug discount card program will receive the lower of the discounted price available through the program, or the price the pharmacy would charge a cash paying customer.

(5) Have a national or regional contracted pharmacy network sufficient to ensure that pharmacies are locally accessible to beneficiaries where the drug discount card will be offered. At least 90 percent of Medicare beneficiaries, on average, in all Metropolitan Statistical Areas (MSAs) served by the program must live within 5 miles of a contracted pharmacy; and at least 90 percent of Medicare beneficiaries, on average, in all non-MSAs served by the program must live within 10 miles of a contracted pharmacy.

(6) Provide to the administrative consortium information on drugs and their pricing included in the applicant's formularies.

§ 403.807 Application process.

(a) CMS will solicit applications through an application process.

(b) CMS will review applications and determine whether the applicant has met and is able to comply with all of the requirements set forth in § 403.806 to become Medicare-endorsed.

(c) All applications that are submitted by the deadline announced in the solicitation and that demonstrate that the applicant has met and is able to comply with all of the requirements to become Medicare-endorsed will be eligible to enter into an agreement to receive Medicare endorsement from CMS.

§ 403.808 Agreement terms and conditions.

In order to receive a Medicare endorsement, an applicant that complies with all of the application procedures and meets all of the requirements described in this subpart must enter into a written agreement with CMS. The agreement must include a statement by the applicant that it has met the requirements of this subpart and will continue to meet all requirements as long as the agreement is in effect. The agreement must include a statement that the applicant will comply with information and outreach guidelines established by CMS.

§ 403.810 Administrative consortium responsibilities and oversight.

(a) The administrative consortium will be responsible for—

(1) Ensuring that beneficiaries are not enrolled in more than one Medicare-endorsed prescription drug card program at the same time;

(2) Facilitating the publication of, or publishing, information, including comparative price information on discounted drugs, that assists beneficiaries in determining which Medicare-endorsed prescription drug card program is the most appropriate for their needs;

(3) Ensuring the integrity of the information distributed by the Medicare-endorsed prescription drug card programs; and

(4) Developing and implementing a written data security plan for protected health information; and

(5) Abiding by applicable Federal and State laws.

(b) In order to facilitate the formation of the administrative consortium and ensure that all functions are performed in a timely manner, CMS may assist in the start-up of the administrative consortium and perform any of the functions in this section for a transitional period of time.

§ 403.811 Beneficiary enrollment.

(a) *Individual enrollment.* (1) Medicare beneficiaries who are enrolling in a Medicare-endorsed prescription drug card program for the first time may enroll at any time.

(2) Once enrolled, a Medicare beneficiary may belong to only one Medicare-endorsed prescription drug card program at a time.

(3) Once enrolled, and except as provided in paragraph (a)(4) of this section, enrollees may change enrollment to a different Medicare-endorsed prescription drug card program, to be effective the first day of the following January or July following the request for change, whichever comes first.

(4) If the Medicare endorsement of a prescription drug card program is terminated, either by CMS or by the sponsor, enrolled Medicare beneficiaries may enroll in a different Medicare-endorsed prescription drug card program to become effective immediately.

(b) *Group enrollment.* (1) The prescription drug card program sponsor may accept group enrollment from health insurers and must ensure—

(i) Disclosure to Medicare beneficiaries of the intent to enroll them as a group;

(ii) Disclosure to beneficiaries of the enrollment exclusivity restrictions and other enrollment rules of the initiative;

(2) Medicare+Choice (M+C) organizations may subsidize the enrollment fee and offer the drug card program as part of their Adjusted Community Rate filing, but may not require enrollment in a drug card program as a condition of enrollment in any of their M+C plans.

§ 403.812 Withdrawal of endorsement.

If CMS obtains evidence that a Medicare-endorsed prescription drug card program or its sponsor has failed to meet any of the requirements for endorsement or has not complied with the agreement necessary to receive endorsement under this subpart, CMS may withdraw the endorsement. CMS may also take appropriate intermediate actions and may also refer the card program sponsor to appropriate Federal or State authorities, including the Office of Inspector General, for sanctions or prosecution under section 1140 of the Act.

§ 403.820 Oversight and beneficiary education.

(a) The Medicare-endorsed prescription drug card program sponsor must report to CMS on a periodic basis on major features of its programs that correspond to the qualifications for endorsement, including savings to beneficiaries, customer service, and discount card program operations. Card program sponsors must certify the validity of their reported data.

(b) The Medicare-endorsed prescription drug card program sponsor must establish and maintain a customer complaints process. This process must

be designed to track and address in a timely manner enrollees' complaints about any aspect of the drug card program.

(c) CMS will conduct beneficiary education about, and oversight of, the Medicare-endorsed prescription drug card programs, as determined by CMS.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 21, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 21, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–22316 Filed 8–30–02; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 982

Exception Payment Standard to Offset Increase in Utility Costs in the Housing Choice Voucher Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR 4672–F–02]

RIN 2577–AC29

Exception Payment Standard to Offset Increase in Utility Costs in the Housing Choice Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule withdraws the interim rule that temporarily increased FMRs in areas affected by increased utility prices, and restores the regulatory language to that which was in effect before the issuance of the interim rule.

DATES: Effective Date: October 4, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–0001; telephone (202) 708–0477 (this is not a toll-free number). Persons with hearing-or speech-impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

1. The June 6, 2001 Interim Rule

During Fiscal Year (FY) 2001, increased energy costs in some parts of the country had an adverse impact on the ability of applicants and participants in the Housing Choice Voucher program to either lease a unit while paying no more than 40 percent of their income for rent, or, once having leased a unit, to continue to pay both rent and the higher utility costs. In order to mitigate those effects, in the interim rule issued on June 6, 2001 (66 FR 30568), HUD temporarily approved higher exception payment standard amounts for certain Public Housing Agencies (PHAs) that adopted new utility allowance schedules after October 1, 2000 of between 110% and 120% of the FMRs without requiring those PHAs to seek HUD approval. HUD calculated these exception payment standards using the most recent rental data, which are also the same data on which the FY 2002 FMRs are based, which had the effect of raising the exception payment standard amount to between 110% and 120% of then-current FMRs in areas where energy costs have increased substantially.

The interim rule by its own term was applicable only for the balance of the Federal Fiscal Year ending September 30, 2001. The FMRs for FY 2002, which have now been published, reflect the most recent rental data, including the increased cost of utilities.

2. This Final Rule

The interim rule provided for termination on its own terms after September 30, 2001. The FMRs that went into effect as of October 1, 2001, reflect the latest rental data, including the increased utility costs (*see* 66 FR 50024, October 1, 2001). Therefore, no further alteration of the FMRs is necessary. Accordingly, this final rule withdraws the changes made by the June 6, 2001, interim rule, and restores the regulatory language to that which was in effect before the issuance of the interim rule.

3. Public Comments

HUD received no public comments on this rule.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule withdraws the interim rule that allowed PHAs in areas affected by sharply increased utility costs to use the new rental data before the FY 2002 FMRs went into effect nationwide. This rule simply recognizes that the FY 2002 FMRs are in effect. There is no change from the viewpoint of the affected PHAs.

Environmental Impact

This rule relates to establishment of rate or cost determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR part 982 as follows:

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for 24 CFR part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Amend § 982.503 as follows:

a. Revise paragraph (b)(2) to read as follows;

b. Revise the introductory text of paragraph (c)(2)(i); and

c. Remove paragraph (c)(2)(iii).

§ 982.503 Voucher tenancy; payment standard amount and schedule.

* * * * *

(b) * * *

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

* * * * *

3. Amend § 982.505 by revising paragraph (c)(4) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(4) *Increase in the payment standard amount during the HAP contract term.* If the payment standard amount is increased during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard amount.

* * * * *

Dated: July 15, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–22327 Filed 9–3–02; 8:45 am]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2172–01; I.D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. The intended effect of this proposed rule is to protect the endangered western DPS of Steller sea lions, as required under the Endangered Species Act (ESA), and to conserve and manage the groundfish resources in the Bering Sea/Aleutian Islands area (BSAI) and the Gulf of Alaska (GOA) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on the proposed rule must be received on or before October 4, 2002.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel-Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island, the supplemental environmental impact statement on Steller Sea Lion protection measures in the Federal groundfish fisheries off Alaska (SEIS), including the 2001 biological opinion and regulatory impact review, the November 30, 2000, biological opinion, the initial regulatory flexibility analysis, and the October 2000 Biological Opinion Questions NMFS white paper, may be obtained from the same address. The SEIS is also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the ESA of 1973, 16 U.S.C. 1531, *et seq*., and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Background

On November 30, 2000, NMFS issued a biological opinion on the FMPs (comprehensive BiOp), which determined that the pollock, Pacific cod, and Atka mackerel fisheries were likely to jeopardize the continued existence of the western DPS of Steller sea lions and to adversely modify its critical habitat. It contained a reasonable and prudent alternative (RPA) that included large fishery closure areas, harvest limits and seasonal distribution of harvest for the pollock, Pacific cod, and Atka mackerel fisheries. Before the RPA could be implemented, the President signed Public Law 106–554 on December 21, 2000, which contained a 1–year timetable to phase in the RPA. This year provided the Council with time to develop alternative conservation measures that would avoid jeopardy and adverse modification of critical habitat for Steller sea lions.

The Council appointed an RPA Committee consisting of a variety of members including commercial fishery interests, the environmental community, the Alaska Department of Fish and Game (ADF&G), and NMFS. The RPA Committee met numerous times throughout 2001 to evaluate the best scientific and commercial data available and, with the assistance of agency expertise, developed recommendations for conservation measures for the pollock, Pacific cod, and Atka mackerel fisheries. More details on the protection measures development process follow later in this preamble.

In a section 7 consultation under the ESA, NMFS issued a biological opinion (2001 BiOp), which determined that the protection measures in this proposed rule are unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its critical habitat. Following this determination and, with the assistance of a draft SEIS on a suite of possible management measures, the Council adopted and forwarded to NMFS the conservation actions contained in this proposed rule, which are necessary to comply with the ESA. These measures are currently being implemented by emergency interim rule (67 FR 956, January 8, 2002, amended 67 FR 21600, May 1, 2002, and extended 67 FR 34860, May 16, 2002). The measures contained in this proposed rule will not be implemented until the emergency interim rule expires on December 31, 2002.

A detailed history on past biological opinions and court cases regarding Steller sea lions and the Alaska groundfish fisheries and a description of how the protection measures meet the national standards in the Magnuson-Stevens Act are presented in the preamble to the January 8, 2002, emergency interim rule.

Status of the Endangered Western DPS of Steller Sea Lions

In 1990, NMFS designated Steller sea lions as a threatened species under the ESA. The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS designated critical habitat for the species, including the marine areas within 20 nautical miles (nm) of major rookeries and haulouts west of 144° W longitude (long.) and three large aquatic foraging areas. In 1997, NMFS recognized two separate populations and reclassified the western DPS (west

of 144° W long.) as endangered under the ESA.

The western DPS of Steller sea lions has been in decline since the late 1970s when the first reliable population estimates were made (about 109,800 animals). During the 1980s, a precipitous decline of Steller sea lions was observed and by 1996, the population had declined by 80 percent. Counts of adult and juvenile Steller sea lions have continued to decline over the last decade, but at a reduced annual rate of roughly 5 percent.

In the 2001 BiOp, NMFS recognized that the current decline of the species is likely due to multiple factors including environmental changes such as El Nino and the Pacific Decadal Oscillation, predation, subsistence harvests, incidental take in fisheries, and competition for prey resources with pollock, Pacific cod, and Atka mackerel fisheries. This last issue, competition with fisheries, is addressed by this action. Diet studies indicate that Steller sea lions depend on pollock, Pacific cod, and Atka mackerel as major prey resources. Also, the winter time is likely the most sensitive period for juveniles and lactating females during which they may be easily susceptible to local prey depletions. These winter fisheries, in particular, could adversely affect Steller sea lions. However, given the complexity of the marine environment and the lack of complete information on the foraging requirements of Steller sea lions, NMFS has determined that this population is likely to continue to decline into the next decade partly because of the inability to statistically detect a change in the population trajectory until an estimated period of 6 to 8 years has elapsed (3–4 population surveys).

More information on environmental changes in the BSAI and GOA and on potential effects on Steller sea lions is detailed in section 4.4.1 of the 2001 BiOp (see **ADDRESSES**).

Development of Steller Sea Lion Protection Measures

In January 2001, the Council established an RPA Committee to make recommendations on Steller sea lion protection measures for the second half of 2001 and to develop Steller sea lion protection measures for 2002 and beyond. The RPA Committee was composed of 21 members from the fishing community, the environmental community, NMFS, the Council's Science and Statistical Committee, the Council's Advisory Panel, and the Alaska Department of Fish and Game (ADF&G).

In developing protection measures for the second half of 2001 and for 2002 and beyond, the RPA Committee's first goal was to determine adequate forage for Steller sea lions using the best scientific information available. Its second goal was to maximize the economic benefit to the fishing industry within the constraints imposed by the Magnuson-Stevens Act, the ESA, and other applicable laws. The RPA Committee met numerous times to review current Steller sea lion biology and known habitat requirements, the reasonable and prudent alternative (RPA) from the comprehensive BiOp, the draft SEIS and draft 2001 BiOp for this action, and commercial fishery and scientific survey information. Meetings in 2001 were held on February 10, February 20, March 6–7, March 26–29, April 9, May 9–11, May 21–24, and August 23–24. These meetings were open to the public and several opportunities for the public to comment were available during each meeting.

After the available scientific information on Steller sea lion biology was discussed, the RPA Committee reviewed commercial fisheries and harvest data to determine the competitive overlap between fisheries and Steller sea lions. The RPA Committee then developed a fisheries management program intended to meet all of the requirements of the ESA and to comply with the Magnuson-Stevens Act, including the national standards. In April 2001, the RPA Committee presented its recommendations to the Council for fishery management measures for the second half of 2001. These recommendations were then forwarded by the Council to NMFS and were implemented by amendment to an emergency interim rule (66 FR 37167, July 17, 2001).

In June 2001, the RPA Committee recommended Steller sea lion protection measures for 2002 and beyond. However, the RPA Committee did not reach consensus regarding the recommendations; two representatives from the environmental community objected and provided a minority report with the May 21–24 RPA Committee minutes. Both the RPA Committee's recommendation and the minority recommendation developed by the American Oceans Campaign and the National Environmental Trust were included as alternatives analyzed in the SEIS. Additionally, protection measures in the GOA, developed by the Alaska Marine Conservation Council, were included as an option to the preferred alternative in the SEIS. Minutes from all RPA Committee meetings were distributed at Council meetings and are available on the Council's web site at http://www.fakr.noaa.gov/npfmc/default.htm. In June 2001, the Council recommended alternatives to be analyzed in the SEIS, including the RPA Committee's recommendations and the protection measures described in the minority report mentioned above. NMFS reviewed the Council's recommendations for alternatives and determined that they represented an adequate range of reasonable alternatives as required by the National Environmental Policy Act (NEPA). For purposes of identifying a proposed action in order to initiate formal consultation under Section 7 of the ESA, NMFS identified the RPA Committee's recommendations as the preferred alternative (Alternative 4) in the draft SEIS. Alternative 4 also included three options added by the Council. Two of the options provided exemptions for small vessels using nontrawl gear in directed fishing for Pacific cod in the Chignik and Unalaska areas, and the third option established gear-specific fishing zones for GOA Pacific cod fisheries (the Alaska Marine Conservation Council option).

In July 2001, the NMFS Alaska Region, Sustainable Fisheries Division (SFD) reinitiated consultation under the ESA with the NMFS Alaska Region Protected Resources Division (PRD) based on the availability of new information and on substantial changes in the action since the completion of the comprehensive BiOp. The new scientific information is described in more detail below under the specific protection measures. Consultation was requested on the management measures outlined in Alternative 4 of the draft SEIS. A draft biological opinion (2001 BiOp) was prepared by the PRD and distributed as Appendix A to the draft SEIS, which was available for public review on August 20, 2001 (comment period closed October 15, 2001).

The draft 2001 BiOp did not entirely replace the previous comprehensive BiOp. The analysis contained in the BiOp remains valid and meets NMFS' requirement to consult at the FMP level. However, the RPA measures from the comprehensive BiOp are not being implemented since the management measures developed by the Council and implemented by this rule were also determined in the 2001 BiOp to avoid jeopardy and adverse modification of critical habitat. During informal consultations, the SFD and the PRD concurred that all other listed species occurring in Alaska other than Steller sea lions would not be adversely affected by the implementation of the proposed action. Therefore, only the

endangered and threatened DPSs of Steller sea lions were the subject of the formal consultation and draft biological opinion issued by the PRD.

The Council conducted a special meeting in September 2001 to review the draft SEIS and the draft 2001 BiOp. After reviewing these documents and public testimony, the Council identified Alternative 4 in the draft SEIS, with several modifications and without the options identified in June, as its preliminary preferred alternative. The Council decided not to include additional small boat exemptions for Unalaska and Chignik because opening these areas would reduce their values as control sites for evaluating management measures and would increase the likelihood for competitive interactions with sea lions and because these sites have not been economically important to the small boat fleets. Also, the Council decided not to include the GOA "gear zone" option because of potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety).

In October 2001, based on the analysis of alternatives in the SEIS, public testimony, and the draft 2001 BiOp, the Council made final recommendations for Steller sea lion protection measures. The draft 2001 BiOp concluded that Alternative 4 met the requirements of the ESA to protect listed species. The SEIS concluded that Alternative 5 effects on Steller sea lions and on their critical habitat would be similar to the effects of Alternative 4. Analysis of Alternatives 2 and 3 concluded that effects on Steller sea lions and their critical habitat would be less adverse for those alternatives than under Alternatives 4 and 5. Alternative 1 was more adverse to Steller sea lions than Alternative 4, based on the SEIS analysis. Given the results of the SEIS and the draft 2001 BiOp, the Council assumed that Alternatives 2, 3, 4, and 5 would meet the requirements of the ESA because Alternatives 2, 3, and 5 were considered to have similar or less adverse effects on Steller sea lions compared with Alternative 4.

After the alternatives that met the ESA requirements were identified, the Council then determined which alternative resulted in the least impact on the human environment, including socioeconomic impacts, and which also met the requirements of the Magnuson-Stevens Act, including the national standards. The Council recommended Alternative 4, and NMFS concurs with the Council's recommendation. The final SEIS is available from NMFS (see **ADDRESSES**) or from the NMFS' home page at http://www.fakr.noaa.gov.

NMFS solicited comments on the draft 2001 BiOp to be considered in the final biological opinion. NMFS released the final 2001 BiOp on October 19, 2001, as an appendix to the final SEIS. Copies of the 2001 BiOp are available from NMFS (see **ADDRESSES**) or from the Alaska NMFS Region home page at http://www.fakr.noaa.gov. The final 2001 BiOp concluded that the proposed action under Alternative 4, which is contained in this proposed rule, is not likely to jeopardize the continued existence of either the eastern or western DPSs of Steller sea lions or to adversely modify its critical habitat.

In October 2001, the Council modified the preferred alternative. All of these modifications fell within the scope of the draft SEIS and the 2001 BiOp. Two modifications provided additional protection to Steller sea lions during 2002 in the Aleutian Islands subarea by eliminating the directed fishery for pollock and by reducing the proposed harvest of Atka mackerel in Steller sea lion critical habitat. The third modification is a nearshore exemption for small vessels directed fishing for Pacific cod using hook-and-line or jig gear in the Bogoslof area and includes a harvest limit. Because of the extremely small level of harvest and closures around Steller sea lion haulouts in the area, this modification is expected to have no appreciable effects on Steller sea lions or their critical habitat. Public comment on the 2001 BiOp provided at the October Council meeting raised questions regarding the efficacy of using the Bogoslof area as a control site for comparing the fishery effects on Steller sea lions. Based on the extremely limited fishing by small vessels for Pacific cod and fishing prohibitions around Bishop Point, the Council changed its recommendation from September and requested NMFS implement a small vessel exemption in a portion of the Bogoslof area (Option 2 to Alternative 4 in the SEIS). The small vessel exemption in the Bogoslof area is within the scope of Option 2 analyzed in the SEIS.

Protection Measures and the Most Recent Information

Scientists generally agree that the decline of the western DPS of Steller sea lions is due to a combination of factors, including nutritional stress, predation and natural environmental changes. These factors are thought to primarily affect juveniles and, to a lesser extent, adult females, although the mechanism and magnitude of the effects are largely unknown. Of these factors, the groundfish fisheries primarily affect nutritional stress and, through indirect mechanisms, may increase the likelihood for predation due to increased search time for prey. Funding for Steller sea lion research has increased over the past few years and should provide clarification on the causes for the sea lion decline.

The ESA requires NMFS to develop a recovery plan for Steller sea lions that includes criteria for delisting the species. A recovery plan was developed in 1992 with a set of delisting criteria for the Steller sea lion population, which included the entire Steller sea lion population in the North Pacific. However, in 1997 the population was split into two DPSs. The delisting criteria have not been revised for either DPS. A new Steller sea lion recovery team has been assembled and met in January 2002. The team will review the best available scientific and commercial data and will develop a new recovery plan within two years. Because no recovery criteria specific to the western DPS have been developed, the 2001 BiOp addressed recovery in terms of the likely effects of the proposed action on the overall Steller sea lion population trajectory.

The 2001 BiOp concluded that the impact of the groundfish fisheries on the decline of the western DPS of Steller sea lions is likely to be small under the protection measures specified in this proposed rule. Although adverse impacts to the two DPSs of Steller sea lions are expected due to these groundfish fisheries, they are unlikely to jeopardize the continued existence or adversely modify their critical habitat. These protection measures are designed to avoid reductions in the abundance of Steller sea lion prey in a manner which would reduce sea lion foraging success.

These protection measures address competitive interactions between the groundfish fishery and Steller sea lions in several ways. First, these measures would modify the existing harvest control rule to ensure that in the future enough prey resources exist overall and that prey densities are sufficient for Steller sea lions on a large scale. Second, the protection measures would distribute the catch of important prey species over zones of key importance to critical components of the Steller sea lion DPS and over time to reduce the effects of localized depletion. Localized depletion for Steller sea lions is the reduction of prey resources to a level that decreases the efficiency of foraging sea lions, so that it adversely affects their health or increases their risk to predation. Finally, the protection measures will prohibit fishing in areas

immediately surrounding all rookery and many haulout sites and curtail fishing for important prey species in significant portions of designated critical habitat to relieve competition in areas considered important to Steller sea lion survival and recovery.

In 1993, critical habitat was established to 20 nm seaward of haulouts and rookeries based on the best scientific information available at the time, such as Platform of Opportunity (POP) data (August 27, 1993, 58 FR 45269). In 1999 through 2001, protection measures included some fishery restrictions out to 20 nm from Steller sea lion rookery and haulout sites.

In most cases, the portion of critical habitat areas considered important for protection in 2002 and beyond is 0–10 nm of haulout and rookery sites with areas closer to shore considered more important for animals with less foraging skills or for females with pups. The best available information on the foraging patterns of Steller sea lions was summarized in a series of white papers by NMFS and the ADF&G. This information, along with historical data, was incorporated into the 2001 BiOp for the two DPSs of Steller sea lions. This new information was primarily gathered through satellite telemetry on sea lions, observing their at-sea distribution, dive characteristics, and haulout patterns. The data, with additional information from juveniles and lactating females, indicate a preference to remain close to shore, generally within 10 nm during the summer. While tagged sea lions were observed to travel beyond 10 nm, these trips were infrequent and often involved trips well beyond the boundaries of critical habitat. About 90 percent of the observations obtained via telemetry showed trips within 10 nm of shore. In the case of adult male Steller sea lions, POP data provide the best information because little telemetry data have been collected for these animals. For adult males, the data indicate much longer trips over greater distances than for juveniles and lactating females.

Juveniles and adult females with pups require access to prey close to shore, due to the need to return often to a rookery or haulout. This behavior pattern makes them more susceptible to localized depletions of prey over relatively small areas. In other words, a lactating female does not have the choice of swimming farther offshore to find additional prey, she must return to feed her pup within a given time period or that pup may starve. The available data suggest that a lack of juvenile survival may be the proximate cause of the decline. This supports NMFS' decision to weigh heavily the telemetry data when determining protections for the western DPS of Steller sea lions. The telemetry data provide the most recent information on the most sensitive aspect of the population and where they are likely to be affected by localized depletion of prey by the groundfish fisheries. For these reasons, NMFS is implementing protection areas that extend from the shore around major rookeries and haulouts to 10 nm. In this way, NMFS has reasoned that the groundfish fisheries are unlikely to substantially reduce the foraging success of Steller sea lions. Animals that do come in contact with groundfish fisheries will have adequate opportunity to find prey such that their foraging success will not be compromised. These animals will be both older males and females that are adept at locating prey and resilient enough to find alternative places to fish.

Steller sea lion count survey data also were used to determine the areas that needed more protection from potential fishery interaction. Some of the rookeries showed declines of more than 10 percent. In some cases, sites with higher rates of decline receive additional protection over areas with less decline under the measures in this proposed rule.

Under the proposed rule, the Bogoslof area, the Seguam foraging area, and the Chignik critical habitat areas would be closed to pollock, Atka mackerel, and Pacific cod directed fishing, except to vessels using jig gear in the Chignik area and to small vessels fishing for Pacific cod using jig or hook-and-line gear in a small portion of the Bogoslof area. Furthermore, the Chiniak Gully would be closed to trawling August 1 through September 20 to determine the impact of trawl fishing on abundance and distribution of pollock. A review of the 2001 BiOp by the National Academy of Sciences may provide further recommendations on whether an experimental design could be developed that uses these closed areas or control sites to provide the information needed on the efficacy of proposed protection measures.

Summary of the 2002 Protection Measures

The following is a summary of protection measures. More detailed descriptions by topic, fishery, and area follow in this preamble. In November 2001, The State of Alaska Board of Fisheries (BOF) adopted the same protection measures for the parallel State fisheries in 2002, with two exceptions in the GOA Pacific cod pot fishery noted below. The ADF&G should be contacted for details on Steller sea lion protection measures inside State waters. Closure areas apply to federally permitted vessels in the groundfish fisheries in the BSAI and GOA reporting areas, including State waters. Protection measures include:

1. Area closures for all groundfish fishing within 0–3 nm of 39 rookery sites. These sites are considered the most sensitive for females with pups, and the nearshore marine critical habitat is the most important to protect from interactions between groundfish fisheries and Steller sea lions.

2. For the Atka mackerel, pollock, and Pacific cod directed fisheries in the waters off Alaska, protection measures include the following: (a) A modified harvest control rule to prohibit directed fishing when the spawning biomass falls below 20 percent of the projected unfished biomass, (b) closures within 10 or 20 nm of selected haulout and rookery sites to directed fishing for Atka mackerel, pollock, and Pacific cod in the GOA and BSAI, (c) closure of the Seguam foraging area and most of the Bogoslof area to all gear types, (d) a Vessel Monitoring System (VMS) requirement to facilitate enforcement of closed areas, (e) closure of the Chignik area to pot, trawl, and hook-and-line gears, (f) closure within 10 or 20 nm of 46 rookeries and haulouts to hook-and-line fishing for Pacific cod and 44 rookeries and haulouts to pot fishing for Pacific cod, (g) modifications to the CDQ groundfish program, (h) revisions to the Federal Fisheries Permit requirements, and (i) changes to the catcher vessels fishing trip definition.

3. Aleutian Island subarea protection measures include the following: (a) Pollock directed fishing outside of critical habitat apportioned to two seasons (40:60 percent), (b) Pacific cod total allowable catch (TAC) apportionment by season and gear, as well as gear specific area restrictions that alternate with the Atka mackerel fishery in critical habitat in waters west of 178° W long., (c) closure of the Seguam foraging area to pollock, Atka mackerel, and Pacific cod directed fishing by all gear types, (d) critical habitat harvest limit of 60 percent for Atka mackerel in waters west of 178° W long., (e) grouping of vessels for Atka mackerel fishing in critical habitat in waters west of 178° W long., (f) requirements for two observers for critical habitat Atka mackerel directed fishing, (g) closures of at least 0–3 nm around all haulouts for Atka mackerel and Pacific cod trawl fishing, and (h) no Atka mackerel critical habitat directed fishing with trawl gear east of 178° W long.

4. Bering Sea protection measures include the following: (a) two seasons (40:60 percent apportionment) for the pollock fishery with no more than 28 percent of the annual directed fishing allowance taken from the Steller sea lion conservation area (SCA) before April 1, (b) establishment of the Bering Sea Pollock Restriction Area (BSPRA) during the A season, (c) closure of the Catcher Vessel Operation Area (CVOA) to non-CDQ pollock trawl catcher/processors during the B season, (d) Pacific cod TAC apportionments by season and gear, as well as gear specific area restrictions, and (e) closure of all Bering Sea subarea critical habitat within 20 nm of rookeries and haulouts to Atka mackerel trawl fishing.

5. Gulf of Alaska protection measures include the following: (a) distribution of pollock harvest evenly among 4 seasons, (b) closure of directed fishing for pollock in areas that vary from 0–20 nm to 0–3 nm around rookeries and haulouts, (c) two seasons (60:40 percent apportionment) for Pacific cod fishing and area restrictions that are dependent on gear type and vessel size, and (d) continuation of the NMFS Chiniak Gully research project to explore the effects of commercial fisheries on pollock abundance and distribution in the GOA.

2002 Protection Measures Details for Harvest Controls, Seasons, Limits, and Apportionments

Modification of the Existing Harvest Control Rule (HCR)

The protection measures include a modification of the existing HCR for pollock, Pacific cod, and Atka mackerel. NMFS currently uses an HCR established under Amendments 56/56 to the FMPs when determining the maximum allowable biological catch (ABC). Under the HCR used for groundfish other than pollock, Pacific cod, and Atka mackerel, the ABC for a majority of stocks, including pollock, Pacific cod, and Atka mackerel, is based on a fishing mortality rate intended to reduce the spawning biomass per recruit to 40 percent of its theoretical unfished level (F40%). When the biomass is below the amount necessary to produce the maximum sustainable yield (MSY), the fishing mortality rate is reduced linearly. When the spawning biomass per recruit is reduced to 2 percent of its unfished level, the fishing mortality rate becomes 0, and all fishing for that target stock is prohibited (see Figure 1). A new HCR was used in 2001 that reduced directed fishing for pollock, Pacific cod, and Atka mackerel in a more aggressive linear fashion than the HCR used for other groundfish species and included a directed fishing prohibition at the 20 percent unfished biomass level. The HCR in this proposed rule (2002 HCR) would also prohibit directed fishing when the spawning biomass is below 20 percent of the unfished level but would reduce fishing mortality at the same biomass level and rate as the HCR used for other groundfish species until B20% is reached.

Figure 1 shows the reduction in fishing mortality under the three methods of harvest control: (1) Amendments 56/56 to the BSAI and GOA FMPs for most groundfish species (the existing HCR for most groundfish species), (2) the 2001 HCR, and (3) the 2002 HCR. The harvest rate under the 2002 HCR and under Amendments 56/56 would decrease at the same rate until 20 percent of the unfished spawning biomass is reached.

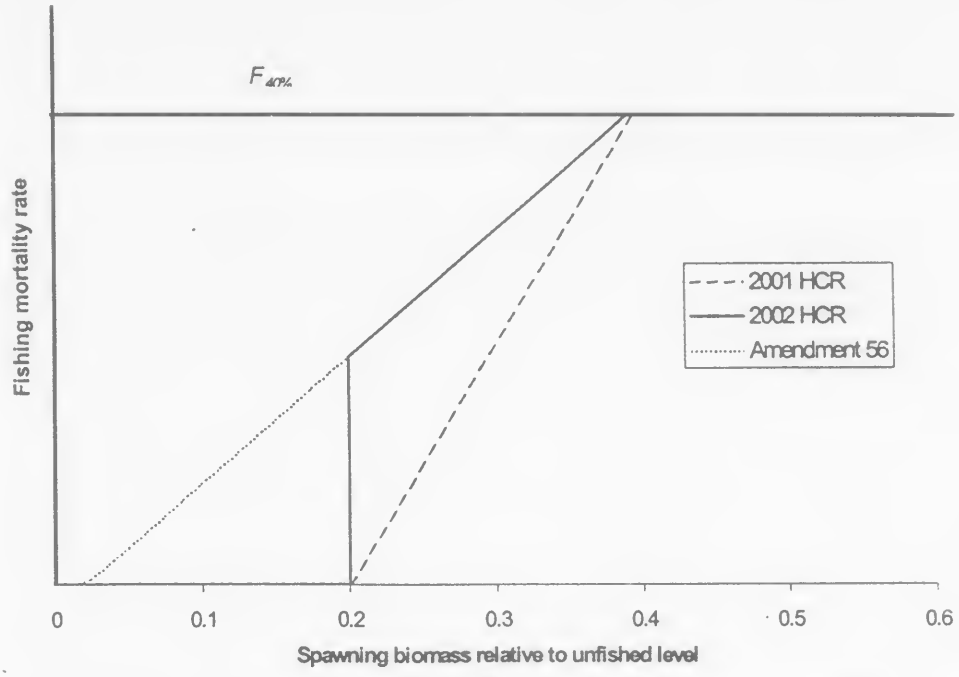

Figure 1. Relationship of fishing mortality rates under different control rules applied to pollock, Pacific cod, and Atka mackerel. FMP Amendments 56/56 harvest guidelines are used for groundfish species managed under the BSAI and GOA FMPs.

In a model, NMFS analyzed the difference in recovery rates up to the MSY under the 2001 and 2002 HCRs and found very little difference (3–4 percent) between them. The 2001 BiOp concluded that the 2002 HCR is adequate to avoid locally depleting Atka mackerel, pollock, and Pacific cod for Steller sea lions.

For 2002, the new HCR did not affect the harvest rates for any species. Of the managed stocks under this proposed rule, the GOA pollock biomass is estimated to be closest to the B20% level, with a biomass level estimate of 26 percent of the projected unfished biomass level. Because of uncertainty in the point estimate and continued poor recruitment in the GOA pollock stock, the Plan Team recommended an ABC well below the maximum permissible ABC using the 2002 HCR. Had the current model and the known biomass amounts been used in 2001, overfishing would have occurred if the total TAC had been taken in areas 620, 630, and Southeast District of the GOA. Instead, 78 percent of the GOA pollock TAC was harvested. This action by the Plan Team is reasonable from a Steller sea lion and stock assessment perspective. See the SAFE reports for the GOA and BSAI and Part II of the preamble to the emergency interim rule (67 FR 956, January 8, 2002) for more details. The SAFE reports are available from the Council website at http://www.fakr.noaa.gov/npfmc/default.htm.

Steller Sea Lion Protection Area Definition, Fishing Trip Definition and Maximum Retainable Amount (MRA) Calculation Modifications, and Retention Prohibitions

The proposed rule would remove the definition of Steller sea lion protection areas. This definition was used previously to describe management measures implemented by emergency rule in 2000 and 2001. This proposed rule would change the management measures for protecting Steller sea lions such that the Steller sea lion protection area definition is no longer needed.

This proposed rule modifies the definition of fishing trip for catcher vessels. The definition is divided between catcher/processor and mothership fishing trips and catcher vessel fishing trips. The conditions defining a fishing trip for catcher/processors and motherships remain unchanged. The catcher vessel fishing trip definition is limited to the offload or transfer of all fish or fish product from the vessel. This change will facilitate the determination of the time when a fishing trip begins and ends for catcher vessels and of the circumstances to which a maximum retainable amount (MRA) of incidental catch species applies.

The calculation of the MRA under § 679.20(e) would be revised so that vessels that enter open and closed fishing areas during a trip will be required to comply with the lowest MRA applicable at any time during the fishing trip.

Modifications to CDQ Program

This proposed rule would remove the specific directed fishing calculation and determination for both groundfish and pollock CDQ. These changes are necessary to ensure that the Steller sea lion protection measures are applicable to groundfish CDQ harvesting activities. Such protection measures are typically predicated on whether a vessel is

considered to be engaged in directed fishing for a given species such as pollock, Pacific cod, or Atka mackerel.

In the non-CDQ fisheries, a vessel is engaged in directed fishing for a species of groundfish if it retains on board an amount of a given species in excess of the MRA for that species. When the TAC for a species is approached, NMFS closes directed fishing for that species. Traditionally, NMFS has not needed to determine whether or not a vessel participating in a CDQ fishery is engaged in directed fishing because directed fishing closures have not applied to the CDQ program. Directed fishing in the groundfish and pollock CDQ fisheries is currently determined based on the species composition of the total groundfish or pollock catch while harvesting CDQ species. This determination is made on a haul-specific basis for catcher/processors and on the species composition of catch on board for catcher vessels.

Typically, NMFS uses directed fishing determinations to calculate halibut bycatch mortality and pollock catch, rather than for at-sea enforcement of other management measures. Determining whether a vessel is pollock fishing facilitates the proper accounting of pollock caught in the groundfish CDQ fisheries toward either the pollock CDQ reserve or the pollock Incidental Catch Allowance. Using current CDQ directed fishing determinations could conflict with the calculated target fishery derived by using MRA calculations.

Removing the specific directed fishing determinations for the CDQ fisheries is necessary to establish a means to readily enforce time and area closures to directed fishing for pollock, Pacific cod, and Atka mackerel. The directed fishery determination currently used in the non-CDQ fishery will now apply to participants in the CDQ groundfish fisheries. This will give consistency to the at-sea determination of both a vessel's non-CDQ and CDQ target fisheries. Additionally, to lessen the potential for confusion by NMFS staff, U.S. Coast Guard boarding personnel, vessel operators, and CDQ groups, MRAs will be used to define directed fishing for all groundfish CDQ species. Information obtained from observer data and CDQ catch reports will assist NMFS management in determining when catch limits have been reached, when area closures should occur, and how to account for pollock caught in the groundfish CDQ fisheries.

Steller Sea Lion Protection Measures for Pollock, Atka Mackerel and Pacific Cod Fisheries

The 2002 Steller sea lion protection measures include fishing seasons and area restrictions for the pollock, Pacific cod, and Atka mackerel fisheries. The apportionment of TAC by seasons will distribute these fisheries over time. Critical habitat harvest limits for pollock and Atka mackerel contained in this proposed rule are consistent with the Council's recommendations. Critical habitat limits will distribute the Atka mackerel and pollock fisheries over a range of areas, reducing the potential for localized depletion of prey.

In order to manage fishing to protect Steller sea lions, this proposed rule includes changes to the permit information collected under § 679.4. Vessel owners using pot, hook-and-line, or trawl gear will need to register with NMFS to participate in the directed fisheries for pollock, Pacific cod, or Atka mackerel. These directed fisheries will appear as endorsements on the vessel's Federal Fishery Permit (FFP). Section 679.7(a)(1) would also be revised to prohibit directed fishing for Pacific cod, pollock, or Atka mackerel without an endorsed FFP, as described above. Vessel owners wishing to fish for Atka mackerel in critical habitat will also need to indicate whether they will fish in Federal regulatory areas 542, 543, or both. The Atka mackerel registration information will be used for group management that is explained later in this preamble.

The protection measures addressing temporal and spatial dispersion of the pollock, Atka mackerel, and Pacific cod directed fisheries are as follows:

1. Aleutian Island Subarea Pollock Fishery

In the AI subarea, directed fishing for pollock outside the critical habitat is apportioned between the A season (January 20–June 10, 40 percent) and the B season (June 10–November 1, 60 percent).

2. Bering Sea Subarea Pollock Fishery

In the Bering Sea subarea, fishing seasons are continued for the four sectors of the Bering Sea pollock fishery that are defined in the AFA. These seasons are defined as the A season (January 20–June 10, 40 percent) and the B season (June 10–November 1, 60 percent).

Pollock fishing will be prohibited during the A season in the BSPRA. This area is delineated by straight lines tangential to haulouts, 10 nm from the shore between the eastern edge of the SCA and the western edge of statistical area 519. The BSPRA is intended to reduce the likelihood of localized depletion and competitive interactions during critical winter months when juvenile Steller sea lions are learning to forage.

This proposed rule will remove the "fair start" provisions at § 679.7(b) that required vessels fishing for pollock in the Bering Sea to cease fishing for groundfish during the week preceding each pollock season or face a mandatory stand-down period during the first week of the pollock season. The Council determined that these fair start requirements were no longer necessary, given the changes to the pollock fishery that occurred under the AFA.

Catcher vessel exclusive fishing seasons at § 679.23(i) are contained in this proposed rule. Vessels fishing in one season in the GOA or in the BSAI are prohibited from fishing in the alternative management area until the following season. This prohibition will limit the concentration of fishing effort in one area and reduce the potential for localized depletion of Steller sea lion prey. Catcher vessels less than 125 ft (38.1 m) LOA fishing east of 157° W long. are exempt from this prohibition.

This proposed rule also includes the use of the SCA established by the emergency rule published January 25, 2000 (65 FR 3892). The SCA includes the portion of Bering Sea critical habitat known as the Bogoslof Foraging area and the portion of the Catcher Vessel Operational Area (CVOA) that extends eastward from the Bogoslof Foraging area. This eastern portion of the CVOA overlaps with the pollock trawl exclusion zone for Sea Lion Rocks (Amak Island). Inclusion of this eastern portion of the CVOA in the SCA is necessary to provide sufficient protection from concentrated fishing and the resulting localized depletions of sea lion prey in (1) the narrow corridor between the Bogoslof Foraging area and the Sea Lion Rocks (Amak Island) trawl exclusion zone and (2) the adjacent portions of critical habitat.

The SCA consists of the area of the Bering Sea between 170°00' W long. and 163°00' W long., south of straight lines connecting the following points in the order listed:

55°00' N lat. 170°00' W long.;
55°00' N lat. 168°00' W long.;
55°30' N lat. 168°00' W long.;
55°30' N lat. 166°00' W long.;
56°00' N lat. 166°00' W long.;
56°00' N lat. 163°00' W long.

This proposed rule specifies the amount of the annual pollock directed fishing allowance (PDFA) that can be taken from the SCA during portions of

the A season. The PDFA is equal to the sum of each sector's total allowable catch (TAC) minus the incidental catch allowance (ICA) and 10 percent CDQ reserve. Until April 1, the harvest within the SCA is limited to 28 percent of the annual PDFA, which is equivalent to 70 percent of the A season apportionment. The remaining 12 percent of the annual PDFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual PDFA is not taken inside the SCA before April 1, the remainder may be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the PDFA as set forth in the AFA. This action is necessary to avoid high harvest rates within a relatively small area of the BS subarea that is Steller sea lion critical habitat.

NMFS will monitor catch by each industry sector and close the SCA to directed fishing for pollock by sector when NMFS determines that a sector's specified portion of the SCA limit has been reached. As in 2001, in accordance with the Council's intent to address small vessel safety concerns, inshore catcher vessels less than or equal to 99 ft (30.2 m) LOA will continue to be exempt from SCA closures unless the cap for the inshore sector has been reached. Under the authority of the AFA, NMFS will separate the inshore fishery into cooperative and non-cooperative sector allocations. For each sector, NMFS will announce the closure of the SCA to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector SCA limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the SCA sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the inshore sector opening.

The CVOA will continue to be closed to pollock trawl catcher/processors during the B season (June 10–November 1) to reduce the amount of pollock taken from this area and to reduce the potential for competition with Steller sea lions.

3. GOA Pollock Fishery Seasons and Apportionments

Fishing seasons and pollock TAC apportionments in the GOA Western and Central Regulatory Areas are summarized in Table 1.

TABLE 1. POLLOCK FISHING SEASONS AND TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Season	TAC Apportionment	Season Dates
A	25%	January 20—February 25
B	25%	March 10—May 31
C	25%	August 25—September 15
D	25%	October 1—November 1

Rollover of a seasonal TAC apportionment is permitted as long as it does not exceed 30 percent of the annual TAC.

Section 679.7(b) would be revised to clarify existing prohibitions and to continue other prohibitions implemented by emergency rule and specific to the GOA. The proposed rule would continue to prohibit the use of trawl gear in the GOA east of 140° W long. and would revise the existing language to clarify this prohibition. The 300,000 lb (136 mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA at § 679.7 supports temporal distribution objectives and is included in this proposed rule. A catcher vessel fishing for groundfish in the GOA will be prohibited from retaining on board more than 300,000 lb (136 mt) of unprocessed pollock harvested in the GOA at any time during a trip. This trip limit will not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop directed fishing for pollock during a fishing trip before the 300,000 lb (136 mt) trip limit is reached to avoid a violation of either the 300,000 lb (136 mt) trip limit or the 100 percent retention requirement for pollock.

In addition, § 679.7 would continue to prohibit vessels from operating as pollock tenders in the GOA east of 157°00' W long. to prevent the large scale use of tender vessels to avoid the trip limit restriction. Vessels operating as tenders in the GOA west of 157°00' W long. will be prohibited from retaining on board more than 600,000 lb (272 mt) of unprocessed pollock or the equivalent of two fishing trips. Tendering west of 157°00' W long. is allowed because smaller vessels delivering to Sand Point and King Cove are more dependent on tenders than the larger vessels that operate east of 157°00' W long. and deliver primarily to Kodiak.

As implemented by emergency interim rule (66 FR 7276, January 22, 2001), catcher vessels or catcher processors in the GOA and BSAI would also be prohibited from acting as a tender until all fish harvested or processed is unloaded. This proposed rule would also prohibit these vessels from harvesting fish at the same time the vessels are used as tenders. These prohibitions would allow for better management of the fisheries by limiting the source of the fish which a vessel may offload and would facilitate accurate recordkeeping.

4. BSAI Atka Mackerel Seasons, Apportionments, Critical Habitat Harvest Limits, and Directed Fishery Groups

In the BSAI, the A season for the Atka mackerel trawl fishery will begin January 20 and end April 15. The B season will begin September 1 and end November 1. The CDQ Atka mackerel fishery will have a single season from January 20 through November 1 because the vessels used in the non-CDQ Atka mackerel fishery are generally the same vessels used in the CDQ fishery and because the CDQ harvest historically takes place when the non-CDQ season is closed.

To clearly identify the Steller sea lion protection areas for Atka mackerel directed fishing in areas 542 and 543, this proposed rule includes a new definition at § 679.2. For purposes of establishing groups for Atka mackerel directed fishing in critical habitat and for restriction of Pacific cod trawling during the Atka mackerel critical habitat directed fishery, the definition of the harvest limit area (HLA) is waters west of 178° W long. within 20 nm seaward of Steller sea lion sites listed on Table 6 of 50 CFR part 679 and west of 177°57.00 W long. This definition is needed to include Rat Island and Cape Ivakin haulouts because these are not

listed under 50 CFR 226.202 as critical habitat but are identified by NMFS as needing protection. This definition also includes that portion of the 20 nm arc of critical habitat related to Tanaga Island/Bumpy Point that occurs west of 178° W long.

Fifty percent of the annual TACs for the western (area 543), central (area 542), and eastern (area 541) Aleutian Islands districts is available during each season. No more than 60 percent of the seasonal TAC may be taken from within the HLA in statistical areas 542 and 543 in the AI subarea. This is an increase from the 46 to 48 percent critical habitat limit effective in 2001. The 2002 limit is based on the assumed distribution of Atka mackerel based on the depth contour of the continental shelf and on an objective to reduce the amount of rockfish bycatch that has occurred historically at relatively high levels outside the critical habitat in deeper waters in areas 542 and 543. One of the objectives in setting harvest levels is to harvest at a level relative to the abundance of the fish in the area to avoid localized depletion. The biomass estimates in areas 542 and 543 indicated that up to 75 percent of the biomass occurs in critical habitat, but the Council recommended, and NMFS concurs, that a more conservative increase in the amount of harvest from critical habitat is appropriate because this fishery has caused measurable localized depletions in the past. Higher levels of harvest in critical habitat may be considered in the future after additional analysis. Analyzing the effectiveness of vessel groupings for managing the fleet in the HLA will provide additional information to understand the potential impact of higher harvest limits in the future. The amount of harvest allowed in the HLA also needs to be enough to encourage participation in the directed fishery groups used to manage the critical habitat fisheries.

NMFS catch data indicate a higher catch rate of Atka mackerel in area 542 than in area 543 so that vessels fishing in area 542 will likely reach their HLA limit quicker than vessels fishing in area 543. Thus, vessels fishing in area 542 could have an earlier opportunity to fish outside the critical habitat and encounter rockfish bycatch in amounts sufficient to pose overfishing concerns so as to close the Atka mackerel fishery without the area 543 HLA limit being reached. With the 60 percent limit in the HLA, vessels will be able to spend more effort inside critical habitat and will be less likely to shut down the Atka mackerel fishery due to rockfish bycatch compared to a limit set at 50 percent or less.

To reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, the Atka mackerel trawl fleet is divided into two groups assigned to fish in the HLA in either area 542 or 543. To facilitate the group assignments before the season start date, NMFS must have information approximately 2 to 4 weeks before the opening date of the season. To participate in the HLA A season fishery, NMFS must receive registration information by 4:30 p.m. of the first working day following January 1. Vessels registered for the A season would be assigned to a B season fishery unless the registration for the HLA fishery is removed. Vessels that did not participate in the A season fishery may participate in the B season fishery if registration information is received by 4:30 p.m. of the first working day following July 31. NMFS would assign vessels to a directed fishery group for each area in which a vessel is registered to fish. Each group in an area would be assigned to fish during one of the two directed fisheries held in the area during a season. The assignment to groups would be accomplished through a lottery system that ensures random selection of vessels to a group. The random selection process would ensure that each participant in a group is provided an equal opportunity to fish in a group of vessels in the HLA in area 542 or 543, and would ensure that the combination of vessels fishing together is determined by chance.

With the random selection process, the potential exists that vessels of less fishing capability may be in a group of vessels with more fishing capability, affecting the smaller vessel's opportunity to harvest fish. By dividing the vessels registered for an area into groups, all vessels would be competing with half of the vessels that they normally compete against, reducing competition on the fishing grounds and potentially enhancing the overall harvest for smaller vessels in the HLA. However, the potential for competitive advantage of larger vessels from the same company working together over the smaller vessels would be reduced with the random group assignments, and the catch would over time be dispersed.

During a fishing season, the fishing limit inside the HLA would be split into two Atka mackerel directed fisheries with each group fishing under a harvest limit in proportion to the number of vessels in the group compared with the number of vessels registered for the area. The time period of the directed fishery is based on the combined harvest potential of the vessels in the group. The start date for the first directed fishery is 48 hours after the closure of the area 541 Atka mackerel directed fishery. Historically, area 541 is harvested first. Vessels then move into areas 542 and 543. Starting the HLA directed fisheries 48 hours after closure of area 541 provides a fair start to the HLA fisheries by allowing for off loading of catch and for travel to areas 542 and 543. When the HLA directed fishery is closed in either area 542 or 543, vessels may fish outside the HLA anywhere in the Aleutian Islands where directed fishing is open.

If a vessel has registered to fish in an HLA in both areas 542 and 543 during a season, it would be assigned to fish in directed fisheries in area 542 and in area 543 that begin on different dates. Regardless of the number of vessels in a group, an HLA directed fishery would last no longer than 14 days to allow each group ample opportunity to harvest in the HLA in area 542 or 543 before the end of the season.

During each season, vessels registered to fish in the HLA in area 542 or 543 would not be allowed to fish for groundfish in any other location while the first directed fishery in an HLA to which the vessel is assigned is open. This stand down provision may last up to 14 days, the maximum length of an HLA directed fishery for Atka mackerel.

All trawl vessels fishing for Atka mackerel in the HLA would be required to carry two observers so that NMFS can meet the requirements of the 2001 BiOp to adequately monitor fisheries to manage critical habitat limits. (The Groundfish Observer Program is due to expire December 31, 2002. At the present time, NMFS is in the process of extending this program through 2007.) Vessels not participating in the groups may fish for Atka mackerel outside the HLA and outside the critical habitat in the BSAI subareas. To provide maximum protection to Steller sea lions, Atka mackerel trawl fishing is prohibited in the Seguam foraging area and in critical habitat around rookeries and haulouts east of 178° W long. since Atka mackerel is readily available in waters outside critical habitat.

5. BSAI and Western and Central Districts of the GOA Pacific Cod Seasons, Apportionments and Closures

For the BSAI and Western and Central Districts of the GOA Pacific cod seasons, this proposed rule would separate the TACs into separate seasonal apportionments depending on gear type (Table 2). Section 679.20(a)(7)(iii)(B), which describes decision criteria for

seasonal allocations for hook-and-line and pot gear, no longer reflects the seasonal allocation specified in the Steller sea lion protection measures. This paragraph would be removed by this proposed rule.

For the nontrawl vessels in the BSAI and Western and Central Districts of the GOA, the A season begins on January 1 and ends June 10. Sixty percent of the annual TAC, after subtraction of any reserves and incidental catch, would be available for harvest during the A season and would be allocated among the various sectors as provided in § 679.20(a)(6)(iii) and (a)(7). The B season for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear and for vessels using jig gear in the BSAI begins at 1200 hours, A.l.t., on June 10 and ends on December 31. The B season for vessels using hook-and-line, pot, or jig gear in the GOA and for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI begins at 1200 hours, A.l.t., on September 1 and ends on December 31. Forty percent of the annual TAC, after subtraction of any reserves and incidental catch, will be available for harvest during the B season and will be allocated among the various sectors as provided in § 679.20(a)(6)(iii)and (a)(7). CDQ vessels using pot gear and vessels less than 60 ft (18.3 m) LOA using pot and hook-and-line gear in the BSAI have no seasonal apportionment.

For the trawl fisheries in the BSAI, the annual TAC is apportioned to three seasons. The A season starts January 20 and ends April 1, with 60 percent of the annual TAC allocated. The B season starts April 1 (1200 hours, A.l.t.) and ends June 10, with 20 percent of the annual TAC allocated. The C season starts June 10 (1200 hours, A.l.t.) and ends November 1, with 20 percent of the annual TAC allocated. In the Western and Central Districts of the GOA, trawl vessels are allocated 60 percent of the annual TAC in the A season and 40 percent in the B season.

TABLE 2 BERING SEA AND ALEUTIAN ISLANDS SUBAREAS AND WESTERN AND CENTRAL DISTRICTS OF THE GULF OF ALASKA PACIFIC COD SEASONS AND TAC APPORTIONMENTS

Gear and Area	A season and apportionment	B season and apportionment	C season and apportionment
Trawl in W/C GOA	January 20–June 10 (60%)	September 1–November 1 (40%)	June 10–November 1 (20%)
Trawl in BSAI	January 20—April 1 (60%),	April 1–June 10 (20%)	
hook-and-line, pot, and jig in W/C GOA, and pot ≥ 60 ft. LOA in BSAI	January 1–June 10 (60%)	September 1–December 31 (40%)	
hook-and-line ≥ 60 ft. and jig in BSAI	January 1–June 10 (60%)	June 10–December 31 (40%)	
CDQ* pot, pot and hook-and-line < 60 ft in the BSAI	January 1–December 31		

*Community Development Quota program. CDQ vessels fishing with non-pot gear are governed by the gear specific seasonal restrictions listed in Table 2.

Unused Pacific cod allocations among sectors and unused apportionments for seasons in the BSAI and Western and Central GOA may be redistributed, considering bycatch and optimization of catch by gear groups and sectors.

Moving 20 percent of the BSAI Pacific cod TAC from the first season to the second season limits the amount of Pacific cod that can be harvested during the critical January through April time period. In comparison with the 2001 apportionments, the BSAI Pacific cod trawl TAC is apportioned among three seasons shifting 20 percent of the harvest out of the June through October time period. Moving 20 percent of the harvest from the second half of the year enhances the opportunity for the Pacific cod trawl fleet to harvest Pacific cod when it is aggregated, optimizing the potential to reach the annual harvest limit. The apportionment during the first half of the year is further divided into 60 percent and 20 percent of the annual TAC.

Apportioning Pacific cod between two or among three seasons may affect the ability of fishermen to fully utilize the TAC for Pacific cod. In previous years, a large portion of the Pacific cod TAC was taken during the early part of the calendar year. Pacific cod tends to aggregate during the early part of the calendar year when it is easier to locate and catch. Also, as Pacific cod becomes disaggregated, the increased fishing time and effort to catch the same amount of fish result in increases in bycatch, which also can affect the success of fully utilizing the TAC.

In the BSAI, the trawl allocations of Pacific cod TAC are further allocated to catcher vessels and catcher/processors. The seasonal allocation for the Pacific cod trawl catcher vessels is further split to 70 percent in the A season, 10 percent in the B season, and 20 percent in the C season. Pacific cod trawl catcher/processors' portion of the TAC is allocated 50 percent in the A season, 30 percent in the B season, and 20 percent in the C season. Many of these vessels participate in the AFA pollock fishery, which disperses over time not only pollock but also Pacific cod harvests in the BSAI. Rollovers between these sectors would continue to be allowed under § 679.20(a)(7)(ii). Regulatory provisions are included in this proposed rule to allow the rollover of BSAI Pacific cod trawl allocations between seasons. Trawl allocations to catcher vessels and catcher/processors may continue to be moved between vessel types within a season before reallocation to other gear types to allow for full optimization of an allocation by the trawl sector during a season. These gear allocations would further disperse the Pacific cod fishery over time and lessen the potential for depletion of prey.

In the GOA, catch of Pacific cod in other directed groundfish fisheries during the time period between the closure of the Pacific cod A season and the opening of the Pacific cod B season would be deducted from the Pacific cod B season apportionment. This recommendation by the Council is intended to optimize the harvest of Pacific cod when it is most vulnerable to fishing gear while fully providing for Pacific cod incidental and bycatch needs in other groundfish fisheries.

Under this proposed rule, Pacific cod harvest by trawl gear in the HLA would be prohibited during the Atka mackerel HLA directed fisheries. See above discussion of Atka mackerel for the definition of the HLA. This provision reduces potential competition for prey posed by concurrent trawl fisheries in critical habitat. It also would allow for easier management by NMFS of the Atka mackerel fishery during the short time period that the HLA is open to directed fishing for Atka mackerel

vessels. Vessels fishing in the HLA during the Atka mackerel directed fishing opening will be managed for Atka mackerel only, instead of being managed for Atka mackerel and for Pacific cod.

Section 679.20(a)(7)(C) specifies the allocation of Pacific cod TAC to vessels using hook-and-line or pot gear. Emergency interim regulations (66 FR 7276, January 22, 2001) further allocated the TAC between pot and hook-and-line vessels over or under 60 ft (18.3 m) LOA. The harvest of Pacific cod by hook-and-line or pot vessels less than 60 ft (198.3 m) LOA accrues against the allocation for vessels greater than 60 ft (18.3 m) LOA when the fishery for the vessels over 60 ft (18.3 m) LOA is open. Otherwise the harvest is counted toward the allocation to vessels less than 60 ft (18.3 m) LOA. This proposed rule would continue this allocation and method of management for Pacific cod hook-and-line and pot vessels in the BSAI.

Closed Areas and Management Measures

The Steller sea lion protection measures include fishery closure areas designed to reduce competition with Steller sea lions, consistent with the concerns described in the 2001 BiOp. Scientific information suggests that the effects of the groundfish fisheries on Steller sea lions may be greatest around rookeries and haulouts. Fishing prohibitions around rookeries and haulouts are important to the most vulnerable Steller sea lions--lactating females, young-of-the-year, and juveniles.

Since publication of critical habitat definitions in 50 CFR 226.202, 19 additional haulouts in the BSAI and the GOA have been identified as areas needing additional protection. The Council recommended that Steller sea lion protection measures should be implemented around the 19 additional haulouts to protect Steller sea lions in these important areas. The majority of these sites had fishing prohibitions consistent with those for critical habitat closure sites in 2001. More information and justification for including these haulouts are contained in the 2001 BiOp (see **ADDRESSES**).

In November 2001, the BOF authorized Steller sea lion protection measures in State waters for the State 2002 parallel fishery similar to Federal protection measures, with two exceptions described below. The State parallel groundfish fisheries are defined in the Alaska Administrative Code at 5 AAC 28.087(c) as Pacific cod, walleye pollock, and Atka mackerel fisheries in State waters managed by ADF&G to correspond with the times, area, and the gear regulations implemented by NMFS for adjacent Federal waters. NMFS deducts harvest amounts which occur during the State parallel fisheries from the Federal TACs. State-managed fisheries function exclusively under state regulations and management policies. The exception is the State-managed Pacific cod fisheries in the Central, Western, and Prince William Sound State waters of the GOA. In these State fisheries, the State establishes Pacific cod harvest levels that are equal to 25 percent of the federally established ABC specification. The Federal TACs for Pacific cod in the Western and Central Regulatory areas are reduced from the respective ABC by the amounts anticipated to be taken in the State-managed Pacific cod fishery. Vessels participating in the State-managed Pacific cod fishery are exempt from the Pacific cod Steller sea lion no-fishing zones in the GOA.

The State parallel groundfish fisheries management plan authorizes the Commissioner by emergency order to open and close seasons and implement gear, time, and area restrictions to parallel Federal regulations governing the Federal fisheries. The BOF authorized the Commissioner of the ADF&G to exempt pot fishing for Pacific cod within 0–3 nm of Caton Island and Cape Barnabus from the parallel fishery closures detailed in Federal regulations. Because of the slow rate of extraction in the pot fishery and the small amount of Pacific cod harvest by this gear sector, NMFS determined through continued consultation under section 7 of the ESA that this change to the action would not result in any appreciable effects on Steller sea lions or their critical habitat that were not considered in the 2001 BiOp.

In February 2002, the Council requested that NMFS analyze effects of opening waters from 0–3 nm around Caton Island and Cape Barnabus to federally permitted vessels using pot gear in the Pacific cod directed fishery. If there is a determination that this action would not cause jeopardy or adverse modification of habitat for the western DPS of Steller sea lions or their critical habitat and if NMFS approves, subsequent rulemaking may follow to open these two haulouts to directed fishing for Pacific cod by federally permitted vessels using pot gear.

Four haulout sites listed as critical habitat under 50 CFR 226.202 occur in the State's waters within Prince William Sound. These sites are Pt. Elrington, The Needle, Perry Island, and Pt. Eleanor. Glacier Island also occurs in the State's waters within Prince William Sound and is one of the 19 haulouts not listed as critical habitat. No Federal fishery or State parallel fishery occurs in this area. However, the State has imposed pollock trawl closures from June 1 to November 1 from 0–10 nm around Pt. Elrington, The Needle, and Glacier Island. The State also apportioned pollock harvest across three areas of Prince William Sound with no more than 40 percent of the total harvest coming from a single area. This proposed rule includes no additional protection measures for these sites inside State waters.

The proposed protection measures make no changes to the existing 0–3 nm no-entry zones around rookeries listed in 50 CFR 223.202. Although Table 12 to 50 CFR part 679 would implement groundfish fishing closures in sites protected by the no-entry zones, persons should refer to 50 CFR 223.202 for the appropriate locations of the no-entry zones. In some cases those locations may be different than locations for the same sites that are also listed in Table 12 to 50 CFR part 679. NMFS would reconcile any differences between the two sets of regulations in the future. However, until that occurs, persons are advised to refer to 50 CFR 223.202 for the proper location of no-entry zones and to Table 12 to 50 CFR part 679 for proper location of sites for fishery closures. Two additional rookeries are included in Table 12 for 0–3 nm groundfish fishing closures that are not on the list appearing in 50 CFR 223.202. These sites are Wooded Island and Seal Rocks (Cordova). The 0–3 nm groundfish fishing closures apply to all federally permitted groundfish fishing vessels and all gear types. The State emergency orders and regulations prohibit commercial fishing in waters within 0–3 nm of all of the rookeries listed on Table 12.

The RPA Committee recommended closures around haulouts and rookeries considering the rate of decline for the entire western DPS of Steller sea lions and historical fishing patterns. In some cases, sites with higher rates of decline received greater protection over areas with lower declines. Jig vessels are exempt from most of the closure zones beyond 3 nm of rookeries and beyond the shore around haulouts because of their slow rate of extraction and of the small number of vessels that prosecute these fisheries. Site-specific closures are detailed in Tables 4, 5, 6, and 12 of 50 CFR part 679 and in § 679.22 of this proposed rule. Closures would apply to federally permitted vessels. A summary of area and fishery specific closures is as follows:

Groundfish Fishery Closures

1. Directed groundfish fishing by vessels using any gear type would be prohibited within 0–3 nm of all rookeries listed in Table 12 to part 679.

2. Directed fishing for pollock, Pacific cod, and Atka mackerel by vessels using trawl, pot, or hook-and-line gear(s) would be prohibited 0–20 nm around five haulout areas in the Northern Bering Sea. These haulouts are Hall Island, Round (Walrus) Island, St. Lawrence Island/S. Punuk Island, St. Lawrence Island/SW Cape, and Cape Newenham. Historically, only limited fishing has occurred for the three prey species near these haulouts, and closures offer protection from fisheries developing in this area.

3. Directed fishing for pollock, Pacific cod, and Atka mackerel by all vessels using any gear type would be prohibited in the Seguam foraging area, and the Bogoslof area, except catcher vessels less than 60 ft (18.3 m) LOA directed fishing for Pacific cod using hook-and-line or jig gear in the Bogoslof Pacific cod exemption area. In addition, critical habitat areas around two rookeries and four haulouts in the Chignik area are closed to pot, hook-and-line, and trawl directed fishing for the three species.

Aleutian Island Closures

1. Directed fishing for pollock inside critical habitat in the Aleutian Islands subarea would be prohibited. Pollock fishing was prohibited in the Aleutian Islands subarea in 1999 through 2002 as part of Steller sea lion protection measures. In October 2001, the Council recommended opening the Aleutian Islands subarea in 2003 to directed fishing for pollock, outside the critical habitat with two seasonal apportionments (40:60 percent). Because this fishery would occur outside the critical habitat, it is not likely to have a significant, adverse effect on Steller sea lions or their critical habitat. In February 2002, the Council recommended additional analysis of directed fishing for pollock in the Aleutian Islands, including closing directed fishing for pollock in the Aleutian Islands subarea and having a single season for directed fishing for pollock outside of critical habitat.

2. Atka mackerel directed fishing by vessels using trawl gear would be prohibited in critical habitat east of 178° W long. in the Aleutian Islands and within 20 nm of rookeries and haulouts of the Bering Sea subareas. Waters 20 nm seaward of Gramp Rock and located east of 178° W long. are included in the critical habitat areas closed to Atka mackerel directed fishing by vessels using trawl gear. Historically, Atka mackerel has been harvested outside the critical habitat east of 178° W long. Consequently, the fishery is expected to be able to harvest the allocation while providing substantial protection to Steller sea lions. West of 178° W long., Atka mackerel directed fishing by trawl gear would be prohibited 0–15 nm of Buldir rookery and 0–10 nm of the remaining rookeries. Due to a continued steep decline in the population at Buldir of greater than 10 percent, an additional 5 nm protection zone was added. Additionally, Buldir is isolated from other nearshore foraging locations making it more susceptible to local depletions. On this haulout, Steller sea lions have less opportunity to move to other foraging areas to escape the possible localized depletion. Atka mackerel directed fishing by trawl gear would also be prohibited 0–3 nm of haulouts west of 178° W long. to protect nearshore foraging areas.

3. Pacific cod fishing closure areas would be dependent on the gear used and location. Hook-and-line and pot vessels would be prohibited from directed fishing for Pacific cod (a) in critical habitat east of 173° W long. to the western boundary of the Bogoslof area to reduce gear conflicts with trawl vessels, (b) 0–10 nm of Buldir rookery, and (c) 0–20 nm of Agligadak rookery. Increased protection around Agligadak is proposed because Steller sea lions at this site are suffering a high rate of count declines. Due to limited harvest rates by hook-and-line and pot vessels, closures are limited to waters 0–3 nm around rookeries.

Pacific cod trawl directed fishery closures in the Aleutian Islands include (a) waters east of 178° W long. 0–10 nm of rookeries and 0–3 nm of haulouts, except that waters around Agligadak rookery would be closed 0–20 nm, and (b) waters west of 178° W long., 0–20 nm around haulouts and rookeries until the Atka mackerel HLA fishery is completed. After the Atka mackerel HLA fishery is closed, Pacific cod trawling would be prohibited 0–3 nm of haulouts and 0–10 nm of rookeries. Trawl closures are more extensive around haulouts and rookeries due to higher removal rates and large harvest by trawl gear. Increased protection around Agligadak rookery is proposed because this site exhibits a high rate of Steller sea lion decline.

Bering Sea Closures

1. Atka mackerel directed fishing by trawl gear would be prohibited in critical habitat around haulouts and rookeries in the Bering Sea subarea, providing protection to Steller sea lions and critical habitat by reducing the potential for competition for Atka mackerel prey.

2. Pollock directed fishing would be prohibited (a) 0–10 nm of all rookeries and haulouts, except that four Pribilof haulouts would be closed 0–3 nm, (b) in the BSPRA during the A season, and (c) by non-CDQ trawl catcher/processors in the CVOA during the B season (June 10–November 1) to reduce the rate and amount of harvest in critical habitat. NMFS has not undertaken Steller sea lion aerial surveys of the northern haulouts in the Bering Sea. Anecdotal evidence from NMFS' scientists, subsistence users, and others indicates that these areas are used infrequently, mostly during the summer as males pass through the area. Therefore, the Council considered these infrequently used haulouts to be of less importance for protection to 10 nm. The Pribilof Islands Conservation Zone described at § 679.22(a)(6) is a trawl closure area that encompasses some of the Steller sea lion critical habitat areas. Five haulouts and one rookery are located in the BSPRA. This area is closed to pollock fishing in the A season to provide protection to Steller sea lions in the nearshore foraging areas during the most critical time of the year.

3. Pacific cod closures depend on the type of gear used. Directed fishing for Pacific cod with vessels using trawl gear would be prohibited 0–10 nm around all rookeries and haulouts, except that waters around the four Pribilof haulouts would be closed 0–3 nm. All hook-and-line and pot gear vessels would be prohibited from directed fishing for Pacific cod 0–3 nm of rookeries and haulouts, except that waters around the Amak rookery would be closed to hook-and-line and pot gear 0–7 nm. Additional protection was implemented for the Amak rookery out to 7 nm for the hook-and-line and pot gear Pacific cod fisheries. The Council recommended this additional closure area to protect this rookery, which has had an increasing population rate over the last ten years. Vessels over 60 ft (18.3 m) LOA using hook-and-line gear are prohibited from fishing within 10 nm of Bishop Pt. and Reef/Lava haulouts.

These closures are necessary to protect Steller sea lion prey availability around important rookeries and haulouts in the Bering Sea. The differential closure scheme by gear type reflects the best available data indicating that pot and hook-and-line gear are less likely to cause localized depletions of Pacific cod than is trawl gear. Although direct empirical evidence for this conclusion is lacking, catch information indicates that these

fisheries are generally dispersed, may actually attract prey, and are relatively slow compared with the trawl fisheries.

A small exemption area was proposed in the southern portion of the Bogoslof area for catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line or jig gear for directed fishing for Pacific cod. This area includes all waters of the Bering Sea south of a line connecting a point 3 nm north of Bishop Pt. to Cape Tanak. The 0–10 nm closure of Bishop Pt. remains in effect for these vessels in the Bogoslof area. The amount of Pacific cod harvested from the exemption area is limited to 113 mt to minimize the possibility of localized depletion of Pacific cod. This exemption will allow a small number of vessels from the Dutch Harbor area a relatively safe location to harvest Pacific cod and will reduce the potential for gear conflicts east of Bishop Pt. These vessels have limited harvesting opportunities because there is no Pacific cod State-managed fishery in the Dutch Harbor area and because some vessels are constrained by their License Limitation permit from fishing in Gulf of Alaska waters.

Vessels greater than or equal to 60 ft. (18.3 m) LOA using hook-and-line gear would be prohibited from directed fishing for Pacific cod 0–10 nm around Bishop Pt. and Reef/Lava haulouts. This restriction was added to reduce the possibility of gear conflicts between hook-and-line and pot vessels in the Pacific cod fishery and to provide added protection to Steller sea lions by reducing fishing effort near these haulouts.

Gulf of Alaska Closures

1. Atka mackerel directed fishing would be prohibited in the Gulf of Alaska subarea. Biomass has been insufficient to support a directed fishery for the past several years.

2. Pollock and Pacific cod directed fishing with trawl gear would be prohibited 0–10 nm or 0–20 nm around most haulouts and rookeries year round. Exceptions are as follows: (a) waters around Marmot Island rookery are closed 0–15 nm during the first half of the year and 0–20 nm during the second half of the year, (b) waters around Gull Point and Ugak Island are closed 0–3 nm in the second half of the year, (c) waters around Cape Barnabus, Cape Ikolik, Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, Castle Rock, and Caton haulouts are closed 0–3 nm, and (d) waters around Pinnacle Rocks rookery are closed 0–3 nm.

The 0–15 nm closure around Marmot Island in the first half of the year would allow the pollock fishing fleet access to pollock that are likely to have roe and are more valuable. Closures are reduced to 3 nm around a number of sites in the GOA year round or for the B season to provide opportunities for fishing by small, local trawl fleets that have historically fished near these sites in consideration of national standard 8 of the Magnuson-Stevens Act. These sites are located in areas that have lower rates of decline for non-pups since 1991 than other areas of the GOA. The rate of harvest by the small vessel trawl fleet is expected to be small enough to avoid any localized depletion of prey for Steller sea lions.

3. Directed fishing for Pacific cod with vessels using hook-and-line or pot gear would be prohibited: (a) 0–10 nm or 0–20 nm of all rookeries, except that Seal Rocks, Wooded Island, Atkins, Chernabura, Clubbing Rocks, and Pinnacle Rock would be closed 0–3 nm, (b) 0–20 nm around Sutwik, Nagai Rocks, Lighthouse Rocks, and Kak haulouts, (c) 0–3 nm around Cape Barnabus, Cape Ikolik, Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, Castle Rock, and Caton haulouts, (d) 0–10 nm around haulouts between 170° W long. and 164° 30'00" W long. for hook-and-line, and (e) 0–20 nm around haulouts between 170° W long. and 164° 30'00" W long. for pot gear.

Directed fishing for Pacific cod would be prohibited within 0–20 nm of sites in the area of Chignik to increase the overall closure area for the GOA. This area also has one of the higher rates of Steller sea lion non-pup count declines in the GOA since 1991, making it an area of greater potential sensitivity to fishing activities. As required by national standard 8 of the Magnuson-Stevens Act, sustained participation of the communities in the Pacific cod fishery in this area was considered by the RPA Committee and Council. Historically, Pacific cod available in the State-managed fishery has not been fully harvested. Even with the Federal fishery closure, opportunity still exists for Pacific cod fishing in State waters with vessels using pot or jig gear under the State-managed fishery. With these gear type fisheries available under the State-managed fishery and jig fishing available under the Federal fishery, the closure of this area should not impose excessive economic hardship on the residents of the small communities who use these fishing grounds.

Vessel Monitoring Systems (VMS)

To ensure vessel compliance with area restrictions, § 679.7 would prohibit a vessel from operating in the BSAI or GOA reporting area if the vessel has been issued an FFP with an endorsement to engage in directed fishing for Pacific cod, pollock, or Atka mackerel, unless it has an operable VMS at all times that the directed fisheries for which it is endorsed are open. The requirements for operating a VMS are specified in § 679.28(f). VMS monitoring is necessary to meet one of the reasonable and prudent measures detailed in the 2001 BiOp requiring that NMFS have the capability to detect illegal fishing activity by vessels endorsed for Pacific cod, pollock, or Atka mackerel fishing inside closed areas. The prohibition applies to operation of a vessel because a number of commercial fishing vessels may be endorsed to harvest Pacific cod and because the vessels may also harvest IFQ halibut, crab, or salmon. Operation also includes fishing related activities in port, such as offloading of fish. Section 679.7(c)(3) would be removed with this action because paragraph (a)(18) of this section would be added to consolidate the requirements for VMS.

The Atka mackerel fishing fleet is currently equipped with VMS, as required by § 679.7(c)(3). Jig vessels are exempt from VMS requirements because they generally are not prohibited except within 3 nm of rookeries (no-fishing zones on Table 12 to 50 CFR part 679) and in the Seguam foraging and Bogoslof areas due to their low and slow method of harvest. The prohibition is also specific to the BSAI and GOA reporting areas so that State of Alaska waters are included in this prohibition for vessels with a FFP. A vessel endorsed for the Pacific cod, Atka mackerel, or pollock directed fishery and fishing in State of Alaska waters would be required to operate VMS when one or more of these fisheries are open so that NMFS can track compliance with the closures around haulouts and rookeries, which include State of Alaska waters.

For vessels that are initially entering a fishery that requires VMS, the vessel owner would be required to receive confirmation of transmission 72 hours before leaving port to allow time to make repairs or to ensure that the transmission is being received before the vessel enters the fishing grounds. A vessel may not operate in a BSAI or GOA reporting area until the transmission is confirmed. Section 679.28(f)(3) would also be revised to clarify that a vessel is required to stop fishing when informed only by an authorized officer rather than by NMFS' staff that position reports are not being received. When a VMS unit is replaced on a vessel, the vessel owner would also be required to inform NMFS of the VMS transponder ID number and the vessel

on which the transponder would be used and to receive transmission confirmation before operating in the BSAI or GOA reporting areas. Under proposed § 679.28(f)(6), a VMS must be operated when the vessel is operating in the BSAI or GOA reporting area and when the species and gear type of directed fishery requiring VMS that the vessel is endorsed for is open in either reporting area, regardless of the area of operation indicated on the FFP. For instance, if a vessel is endorsed for Pacific cod hook-and-line directed fishing and is permitted to operate only in the BSAI, it would be required to operate a VMS when the BSAI area Pacific cod hook-and-line fishery is closed but the GOA Pacific cod hook-and-line fishery is open. This is necessary because of the ease of movement of vessels between the BSAI and GOA management areas in some portions of the management areas and the need to monitor fishing activities in Steller sea lion closure areas.

The Chiniak Gully Pollock Research Program

The Council endorsed a research project proposed by NMFS in the Chiniak Gully off Kodiak Island to determine the effect of pollock fisheries on pollock school dynamics and the likelihood of localized depletions. The experiment includes the closure of Chiniak Gully to trawl fishing from August 1 to no later than September 20. A more detailed description of the experiment is provided in the EA/RIR/IRFA for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island. For copies of these documents, please contact NMFS (see **ADDRESSES**). This experiment was implemented by emergency interim rules in 2001 (66 FR 37167, July 17, 2001) and in 2002 (67 FR 956, January 8, 2002). This proposed rule would implement regulations necessary to continue this experiment, including trawl closures necessary to conduct the experiment. The seasonal closure would be implemented through 2004.

Response to Comments

NMFS received eight letters of comment in response to the January 8, 2002, emergency interim rule (67 FR 956) that implemented the Steller sea lion protection measures and the 2002 harvest specifications.

In one letter, the comments were limited to the VMS regulations and the use of electronic logbooks. The writer appeared to conclude that the emergency interim rule was a "draft" regulation and recommended a number of changes to the "draft" regulation. Although NMFS is unable to consider making changes to the emergency interim rule, as recommended, below are the comments and responses that can be addressed in this proposed rulemaking.

Comment 1. The regulations for VMS need to be modified so more than one company may provide the required product. The draft regulations limit competition, are unnecessarily costly to consumers, and retard the development of new products that would result in cheaper and more efficient alternatives to the consumer.

Response. National standards for VMS were developed through a rule-making process and published in the **Federal Register** on March 31, 1994 (59 FR 15180). The regulations for VMS do not restrict competition or limit the number of providers of VMS. However, to date only one supplier has submitted a VMS for approval that meets the national VMS standards and operational requirements in the waters off Alaska. NMFS disagrees that the VMS standards should be modified solely to provide opportunities for more suppliers to meet a reduced standard.

Comment 2. Current regulations regarding VMS certification were developed several years ago and were based on the level of technology available at the time. The black box is no longer necessary to ensure a tamper-proof system.

Response. The standards for approval of VMS include specific functions that VMS must perform, but do not require a "tamper-proof black box".

Comment 3. The company currently approved to provide VMS has an exclusive agreement with NOAA for satellite usage at a rate of $5 per day. Other companies pay approximately $70 per day for the same access, making communication costs greater and more difficult for these companies to attract customers.

Response. NMFS is unable to confirm the estimated $70/day cost for other companies. Five dollars per day is a typical cost for VMS transmission from fishing vessels. The supplier of VMS units currently approved by NMFS has an agreement for air time with Service Argos, which uses the NOAA satellite for maintaining its equipment in orbit. NOAA has no agreements with any VMS companies for the use of NOAA satellite equipment and has no involvement in setting the daily transmission costs for VMS equipment.

Comment 4. The economic impact of VMS is substantially different for small vessels compared to larger AFA qualified vessels. This must be addressed under the Regulatory Flexibility Act (RFA).

Response. Because the January 8, 2002, emergency interim rule did not require prior notice and opportunity for comment, the requirements of the RFA did not apply. An economic analysis of the emergency rule was provided in the regulatory impact review (RIR) included in the SEIS for the Steller sea lion protection measures. This RIR discussed the costs associated with the VMS system. An IRFA was prepared for this proposed rule as required by the RFA. The IRFA includes an analysis of the impact of the VMS requirement on small vessels. NMFS agrees that the VMS requirement is likely to impose proportionately larger expenses on small entities. However, NMFS also notes that the Pacific States Marine Fisheries Commission has received a grant to make over $1.5 million available as reimbursements to vessel owners who are required to purchase VMS units by these protection measures. Eligible participants will be able to receive reimbursements for up to $2,000 of the purchase price of the VMS unit. These reimbursements should begin in early June 2002. These reimbursements will significantly offset any alleged lack of proportionality.

Comment 5. Draft regulations should be modified now for consistency and efficiency of rulemaking. Draft regulations should be modified now to allow the use of other VMSs either as primary or back up systems.

Response. To be approved by NMFS, a VMS must meet the published VMS standards, which are not part of the Steller sea lion protection measures rulemaking. Standards should be revised if a change occurs in technology or criteria to ensure equipment will operate as required. Finally, the rules implementing Steller sea lion protection measures are not the appropriate mechanism for changes in the National VMS standards.

In another letter, the comments addressed the excessive share cap and rollover provisions in the harvest specifications and VMS requirement.

Comment 1. In Table 5 to the preamble of the emergency interim rule, Allocations of the Pollock TAC and Directed Fishing Allowances (DFA) to the Inshore, Catcher/Processor, Mothership, and CDQ Components, the excessive share cap (ESC) amounts and footnote 7 are misleading. The calculation for the ESC should include the rollover from the incidental catch allowance which can increase the ESC substantially from the value in the table.

Footnote 7 should include a statement regarding the increase of the ESC by 17.5 percent of each rollover.

Response. NMFS agrees that the ESC is adjusted during the year to include any rollover from the incidental catch allowance. The values in the table represent the allocations at the beginning of the year and cannot include rollover amounts that cannot be predicted. NMFS will update the allocations shown in Table 5 as rollovers and adjusted allocations under paragraph 210(e)(1) of the AFA are announced in the **Federal Register**.

Comment 2. Section 679.7 should clarify what a vessel owner is required to do in the case of a non-operational VMS. The two NMFS observers required on AFA catcher/processors can be used to report the vessel location 24 hours a day. These vessels should be allowed to continue fishing if their VMS stops working until the vessel can reach port where the unit may be diagnosed, repaired and/or replaced. Non-AFA vessels should also be allowed to continue fishing if the VMS stops working until the vessel reaches port because lost fishing time could be quite costly.

Response. Section 679.7 requires vessel owners that use VMS to comply with the requirements of § 679.28. Section 679.28(f)(3) requires a vessel owner to stop fishing immediately if informed by an authorized officer that NMFS is not receiving position reports from the VMS transmitter. If a vessel is fishing and determines that its VMS is not working, NMFS enforcement should be notified immediately so that NMFS may assist in troubleshooting. On a case by case basis, NMFS enforcement will inform the vessel owner of the appropriate steps to take.

AFA catcher/processor observers are usually employed by a contractor and trained by NMFS. Their job requirements are specific to the collection of data from hauls and position information is usually taken from vessel records after a haul survey is completed. They are unable to independently track the vessel's location on a 24–hour basis and, therefore, are not an appropriate substitute for VMS.

To avoid potential extended loss in fishing time, a vessel owner may consider installing a backup VMS to use in case of failure of the primary VMS. NMFS needs to be able to track the location of vessels registered to participate in the directed fisheries for Pacific cod, pollock, and Atka mackerel at all times that these fisheries are open.

Four letters focused comments on small nontrawl gear vessel fisheries and VMS requirements. These comments are summarized below.

Comment 1. The VMS requirements in the emergency interim rule are onerous and cannot be complied with by small vessels endorsed for the Pacific cod directed fishery and also participating in other groundfish, crab, salmon, and/or halibut IFQ fisheries. Estimated costs for purchase and installation of the VMS unit are $4,000. The VMS would have to be operated at all times that the fishery the vessel is endorsed for is open. This is not possible for vessels that cannot run a 110 volt AC power generator 24 hours a day, if no harbor facilities are available.

Response. NMFS and the Council recognized that installation of a VMS unit on some small vessels may be difficult. Jig vessels are not required to have VMS because they have very few restrictions on fishing in Steller sea lion critical habitat. Small vessels using hook-and-line and pot gear take a significant portion of the Pacific cod harvest in the GOA. During 1999, in the GOA Pacific cod pot and hook-and-line directed fisheries, 70 to 98 percent of the Pacific cod was harvested by vessels less than 60 ft (18.3 m) LOA. Because of the significant amount of harvest by small vessels using hook-and-line and pot gear, NMFS needs to track the location of these vessels when the Pacific cod directed fishery is open to ensure Pacific cod is not being harvested from closed areas.

To ensure directed fishing for Pacific cod, pollock, or Atka mackerel is not occurring in closed areas, VMS must be operated by all vessels endorsed for these fisheries as long as the vessels are in the BSAI or GOA reporting areas. The VMS information will allow NMFS to identify Pacific cod, pollock or Atka mackerel endorsed vessels fishing inside the closed areas, and these vessels may be checked at port to ensure the maximum retainable amounts of incidental catch have not been exceeded.

NMFS agrees that the VMS installation costs for small vessels may be proportionally larger than the cost for larger vessels. A VMS is available in a 12 volt configuration which can be installed on most small vessels without additional voltage transformer equipment. The VMS cost is addressed in the IRFA for this proposed rule (see **ADDRESSES**). See also responses to comments 5 and 7 below.

In addition, the Pacific States Marine Fisheries Commission has received grant funds to reimburse vessel owners required by these protection measures to buy a VMS unit for up to $2,000 of the purchase price of the unit. While these funds may not be used to cover installation or maintenance costs, they should offset a significant part of any financial burden the VMS requirement may impose on small entities. For more information, vessel owners should contact the Pacific States Marine Fisheries Commission, 612 W. Willoughby Avenue, Suite B, Juneau, AK 99801; or telephone (907) 586–8244.

Comment 2. Salmon fishing can occur in Steller sea lion closure areas. Will the U. S. Coast Guard fly over and check vessel gear or will NMFS issue "tickets" based on VMS data if a vessel is endorsed for Pacific cod directed fishing and is in a closure area, even though they are fishing for salmon?

Response. See response to comment 1.

Comment 3. Why is the halibut IFQ program included in the VMS requirements?

Response. Only vessels endorsed for Pacific cod, Atka mackerel or pollock directed fishing are required to operate a VMS. Many GOA Pacific cod vessels are also used for IFQ halibut, crab and/or salmon fishing. A vessel will need to operate its VMS when the Pacific cod fishery is open even though it may be fishing for a species other than Pacific cod, if the vessel's FFP is endorsed for Pacific cod. If the vessel will not be used in the directed fishery for Pacific cod, the vessel owner may amend his or her FFP by removing the Pacific cod endorsement, eliminating the need to operate a VMS.

Comment 4. Small vessels using nontrawl gear under 60 ft (18.3 m) LOA should be exempt from VMS requirements.

Response. See response to comment 1.

Comment 5. Vessels 60 to 50 ft (18.3 to 15.2 m) LOA should be allowed to turn off the VMS when they are not participating in the directed fishery for Pacific cod or pollock and are not carrying legal groundfish gear. Vessels under 60 ft (18.3 m) LOA could declare when they will participate in the groundfish fishery and turn on their VMS. When finished directed fishing, the vessel would report that fishing is completed and turn off the VMS.

Response. The endorsement for Pacific cod, Atka mackerel or pollock authorizes a vessel to participate in these directed fisheries. If a vessel will not be used in these directed fisheries, the FFP may be amended to remove the endorsement, and VMS would not be a requirement for that vessel. NMFS must maintain the ability to track the activities of all endorsed vessels while the directed fisheries are open regardless of where they are in the BSAI and GOA reporting areas and regardless

of the type of fishing in which they are engaged. This requirement must be maintained to prevent illegal harvesting activities within Steller sea lion protection areas.

Comment 6. The Council should consider postponing the implementation of the VMS program to allow industry time to discuss alternatives. The Council should focus the VMS requirement on those who would be likely to engage in directed fishing in a Steller sea lion closure area.

Response. NMFS has determined that the protection measures selected afford adequate protection for Steller sea lions. An extensive public process, including preparation of the SEIS and consultation with the Council was followed in developing these protection measures. Many important fishing grounds are included in the Steller sea lion critical habitat. The protection measures, including VMS, were developed to afford vessels an opportunity for continued access to those grounds. Allowing that access, with addition of the VMS requirement, was preferred by the industry to closing the areas entirely. The VMS requirement is applied to all vessels subject to restrictions on directed fishing for pollock, Atka mackerel, and Pacific cod in order to meet the reasonable and prudent measures in the 2001 BiOp, in compliance with the ESA.

Comment 7. A large amount of funding was made available for Steller sea lion research. Some of this money should be used for purchase and service of VMS units. NMFS should make it a priority to release funds for VMS purchase and maintenance for smaller vessels.

Response. Funds appropriated for research cannot be used for other purposes. However, the Pacific States Marine Fisheries Commission has received grant funds to reimburse vessel owners required to buy a VMS unit by these protection measures for up to $2,000 of the purchase price of the unit. These funds should be available in early June 2002. While these funds cannot be used to cover installation or maintenance costs, they should still offset a significant part of the disproportionate burden on small entities.

Vessel owners may choose to amend their FFPs to remove the Pacific cod, pollock, or Atka mackerel endorsement before June 10, 2002, obviating the VMS requirement for the vessel in 2002. More information about potential funding may be available later in 2002 to allow for planning for VMS installation in 2003, when an FFP may again be endorsed for the Pacific cod, pollock, or Atka mackerel directed fisheries.

Another letter was received from several participants in the Pacific cod freezer hook-and-line fishery. Their comments focused on the impact of this fishery on Steller sea lions and the lack of information needed to make protection measure requirements specific to this sector of fishing vessels in the BSAI.

Comment 1. NMFS' imposition of restrictions on the Pacific cod fishery activities in the BSAI to protect Steller sea lions is both arbitrary and capricious in the absence of a scientifically supportable nexus between the survival of Steller sea lions in these waters and the restrictions on Pacific cod fishing practices. These restrictions have resulted in unnecessary economic hardships to the freezer hook-and-line sector.

Response. The ESA requires NMFS to ensure that any agency action is not likely to jeopardize continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. A significant portion of the diet of the endangered western DPS of Steller sea lions is Pacific cod. Pacific cod fishing occurs in Steller sea lion critical habitat, leading to the potential for competitive interaction between the Pacific cod fisheries and Steller sea lions. While the extent of the competition between Steller sea lions and the freezer hook-and-line Pacific cod fishery is not fully understood, NMFS is required by the ESA to take steps to ensure Steller sea lions are protected from authorized groundfish fisheries that are likely to jeopardize the Steller sea lion or result in the destruction or adverse modification of its critical habitat. The protection measures, including closures and seasonal allocations by gear grouping, were developed using the best scientific information available and considering the potential cumulative impacts on Steller sea lions and their critical habitat and on the commercial fisheries.

Comment 2. The best available scientific data refute the hypothesis that the freezer hook-and-line sector of the Pacific cod fishery in the BSAI has contributed to nutritional stress on Steller sea lions.

Response. The Pacific cod fisheries have been determined by NMFS to have a likelihood of jeopardizing the continued existence of Steller sea lions and adversely modifying their critical habitat (November 30, 2000, BiOp). The freezer hook-and-line sector removes roughly half of the annual Pacific cod quota in the BSAI, and the best scientific information suggests that nutritional stress is a likely factor in the continued decline of the western DPS of Steller sea lions. Technical data does not presently exist to quantify the relative extent to which trawl fisheries and hook-and-line fisheries adversely affect foraging Steller sea lions and their critical habitat, although NMFS does agree that hook-and-line fisheries may have different effects on the prey field (section 5.3.1.6 of the 2001 BiOp). Hook-and-line fisheries remove Steller sea lion prey from critical habitat and are dispersed temporally and spatially along with trawl, pot, and other Pacific cod fisheries in order to avoid the likelihood of jeopardy and adverse modification of critical habitat.

Comment 3. NMFS should eliminate the mandatory use of VMS for the freezer hook-and-line Pacific cod fishery because of the limited impact this sector has on the recovery of the Steller sea lion population. Commentors were not aware of discussions of a VMS requirement during the extensive Council RPA process.

Response. The 2001 BiOp reasonable and prudent measures require NMFS to monitor fishing activity of Pacific cod, pollock, and Atka mackerel vessels that are restricted from fishing in haulouts, rookeries, and foraging areas. The freezer hook-and-line Pacific cod fishery is restricted from fishing in a number of foraging, haulout, and rookery areas in the BSAI and, therefore, must comply with the VMS requirements. The VMS requirement was part of the 2001 BiOp and Alternative 4 in the Steller sea lion SEIS, which were reviewed in the RPA Committee and Council process in September and October 2001.

Comment 4. NMFS-funded Steller sea lion research efforts should address the Pacific cod prey issues and hook-and-line fisheries competition with Steller sea lions.

Response. A large number of current research projects deal with Steller sea lion prey, foraging behavior, and commercial fisheries interaction. While none of these are specific to only the freezer hook-and-line sector, information from a number of these studies will likely advance the understanding of the interaction between the freezer hook-and-line sector and Steller sea lions and their critical habitat. A listing of the currently funded research projects is available on the NMFS Alaska Region web site at http://www.fakr.noaa.gov/protectedresources/stellers/research.pdf

Comment 5. The commentors do not agree that sufficient grounds exist to mandate the 60–percent TAC allocation to the A season and want additional

harvest amounts shifted into the A season.

Response. See response to comment 1. The 60–percent TAC apportionment for Pacific cod is a risk averse approach to protecting Steller sea lion prey during the winter season. The key to avoiding possible localized depletions of prey is to disperse the fishery roughly equally between the winter and summer seasons. A TAC of 60 percent in the winter is consistent with this goal of dispersing the catch between seasons. Given that the winter may be the most critical time period for juvenile sea lions, this approach of dispersing the catch between seasons is reasonable.

Comment 6. Historical fishing areas in the Aleutian Islands are closed to the freezer hook-and-line fishery under the Steller sea lion protection measures. Individual vessels are significantly disadvantaged because they must look for new fishing areas and develop new fishing practices. No sustainable basis exists for maintaining such closures. Nearshore closures create congestion and potential gear conflict in the remaining viable fishing areas, disproportionately impacting the more fragile freezer hook-and-line gear.

Response. See response to comment 1. These impacts were considered by the RPA committee as the Steller sea lion protection measure were developed. Most of Steller sea lion critical habitat outside of 3 nm is available to the hook-and-line fishery in the Aleutian Islands west of the Seguam Foraging area. NMFS agrees that the freezer hook-and-line vessels may experience additional costs if they shift harvest into new fishing areas. Those costs have been examined in the RIR and IRFA for this action.

Several environmental organizations submitted one letter with comments focusing on the Steller sea lion protection measures and harvest specifications rulemaking processes. Their comments are summarized below.

Comment 1. Because the 2002 TAC specifications are being promulgated through the emergency interim rule process, fishing was allowed to commence without sufficient opportunity for public notice and comment. NMFS provides opportunity for comment by members of the fishing industry through the Council process, but this does not provide adequate access and the ability to comment by members of the public who are not members of the fishing industry. Even though NMFS ensured thorough involvement of the Council in the development of Steller sea lion protection measures, NMFS did not take into account the views of the non-fishing public or the deliberative processes of ESA and NEPA.

Response. NMFS disagrees that the public was not given the opportunity to participate in the review processes under the NEPA and ESA for the Steller sea lion protection measures and for the 2002 harvest specifications. The Council decision-making process is open to the fishing and non-fishing public. The Council appointed fishing and non-fishing members to the committee that made Steller sea lion protection measures recommendations to the Council. The public may keep up to date on actions contemplated by NMFS or the Council by contacting NMFS or the Council directly or by periodically reviewing NMFS or the Council's internet web sites at http://www.fakr.noaa.gov or http://www.fakr.noaa.gov/npfmc, respectively.

NMFS provided opportunities for public involvement in the development of the Steller sea lion protection measures SEIS and the TAC specifications EA for the emergency interim rule action. A notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). NMFS provided the draft SEIS in September 2001 at the Council meeting and hard copies of the draft EA were made available at the Council meeting in December 2001 for public review and comment and mailed to those requesting a copy. The draft EA was also posted on the Council's website on November 23, 2001. At least one other link was made to that EA from the NMFS Alaska Region NEPA page at http://www.fakr.noaa.gov/sustainablefisheries/ea/ea2001.htm. The SEIS was also made available to the public through these websites.

NMFS received one comment letter on the draft EA, which was from the non-fishing public. A response to this letter was published in the preamble to the emergency interim rule (67 FR 956, January 8, 2002). Numerous comments received from the public regarding the SEIS were addressed and incorporated into the final document.

Although the ESA does not require NMFS to provide public review of draft biological opinions, the draft 2001 BiOp was made available for public review as an appendix to the Steller sea lion SEIS in September 2001 and public comments were solicited.

Comment 2. NMFS' approach to fishery closure areas in this emergency interim rule appears to be a patchwork attempt at Steller sea lion conservation. NMFS' rationale for fishery closures in Steller sea lion critical habitat reflects a greater consideration for the preferred fishing areas of the fleet than it does the survival and recovery of the species. NMFS provides little justification for these closures, and in fact cites numerous examples where exemptions were made to provide access to historic fishing grounds for the fleet. Numerous examples of closure areas and exemptions are provided in the comment.

Response. NMFS disagrees that the conservation measures contained within the emergency interim rule are a patchwork attempt that would jeopardize the continued existence of Steller sea lions or adversely modify critical habitat in exchange for access to preferred fishing grounds. The emergency interim rule outlines the extensive public process that NMFS and the Council used in determining the structure of the closure areas (Part I. Steller Sea Lion Protection Measures at 67 FR 956). This process focused on the biology of Steller sea lions and their foraging requirements. The Council, its RPA Committee, and NMFS utilized the best available scientific information in order to avoid jeopardizing the continued existence of Steller sea lions or destroying or adversely modifying their critical habitat. Only after all this information was taken into account did the Committee consider the needs of the fishing industry in developing access to fishing grounds. For most fisheries, substantial historic fishing grounds were closed in order to promote the recovery of the western DPS of Steller sea lions.

The 2001 BiOp describes the likely effects of the proposed conservation measures. Substantial areas of Steller sea lion critical habitat are closed to pollock, Pacific cod, and Atka mackerel fishing under the emergency interim rule (see Table 5.3, page 169). Based on the latest scientific information, NMFS has determined that nearshore areas (0–10 nm) are the most critical to the western DPS of Steller sea lions (specifically pups and juveniles). This determination differs from NMFS' opinion in past Section 7 consultations on the BSAI and GOA fisheries. New data and analyses of Steller sea lion at-sea distributions imply a foraging pattern not previously understood. Substantial uncertainty still exists in understanding the specific areas important to Steller sea lions and the effects of fisheries in these areas. However, NMFS concludes that current information is sufficient to provide adequate protection for the endangered western DPS of Steller sea lions and its critical habitat while providing access to some of the historical fishing grounds

for the pollock, Pacific cod, and Atka mackerel fisheries.

In the 2001 BiOp, Table 5.3 describes the areas closed in relation to their distance from land in Steller sea lion critical habitat. These conservation measures include substantial closures within 10 nm from haulouts and rookeries. When comparing this closure area with the amount of nearshore area closed in the comprehensive BiOp, much more of the 0–10 nm area is closed under this action. Although NMFS determined that nearshore areas are more important than offshore habitat, the total closure area is similar under both scenarios (roughly 60–65 percent of critical habitat). When the effects of these closures are evaluated, weighted by area for Steller sea lion abundance and population trend rates, the result is a strategy as conservative as the RPA contained in the comprehensive BiOp, although the two approaches use different tools to protect the western DPS of Steller sea lions and protect its critical habitat.

Comment 3. NMFS' interpretation of the available telemetry data from Steller sea lions is flawed. NMFS points out numerous limitations and potential biases to the data, as well as criticism by a peer review panel, but does not appropriately integrate this uncertainty into its management of these fisheries in order to avoid adverse effects to Steller sea lions or their critical habitat. Following this reasoning, NMFS did not develop closure areas that are large enough to insure the protection of juvenile and adult female Steller sea lions; the segment of the population which NMFS asserts is the most vulnerable to localized depletions caused by fishing. NMFS has not adequately described what the edge effects may be of large fishery removals of Steller sea lion prey species on the boundary of 3 or 10 nm closures near haulouts and rookeries. Additionally, NMFS did not display the amount of area closed to fishing in a way which could easily be compared to previous conservation measures for pollock and Atka mackerel.

Response. NMFS uses the best scientific and commercial data available in consultations pursuant to section 7 of the ESA. The best information available to NMFS is the at-sea locations based on approximately 100 instrumented animals. NMFS explored various ways of looking at this information in the 2001 BiOp and determined that the distribution of hits was reasonably likely to capture Steller sea lion foraging patterns. As various reviews have pointed out (i.e., Bowen et al., 2001), the effectiveness of NMFS' protection measures are sensitive to this assumption. NMFS expects to have more sophisticated analyses on sea lion foraging patterns within the next several years and will continue to evaluate the important assumptions made in the 2001 BiOp.

NMFS acknowledges that the uncertainty regarding the telemetry information caused NMFS to conservatively protect areas beyond the core 0–10 nm buffer zones. Table 5.3 and section 5.3.4 of the 2001 BiOp outline the complex protection measures in relation to their distance from shore. In general, little or no fishing is allowed within 3 nm of rookeries and haulouts; some nontrawl gear fishing from 3–10 nm (i.e., no trawling); and some trawling and nontrawl gear fishing from 10–20 nm, with trawl gear prohibited from 0–20 nm around rookeries and haulouts in approximately half of the critical habitat sites in all areas. NMFS believes that these closures are more conservative than the RPA of the comprehensive BiOp which would have instituted closure areas in bands, closing all critical habitat within a zone out to 20 nm while other bands, in some cases, would have been open all the way to the shore. Under the January 8, 2002, emergency interim rule, all of the 13 areas receive substantial closures out to at least 10 nm, leaving virtually no "holes" where fishing would occur close to a rookery or haulout. This change in conservation strategy is based on the new telemetry analysis information that was not available to NMFS in November 2000. For these reasons, NMFS believes that the closure areas are adequate because they encompass the areas close to shore that appear to be important to juvenile Steller sea lions, lactating females, and pups.

In the 2001 BiOp, NMFS explored the idea of edge effects and the migration of Steller sea lion prey into critical habitat areas where they would be available to foraging sea lions (see section 5.3.1.7 of the 2001 BiOp). Unfortunately, there is very little information on the migration of Steller sea lion prey species into critical habitat, and the possible effects of fisheries on those small scale fish movements. The 2001 BiOp describes the possible scenarios and the current research on Atka mackerel and pollock. At this point, NMFS' preliminary information indicates that migratory distances for Atka mackerel are small. This is unlikely to explain migration patterns in other species due to differences in life history patterns. NMFS is continuing this research and expects to have further insight into the issue over the next two to three years. Currently, NMFS has no information which would indicate that fishing at the levels authorized under the emergency interim rule would cause localized depletions of prey inside the closure areas.

The amount of closure area has been described in numerous ways by NMFS. In the SEIS, Table 4.8–3 displays the amount and the percentage of area closed under each of the alternatives. Additionally, in section 5.3.2.1 NMFS explored various methods of describing protection measures in comparison with the previous RPA from the comprehensive BiOp. Section 5.3.4 of the 2001 BiOp also describes the amount of area closed by zones radiating out from rookeries and haulouts.

Comment 4. In previous Section 7 consultations under the ESA, NMFS determined that pollock fisheries were likely to jeopardize Steller sea lions because of their temporal concentration. In the December 3, 1998, Biological Opinion, NMFS outlined 6 criteria necessary to disperse the pollock fisheries in order to avoid jeopardizing Steller sea lions or adversely modifying their critical habitat. NMFS provides no explanation as to why they have not applied similar criteria to TAC allocations for pollock, Pacific cod, and Atka mackerel under the January 8, 2002, emergency interim rule for 2002. For example, numerous examples of TAC allocations are provided that do not comply with NMFS' criteria. How does this action avoid jeopardy and adverse modification of critical habitat when these fisheries are likely to be as temporally concentrated as in 1998 and 2000 when NMFS determined them to be unacceptably high?

Response. The 2001 BiOp on Steller sea lion protection measures provides the rationale for the temporal distribution of the pollock, Pacific cod, and Atka mackerel fisheries in the BSAI and GOA (see section 5.3). The seasonal allocations of TAC are considered together with the spatial dispersion of these fisheries. The "no jeopardy" determination for the western DPS of Steller sea lions and no adverse modification of its critical habitat is based on new information and analyses that became available since the 1998 Biological Opinion was completed (see response to comment 4 above) and in consideration of potential fishery impacts on the western DPS of Steller sea lions as a whole.

Protection measures are consistent from one region to the next. Maximum protection was provided close to shore, within 0–3 nm from rookeries and

haulouts. From 3–10 nm from rookeries and haulouts, limited fishing is authorized by gear types unlikely to cause localized depletions. From 10 nm and beyond, trawl fisheries are authorized, in some cases with critical habitat limits in order to protect Steller sea lion prey availability. New information available on the at-sea distribution of Steller sea lions, and their presumed foraging habits, indicated to NMFS that a slightly different management action was necessary in order to adequately protect and recover the endangered Steller sea lion.

In the BSAI, the rationalization of the pollock fishery under the American Fisheries Act and the allocation of Pacific cod TAC among gear types, processing and catcher vessel sectors, and vessel size classes contribute significantly to spatial and temporal dispersion of these two fisheries. Although the Atka mackerel fishery cannot be considered fully "rationalized," the fleet's harvest rate in the western and central districts of the Aleutian Islands has been reduced by nearly half in critical habitat under the new group management of fishing effort.

The GOA pollock and Pacific cod fisheries are not allocated among gear types or rationalized in a manner that would provide for slowing the pace of the fisheries under these highly competitive scenarios. Thus, more elaborate conservation measures are necessary to prevent locally high harvest rates. These measures include gear-specific fishery closures around rookeries and haulouts, four equal seasonal apportionments of the pollock TAC, and a 60/40 seasonal apportionment of the Pacific cod TAC. Additionally, any rollover of unharvested pollock from one season to the next is limited to 5 percent of the annual TAC (i.e., so that no more than 30 percent of the annual TAC is harvested in any one season). Historically, the GOA Pacific cod TAC has been harvested during the first quarter of the calendar year. The emergency interim rule now restricts the harvest to no more than 60 percent of the TAC during the first 6 months of the year, a substantial new conservation measure that was not required in the RPA for the 1998 BiOp. Thus, the fact that the GOA pollock fishery is temporally dispersed into four seasons while other fisheries are dispersed into fewer seasons is based on consideration of the nature of the fishery, seasonal distribution of prey biomass, TAC allocations among different sectors, closure areas, and the lack of rationalization in the GOA fisheries.

NMFS has determined that the protection measures implemented under the emergency interim rule avoid jeopardy to the western DPS of Steller sea lions and the destruction or adverse modification of its critical habitat without resorting to a uniform approach to the protection measures.

Comment 5. The harvest control rule (HCR) for pollock, Pacific cod, and Atka mackerel does not provide meaningful protection for Steller sea lions. Furthermore, NMFS has not adequately displayed the effects of fishing under the HCR on the Steller sea lion population due to the following: (a) removal of 60 percent of the theoretical biomass of a primary prey species for the endangered Steller sea lion, (b) authorization of a substantial harvest rate even when the biomass is below the B40% target level, and (c) authorizing fishery removals until 80 percent of the biomass of a primary prey species has been removed. In 2002, four stocks are below the B40% biomass level, and the eastern Bering Sea pollock stock, which was estimated in the 2001 Stock Assessment and Fishery Evaluation report to be at a very high biomass level, was only at B45%. NMFS has not addressed issues raised by these biomass removals and the resulting diminished carrying capacity for Steller sea lions.

Response. NMFS disagrees. The HCR provides meaningful protection to the western DPS of Steller sea lions and its critical habitat by halting fishing in the unlikely event that the biomass of a key prey species drops below 20 percent of its theoretical unfished level. Additionally, NMFS considers the harvest restraints implemented under FMP amendments 56/56 to be very conservative. Under these rules, the maximum permissible fishing mortality rates are formally reduced when the stock falls below B40%. In addition, stock assessment scientists often recommend fishing mortality rates that are below the maximum permissible level. These constraints are intended to accelerate the recovery of the spawning stock biomass when stock levels are below B40%. For pollock, Pacific cod, and Atka mackerel, the HCR would prohibit directed fishing before the stock was declared overfished. Thus, the HCR provides added protection to pollock, Pacific cod, and Atka mackerel stocks, if the spawning stock biomass exhibits a rapid decline.

Steller sea lion foraging behavior, physiology, and nutrition are discussed at length in the SEIS, sections 3.1.1.7. and section 3.1.1.8. The discussion of physiology and nutrition is a quantitative presentation of food intake requirements. The analysis includes an examination as to whether the alternative management regime would result in fisheries harvest on prey species of particular importance to marine mammals at levels that could compromise foraging success. The analysis concluded that the effects on the human environment were insignificant for all five alternatives in the SEIS, including the protection measures in the January 8, 2002, emergency interim rule. Therefore, based on all of the above information, NMFS determined that the proposed action would not cause jeopardy to the western DPS of Steller sea lions or adverse modification to its critical habitat.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this proposed rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this proposed rule is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

The Steller sea lion protection measures have been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that described the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble.

The IRFA concluded based on the numbers of operations in 2000, that approximately 581 small entities would be directly regulated by the rule. This includes 514 catcher vessels, 30 catcher/processors, and 37 shoreside processors.

Reductions in TACs, increases in the proportions of TACs placed "at risk" due to closure or restriction of accustomed fishing areas, potential long-term market share losses, and possible quality reductions are expected to decrease gross revenues for all fleet segments. CDQs are small entities, and estimates suggest a reduction in gross revenues between 1.6 percent and 6.3 percent. Shoreside processors buying from catcher vessels will have estimated reductions in revenues between 1.1 percent and 5.9 percent. These may translate into reduced ex-vessel revenues for catcher vessels of similar magnitudes. Most catcher vessels are small entities. Catcher/processor

revenues will also drop and some catcher/processors are small entities. The low end of the range of possible decreases in gross revenues does not appear to be disproportionate for small entities, but the high end of the range does.

The proposed regulation would increase vessel and processor operating costs for a number of reasons: (a) An increased travel time to and from more distant fishing grounds; (b) costs of learning new grounds; (c) costs of undertaking bycatch avoidance measures, or the costs associated with lost catches from premature closures due to excessive bycatch, if these efforts are unsuccessful; (d) reduced catch per unit effort due to less concentrated target stocks; (e) costs of stand-downs and lay-ups; (f) potential gear conflicts; (g) costs of fishing Pacific cod, pollock, or Atka mackerel when other economically important fisheries are open; (h) operational inefficiencies caused when processing facilities built for high rates of throughput receive slower fish deliveries; and (i) costs for installation and operation of VMS equipment. The cost for the purchase and installation of the VMS is expected to be about $1,900 for all operations; this will impose a proportionately larger increase in the costs incurred by small entities.

The action imposes new recordkeeping and reporting requirements. (1) Questions will be added to the annual fishing permit renewal application and the CDQ catch report. These questions are expected to have small costs per vessel and in aggregate. (2) A VMS is a NMFS-approved transmitter that automatically determines the vessel's position and transits it to a NMFS-approved communications service provider. A VMS unit will allow NMFS to continually track the location of a fishing vessel. This capability is extremely important in order for NMFS to effectively enforce the large number of area-based fishing restrictions designed to protect the Stellers sea lion. Jig vessels have been excluded from this requirement, but other vessels will be required to carry VMS while they are fishing for Pacific cod, pollock, and Atka mackerel. The cost for the purchase and installation of a VMS unit is estimated to be $1,926. Annual maintenance and transmission costs for a small entity are estimated to be $220. The VMS costs should be substantially mitigated for small vessels since the Pacific States Marine Fisheries Commission (PSMFC) has obtained a grant of $1.8 million from NMFS for the purpose of reimbursing vessel owners for VMS purchases that are required under these regulations. PSMFC will reimburse up to $2,000 of the purchase price of each unit. The grants will not cover the costs of installation, maintenance, and operation of the units. (3) The regulation increases the number of observers that must be carried by a vessel fishing for Atka mackerel in Aleutian Islands critical habitat from one to two. The cost for an additional observer was estimated to range between $12,600 and $25,000 a year per operation.

This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

The Council considered five regulatory alternatives and three options for one of these alternatives. Only one of the alternatives (the "no action" alternative involving the expiration of most of the rules that had been implemented by emergency order to protect the Steller sea lions) had smaller adverse impacts on small entities than the preferred alternative. The "no action" alternative was not adopted because it was presumed to violate the provisions of the Endangered Species Act and, therefore, failed to achieve the objectives of the proposed action.

The Council considered, but did not adopt, two options to Alternative 4, which might have produced a reduced impact on the small vessel fleets. One of these would have exempted certain classes of small vessels from fishing restrictions in the vicinities of Chignik and a second would have established a system of "gear zones" along the coast in the GOA, and have restricted larger vessels to a greater extent than small ones in the zones closer to the shore. The Council preliminarily decided not to include the additional small boat exemptions for Chignik due to concerns that opening these areas would reduce the value as a control site for evaluating management measures and increase the likelihood for competitive interactions with sea lions, and that this site has not been economically important to the small boat fleets. The Council preliminarily decided not to include the GOA "gear zone" option due to potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety respectively).

An IRFA has been prepared for the Chiniak Gully experiment in compliance with the Regulatory Flexibility Act of 1980 and the Small Business Regulatory Enforcement Fairness Act of 1996. The IRFA concluded that most of the vessels that otherwise would trawl for groundfish in the proposed Chiniak Gully area during late summer are small entities. Most of these affected vessels are home ported in and operate out of the city of Kodiak, adjacent to the proposed closure area. Although vessels will be able to harvest elsewhere and should be able to recover most of their lost revenues, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. However, these costs would not be significant and would be short-lived. Because these small vessels may experience higher costs, they may see some reduction in their cash flow and profits while the program is in effect. Since the affected vessels are mostly small entities, and large trawl entities would not be affected by this trawl closure, the impact may be disproportionately large on small entities. The alternatives of no action and of excluding small entities from the action would have reduced the burden on small entities, but did not meet the objectives of the action. Copies of this IRFA are available from NMFS (SEE **ADDRESSES**).

Pursuant to the National Environmental Policy Act, NMFS prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS, and the final document was issued November 23, 2001 (66 FR 58734). An analysis of the Chiniak experiment is provided in the EA/RIR/IRFA for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island. The final SEIS and EA/RIR/IRFA are available from NMFS (see **ADDRESSES**). No significant impacts on the human environment were anticipated from the Chiniak Gully experiment based on the analysis in the EA/RIR/IRFA. Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action complies with ESA requirements. Potential impacts on marine mammals resulting from fishing activities conducted under this proposed rule are discussed in the SEIS for this action.

This proposed rule contains and refers to collection-of-information requirements subject to the Paperwork Reduction Act. Applications to amend a permit and register for Atka mackerel, pollock, or Pacific cod directed fisheries have been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0206. Requirements regarding use of a VMS

have been approved under OMB control number 0648–0445.

The estimated response time for an application to amend a permit and register for the Atka mackerel, pollock, or Pacific cod directed fisheries is 31 minutes. The response time for VMS-related requirements are 6 hours to install a unit, 12 minutes to fax a check-in report that the VMS is operational, 5 seconds per automated position report, and 4 hours per year for VMS maintenance.

The response-time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Formal and informal section 7 consultations under the ESA were completed for this proposed rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In the 2001 BiOp and memorandum dated December 11, 2001, from the OPR to OSF, the Director of the OPR determined that fishing activities described in the proposed rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 57 Stat. 113; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.2, the definition for "Steller Sea Lion Protection Areas" is removed, paragraph (1) of the definition for "Fishing trip" is revised, and the definition for "harvest limit area (HLA) for Atka mackerel directed fishing" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means: *(1) Retention requirements (MRA, IR/IU, and pollock roe stripping).*

(i) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until:

(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

(B) The offload or transfer of all fish or fish product

from that vessel;

(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with different type of authorized fishing gear; or

(E) The end of a weekly reporting period, whichever comes first.

(ii) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

Harvest limit area (HLA) for Atka mackerel directed fishing for the purposes of §§ 679.4(b)(5)(vi)(B), 679.20(a)(8)(ii) and (iii), and 679.22(a)(8)(iv)(A), means the waters of statistical areas 542 and 543 west of 178° W long. within 20 nm seaward of sites listed in Table 6 of this part and located west of 177°57.00' W long.

* * * * *

3. In § 679.4, paragraph (b)(5)(vi) is added to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(5) * * *

(vi) *Atka Mackerel, Pollock and Pacific Cod Directed Fisheries.* (A) Indicate use of pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel or Pacific cod.

(B) Indicate directed fishing for Atka mackerel in the harvest limit area, as defined in § 679.2.

* * * * *

4. In § 679.7 paragraphs (a)(17), (a)(18), and (a)(19) are added, paragraphs (a)(1) and (b) are revised, and paragraph (c)(3) is removed to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal Fisheries Permit.* (i) Fish for groundfish in the BSAI or GOA with a vessel of the United States that does not have on board a valid Federal fisheries permit issued under § 679.4.

(ii) Directly fish for Atka mackerel, Pacific cod, or pollock with a vessel of the United States that does not have on board a valid Federal fisheries permit issued under § 679.4 and endorsed for Atka mackerel, Pacific cod or pollock under § 679.4(b)(5)(vi).

* * * * *

(17) *Tender vessel.* (i) Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) Use a catcher vessel or catcher/processor to harvest groundfish while operating as a tender vessel.

(18) *Pollock, Pacific Cod and Atka Mackerel Directed Fishing and VMS.* Operate a vessel in any Federal reporting area when a vessel is authorized under § 679.4(b)(5)(vi) to participate in the Atka mackerel, Pacific cod, or pollock directed fisheries and the vessel's authorized species and gear type is open to directed fishing, unless the vessel carries an operable NMFS-approved Vessel Monitoring System (VMS) and complies with the requirements in § 679.28(f).

(19) *Atka Mackerel HLA Groundfish Prohibition.* For vessels registered for an Atka mackerel HLA directed fishery under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than for Atka mackerel in an assigned HLA directed fishery under § 679.20(a)(8)(iii), during the time period that the first Atka mackerel HLA directed fishery to which the vessel is assigned under § 679.20(a)(8)(iii)(B) is open.

(b) *Prohibitions specific to the GOA.* (1) *Southeast Outside trawl closure.* Use trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel

at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.* (i) Operate as a tender vessel east of 157°00' W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00' W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

* * * * *

5. In § 679.20:

a. Remove paragraphs (a)(7)(iii)(B), (f)(3), and redesignate paragraph (a)(7)(iii)(C) as (a)(7)(iii)(B).

b. Revise paragraphs (a)(5)(i)(A), (a)(5)(i)(B),(a)(5)(ii)(B), (a)(6)(ii), (a)(6)(iii), (a)(7)(i)(C)(*2*) and (*3*), (a)(7)(ii)(A), (a)(7)(ii)(D), (a)(7)(iii)(A), (a)(8)(ii)(C), (a)(8)(iii), (a)(11), (b)(2)(i), (b)(2)(ii), (d)(4) and the newly designated paragraph (a)(7)(iii)(B).

c. Add paragraph (e)(2)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(A) *BSAI seasonal allowances—*(*1*) *Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BSAI area pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

(B) *Steller sea lion conservation area (SCA) harvest limit.* For each component under Sections 206(a) and 206(b) of the AFA and for the open access fishery, no more than 28 percent of the annual pollock directed fishery allowance may be taken from the SCA before April 1. The SCA is defined at § 679.22(a)(7)(vii).

* * * * *

(ii) * * *

(B) *GOA Western and Central Regulatory Areas seasonal apportionments.* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(2) as follows: A Season, 25 percent; B Season, 25 percent; C Season, 25 percent; and D Season, 25 percent. Within any fishing year, underharvest or overharvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for a GOA regulatory area.

* * * * *

(6) * * *

(ii) *GOA pollock.* The apportionment of pollock in all GOA regulatory areas and for each seasonal apportionment described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod.* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

* * * * *

(7) * * *

(i) * * *

(C) * * *

(*2*) Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(1)(iv) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

(*3*) Harvest of Pacific cod made by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear:

(*i*) Will accrue against the 0.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is closed.

* * * * *

(ii) * * *

(A) *Reallocation within the trawl sector.* If, during a fishing season, the Regional Administrator determines that either components of catcher vessels using trawl gear or catcher/processors using trawl gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i), (a)(7)(ii)(C), or (a)(7)(iii)(A) of this section, he/she may reallocate the projected unused amount of Pacific cod to vessels using trawl gear in the other component through notification in the **Federal Register** before any reallocation to vessels using other gear type(s).

* * * * *

(D) *Unused seasonal allowance for trawl.* Any unused portion of a seasonal allowance of Pacific cod for vessels using trawl gear under paragraph (a)(7)(ii) or (a)(7)(iii)(A) of this section may be reapportioned by the Regional Administrator to the subsequent seasonal allocations for vessels using trawl gear.

(iii) * * *

(A) *Seasonal apportionment and gear allocations.* The Pacific cod BSAI gear allocations and apportionments by seasons, as specified in § 679.23 (e)(5), are as follows:

Gear Type	A season	B season	C season
1 trawl	60 percent	20 percent	20 percent
2 trawl CV	70 percent	10 percent	20 percent
3 trawl CP	50 percent	30 percent	20 percent
4 hook–and–line ≥ 60 ft (18.3 m) LOA, non–CDQ pot vessels ≥ 60 ft	60 percent	40 percent	

Gear Type	A season	B season	C season
(18.3 m) LOA, and jig vessels 5 all other nontrawl vessels	no seasonal apportionment		

(B) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

(8) * * *

(ii) * * *

(C) *Harvest limit area (HLA) limits.* Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(*1*) For the HLA, the Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(*2*) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(*1*) of this section for the HLA.

(iii) *Atka mackerel HLA directed fishing*—(A) *Registration.* All vessels using trawl gear for directed fishing for Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vi) for an endorsement to the vessel's Federal fishery permit issued under § 679.4.

(*1*) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., on the first working day following January 1.

(*2*) To participate in the B season HLA fishery,

(*i*) The vessel is registered for the A season HLA fishery and is registered for the HLA fishery through the first working day following July 31, or

(*ii*) Registration information for the HLA fishery is received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., on the first working day following July 31.

(B) *HLA assignment.* For each season, NMFS will manage the HLA directed fishery for the vessels registered to fish in areas 542 or 543 under paragraph (a)(8)(iii)(A) of this section as follows:

(*1*) *Lottery.* The Regional Administrator or his/her designee will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered under paragraph (a)(8)(iii)(A) of this section. Each HLA directed fishery within a statistical area will be assigned an equal number of vessels unless there is an odd number of vessels under paragraph (a)(8)(iii)(A) of this section. In the case of an odd number of vessels, the Regional Administrator or his/her designee will assign one additional vessel to one HLA directed fishery. Vessels registering under paragraph (a)(8)(iii)(A) of this section to fish in both area 542 and area 543 will be randomly assigned to an HLA directed fishery in area 542 and will be placed in the area 543 HLA directed fishery occurring at an alternate time during the season.

(*2*) *Notification.* The Regional Administrator will provide the results of the lottery under (a)(8)(iii)(B)(*1*) of this section by notification published in the **Federal Register** and other means of practicable notification.

(C) *HLA directed fisheries.* 48 hours after a seasonal closure of the area 541 Atka mackerel directed fishery, the Regional Administrator will open the directed fisheries within the HLA in areas 542 and 543. The Regional Administrator will provide notification by publication in the **Federal Register** of the opening and closure dates of the HLA directed fisheries, as determined by paragraph (a)(8)(iii)(E) of this section. Closures specified in Table 6 to this part and in § 679.22(a)(8) will remain in effect.

(D) *HLA harvest limit.* The Regional Administrator will establish the harvest limit for each HLA directed fishery for each area based on the seasonal apportionment at paragraph (a)(8)(ii)(C) of this section and in proportion to the number of vessels in an HLA directed fishery compared to the total number of vessels fishing in the HLA of an area during a season.

(E) *HLA directed fishery closure.* The Regional Administrator will establish the closure date of the Atka mackerel HLA directed fishery for each statistical area based on the estimated fishing capacity of vessels registered to fish in the area and assigned to the HLA directed fishery under paragraph (a)(8)(iii)(B) of this section. Each HLA directed fishery will last no longer than 14 days.

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery other than the one assigned under paragraph (a)(8)(iii)(B) of this section during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

* * * * *

(11) *GOA Pacific cod TAC*—(i) *Seasonal apportionment.* The TAC established for Pacific cod in the Western and Central Regulatory Areas of the GOA will be divided 60 percent to the A season and 40 percent to the B season, as specified in § 679.23(d)(3).

(ii) *The Regional Administrator may apply any underage or overage of Pacific cod harvest from one season to the subsequent season.* In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider bycatch needed to optimize catch by gear groups and sectors.

(iii) *Pacific cod catch between the A and B seasons.* Pacific cod catch taken between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of this section.

* * * * *

(d) * * *

(4) *Harvest control for pollock, Atka mackerel and Pacific cod.* If a biological assessment of stock condition for the pollock, Pacific cod, or Atka mackerel within an area projects that the biomass in an area will be equal to or below 20 percent of the projected unfished biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. The Regional

Administrator will prohibit the directed fishery under this paragraph by notification published in the **Federal Register**. The directed fishery will remain closed until a subsequent biological assessment projects that the biomass for the species in the area will exceed 20 percent of the projected unfished biomass during a fishing year.

* * * * *

(e) * * *

(2) * * *

(iv) The maximum retainable amount for vessels fishing during an individual fishing trip in areas closed to directed fishing and in areas open to directed fishing is the lowest maximum retainable amount applicable to the prohibited species or species group in any of these areas, and this maximum retainable amount must be applied for the duration of the individual fishing trip.

* * * * *

6. In § 679.22, paragraphs (a)(5), (a)(7), (a)(8), (b)(2) and (b)(3) are revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area(CVOA)*—(i) *Definition.* The CVOA is defined as that part of the BSAI that is south of 56°00′ N lat. and between 163°00′ W long. and 167°30′ W long., and north of the Aleutian Islands (Figure 2 to part 679).

(ii) *Catcher/processor restrictions.* A catcher/processor vessel authorized to fish for BSAI pollock under § 679.4 is prohibited from conducting directed fishing for pollock in the CVOA during the B pollock season defined at § 679.23(e)(2)(ii), unless it is operating under a CDP approved by NMFS.

* * * * *

(7) *Steller sea lion protection areas, Bering Sea subarea*—(i) *Bogoslof area*—(A) *Boundaries.* The Bogoslof area consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00′ N lat./170°00′ W long., and 55°00′ N lat./168°11′4.75″ W long.;

(B) *Fishing prohibition.* All waters within the Bogoslof area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel by federally-permitted vessels, except as provided in paragraph (a)(7)(i)(C) of this section.

(C) *Bogoslof Pacific cod exemption area.* (*1*) All catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod are exempt from the Pacific cod fishing prohibition as described in paragraph (a)(7)(i)(B) of this section in the portion of the Bogoslof area south of a line connecting a point 3 nm north of Bishop Point (54°01′25″ N lat./166° 57′00″ W long.) to Cape Tanak (53°33′50″ N lat./168°00′00″ W long.), not including waters of the Bishop Point Pacific cod fishing closures as described in Table 5 of this part.

(*2*) If the Regional Administrator determines that 113 mt of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area described in paragraph (a)(7)(i)(C)(*1*) of this section, the Regional Administrator will prohibit directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area by notification published in the **Federal Register**.

(ii) *Bering Sea Pollock Restriction Area.* (A) Boundaries. The Bering Sea Pollock Restriction Area consists of all waters of the Bering Sea subarea south of a line connecting the points 163°0′00″ W long./55°46′30″ N lat., 165°08′00″ W long./54°42′9″ N lat., 165°40′00″ W long./54°26′30″ N lat., 166°12′00″ W long./54°18′40″ N lat., and 167°0′00″ W long./54°8′50″ N lat.

(B) *Fishing prohibition.* All waters within the Bering Sea Pollock Restriction Area are closed to directed fishing for pollock by federally-permitted vessels during the A season, as defined at § 679.23(e)(2).

(iii) *Groundfish closures.* Directed fishing for groundfish by federally permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Bering Sea" in column 2.

(iv) *Pollock closures.* Directed fishing for pollock by federally-permitted vessels is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Bering Sea" in column 2.

(v) *Pacific cod closures.* Directed fishing for Pacific cod by federally-permitted vessels using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "BS" in column 2.

(vi) *Atka mackerel closures.* Directed fishing for Atka mackerel by federally permitted vessels using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 to this part and are identified by "Bering Sea" in column 2.

(vii) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for pollock CDQ, is prohibited within the SCA until April 1 when the Regional Administrator announces, by notification in the **Federal Register**, that the criteria set out in paragraph (a)(7)(vii)(C) of this section have been met by that industry component.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;

55°00′ N lat. 168°00′ W long.;

55°30′ N lat. 168°00′ W long.;

55°30′ N lat. 166°00′ W long.;

56°00′ N lat. 166°00′ W long.; and,

56°00′ N lat. 163°00′ W long.

(C) *Criteria for closure*—(*1*) *General.* The directed fishing closures identified in paragraph (a)(7)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(B) is reached before April 1. The Regional Administrator shall close the directed pollock fishery in the SCA by notification published in the **Federal Register**.

(*2*) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(B) has been met before April 1.

(8) *Steller sea lion protection areas, Aleutian Islands subarea*—(i) *Seguam Foraging area*—(A) The Seguam foraging area is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30′ W long. and 172°30′ W long.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel by

federally-permitted vessels is prohibited in the Seguam Foraging area as described in paragraph (a)(8)(i)(A) of this section.

(ii) *Pollock closure.* Directed fishing for pollock by federally-permitted vessels is prohibited within the pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Aleutian I." in column 2.

(iii) *Groundfish closures.* Directed fishing for groundfish by federally-permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Aleutian Islands" in column 2.

(iv) *Pacific cod closures*—(A) *HLA closure.* Directed fishing for Pacific cod by federally-permitted vessels using trawl gear is prohibited in the HLA in area 542 or area 543, as defined in § 679.2 when the Atka mackerel HLA directed fishery in area 542 or area 543 is open.

(B) *Gear specific closures.* Directed fishing for Pacific cod by federally-permitted vessels using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "AI" in column 2.

(v) *Atka mackerel closures.* Directed fishing for Atka mackerel by federally-permitted vessels using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 of this part and are identified by "Aleutian Islands" in column 2.

* * * * *

(b) * * *

(2) *Steller sea lion protection areas*—(i) *Groundfish closures.* Directed fishing for groundfish by federally-permitted vessels is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by "Gulf of Alaska" in column 2.

(ii) *Pollock closures.* Directed fishing for pollock by federally-permitted vessels is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by "Gulf of Alaska" in column 2.

(iii) *Pacific cod closures.* Directed fishing for Pacific cod by federally-permitted vessels using trawl, hook-and-line, or pot gear in the federally managed Pacific cod or State of Alaska parallel groundfish fisheries, as defined in Alaska Administrative Code (5 AAC 28.087(c), January 3, 2002), is prohibited within Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by "GOA" in column 2.

(iv) *Atka mackerel closure.* Directed fishing for Atka mackerel by federally permitted vessels within the Gulf of Alaska subarea is prohibited at all times.

(3) *Chiniak Gully Research Area (applicable through December 31, 2004)*—(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N lat., 152.37° W long.;

57.81° N lat., 151.85° W long.;

57.22° N lat., 150.64° W long.;

56.98° N lat., 151.27° W long.;

57.62° N lat., 152.16° W long.; and hence counterclockwise along the shoreline of Kodiak Island to 57.81° N lat., 152.37° W long.

(ii) *Closure*—(A) The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24 (d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(3)(ii)(A) of this section.

* * * * *

7. In § 679.23, paragraphs (d)(2), (d)(3), (e)(2), (e)(3), (e)(4)(iii), and (e)(5) and paragraph (i) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., February 25;

(ii) *B season.* From 1200 hours, A.l.t., March 10 through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 25 through 1200 hours, A.l.t., September 15; and

(iv) *D season.* From 1200 hours, A.l.t., October 1 through 1200 hours, A.l.t., November 1.

(3) *Directed fishing for Pacific cod*—(i) *Hook-and-line, pot, or jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(e) * * *

(2) *Directed fishing for pollock in the Bering Sea/Aleutian Islands area by inshore, offshore catcher/processor, and mothership components and pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea/Aleutian Islands area or directed fishing for pollock CDQ in the Bering Sea/Aleutian Islands area is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, non-CDQ directed fishing for Atka mackerel with trawl gear in the Aleutian Islands subarea is authorized only during the following two season:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 15; and

(ii) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(4) * * *

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than pollock CDQ; hook-and-line, jig, or trawl Pacific cod CDQ; and fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1 through the end of each

fishing year, except as provided under paragraph (c) of this section.

(5) *Directed fishing for Pacific cod*—(i) *Hook-and-line and jig gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear and with vessels using jig gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with trawl gear in the BSAI is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1;

(B) *B season.* From 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10; and

(C) *C season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(iii) *Pot gear.* Subject to other provisions of this part, non-CDQ directed fishing for Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock.* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction when fishing east of 157°00′ W long. GOA and Bering Sea seasons are specified at § 679.23(d)(2) and § 679.23(e)(2).

If you own or operate a catcher vessel and engage in directed fishing for pollock in the	During the...	Then you are prohibited from subsequently engaging in directed fishing for pollock with that catcher vessel in the...
(1) Bering Sea subarea	(i) A season	(A) GOA until the following C season
	(ii) B season	(B) GOA until the A season of the next year
(2) GOA	(i) A season	(A) BSAI until the following B season
	(ii) B season	(B) BSAI until the following B season
	(iii) C season	(C) BSAI until the A season of the following year
	(iv) D season	(D) BSAI until the A season of the following year

8. In § 679.28, paragraphs (f)(3)(ii) and (f)(3)(iii) are revised, and paragraphs (f)(4), (f)(5), and (f)(6) are added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(3) * * *

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before engaging in operations when a VMS is required.

(iii) Continue the VMS transmissions until no longer engaged in operations requiring VMS.

* * * * *

(4) *What must the vessel owner do before activating a VMS transmitter for the first time*? If you are a vessel owner who must use a VMS and you are activating a VMS transmitter for the first time, you must:

(i) Contact the NMFS enforcement division by FAX at 907–586–7703 and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit Number, and approximately when and where the vessel will begin fishing.

(ii) Call NMFS enforcement at 907–586–7225, Monday through Friday, between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t., at least 72 hours before leaving port and receive confirmation that the transmissions are being received.

(5) *What must the vessel owner do when the vessel replaces a VMS transmitter*? If you are a vessel owner who must use a VMS and you wish to replace a transmitter, you must either:

(i) Have followed the reporting and confirmation procedure for the replacement transmitter, as described above in paragraph (f)(4) of this section, or

(ii) Contact the NMFS Enforcement Division by phone or FAX and provide: the replacement VMS transmitter ID, the vessel name and the vessel's Federal Fisheries Permit Number and receive confirmation that the transmissions are being received before beginning operations.

(6) *When must the VMS transmitter be transmitting*? Your vessel's transmitter must be transmitting if the vessel is operating in any Reporting Area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit under § 679.4(b)(5)(vi), is open.

§ 679.32 [Amended]

9. In § 679.32, paragraph (e) is removed and reserved.

10. In § 679.50, paragraph (c)(1)(x) is revised to read as follows:

§ 679.50 Groundfish Observer Program (applicable through December 31, 2002).

* * * * *

(c) * * *

(1) * * *

(x) A vessel directed fishing with trawl gear for Atka mackerel in the Aleutian Islands subarea must carry two NMFS-certified observers at all times while directed fishing for Atka mackerel in the HLA directed fishery, as specified in § 679.20(a)(8).

* * * * *

11. In 50 CFR part 679, Tables 4, 5, and 6 are revised, Table 12 is added, and Table 13 is removed and reserved to read as follows:

BILLING CODE 3510–22–S

Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.80 E			20
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			20
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			20
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			10
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			20
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67.N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[11, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).
[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.
[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.
[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178°W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts.
[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt.	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I. Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Gramp Rock[3]	Aleutian Islands	51 28.87 N	178 20.58 W			10, 20
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Sagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagámil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire I.[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt.	Bering Sea	53 58.40 N	166 57.50 W			20
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			20
Amak I. And rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	20

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22 (a)(7)(vi) and (a)(8)(v).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located 20 nm seaward of Gramp Rock and east of 178°W long.

Table 12 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			Y
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	Y
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	Y
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	Y
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			Y
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	Y
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			Y
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			Y
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	Y
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			Y
Agligadak I.	Aleutian I.	52 06.09 N	172 54.23 W			Y
Seguam I./Saddleridge Pt.	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	Y
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53 55.69 N	168 02.05 W			Y

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

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[FR Doc. 02-21985 Filed 9-3-02; 8:45 am]
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Federal Register

Wednesday,
September 4, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 93
Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No. FAA–2002–13235; Notice. No. 02–13]

RIN 2120–AH57

Special Air Traffic Rules; Flight Restrictions in the Vicinity of Niagara Falls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for Niagara Falls by the Canadian government. The intended effect of this action is to prevent unsafe congestion of aircraft in this popular sightseeing area. The FAA is also proposing a number of editorial changes to parts 91 and 93 of Title 14 of the Code of Federal Regulations.

DATES: Send your comments to reach us on or before October 21, 2002.

ADDRESSES: Mail your comments to Docket Management System, U.S. Department of Transportation, Room 401 Plaza level, 400 Seventh Street, SW., Washington, DC 20590; or send your comments through the Internet to *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Terry Brown or Jan 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:

Your Comments Are Welcome

We invite your comments on this notice of proposed rulemaking (NPRM). The most useful comments are those that are specific, related to issues raised by the NPRM, and that explain the reason for any recommended change. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the NPRM that might suggest a need to modify it. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

To ensure consideration, you must identify the Rules Docket number in your comments, and you must submit comments to one of the addresses specified under the **ADDRESSES** section of this preamble. We will consider all communications received on or before the closing date for comments, and we may amend or withdraw this NPRM in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. We will file in the Rules Docket a report that summarizes each public contact related to the substance of this proposed rule.

You may review the public docket containing comments on this NPRM in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the address specified in the **ADDRESSES** section. Also, you may review the public docket on the Internet at *http://dms.dot.gov*.

If you want us to acknowledge receipt of your comments submitted in response to this proposed rule, you must include with your comments a self-addressed, stamped postcard on which you identify the Rules Docket number of this rulemaking. We will date stamp the postcard and return it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this NPRM using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or through the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity. If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the FAA Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA in the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.html*. You may send inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov*.

Background

Canadian Flight Restrictions

On September 29, 1992, three people lost their lives when two sightseeing helicopters collided over Niagara Falls. In response to this accident and to ensure safety, Transport Canada established a restricted airspace area in Canada within a 2-nautical-mile radius of Niagara Falls. The designated area excludes U.S. airspace. The restricted airspace area was established on October 29, 1992, and is designated CYR–518.

In part, the Canadian action restricts aircraft operations within a specified area from the surface up to, but not including, 3,500 feet mean sea level (MSL), except for medical and police operations and those operations specifically authorized by the Regional Director for Air Carrier Operations, Ontario Region, Transport Canada.

Pilots may conduct passenger sightseeing flights in CYR–518 if they meet certain operating requirements. These requirements include operating on an approved Scenic Falls Route, maintaining a listening watch on a published radio frequency, transmitting certain information at specified points on the route, operating at speeds within a specified range, and maintaining specified horizontal spacing between aircraft when on the route. This is a partial list of the operational requirements for CYR–518. Readers who are interested in more details should refer to CYR–518, a copy of which we have placed in the docket for this rulemaking.

U.S. Temporary Flight Restriction

The FAA Administrator has broad authority under section 40103 of Title 49 of the United States Code (49 U.S.C. 40103) to regulate, control, develop plans for, and formulate policy with respect to, the use of navigable airspace. Additionally, the Administrator has the authority to assign by rule, regulation, or order, the use of the United States navigable airspace under such terms, conditions, and limitations as deemed necessary to ensure the safety of aircraft

and the efficient use of the navigable airspace.

To complement the Canadian action described above, the FAA issued a temporary flight restriction (TFR) in September 1992 for aircraft operations in U.S. airspace adjacent to Niagara Falls pursuant to section 91.137 of Title 14 of the Code of Federal Regulations (14 CFR 91.137). As published in the Airport/Facility Directory, Northeast U.S. Edition, Detroit Sectional Aeronautical Chart, visual flight rules (VFR) aircraft operating in the vicinity of Niagara Falls must adhere to the following flight restrictions:

Pursuant to FAR 91.137(a)(3) temporary flight restrictions are in effect below 3,500 feet MSL in the airspace above Niagara Falls west of a line from the whirlpool rapids bridge (BUF309/21) to the Niagara Splash Amusement Park (BUF306/20) to the International Control Dam (BUF304/20) to the United States Canadian Border to prevent an unsafe congestion of sightseeing and other aircraft. No flight is authorized in the described area below 3,500 feet MSL except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) AFSS phone 716–631–3756/5567, the FAA coordination facility. Pilots are advised to check with Transport Canada for flight restrictions in Canadian airspace. Commercial air tour operations approved by Transport Canada will be conducting a north/south orbit of the falls area below 3,500 feet MSL over the Niagara River.

Pursuant to the above flight restrictions, the minimum altitude for VFR flight over the Scenic Falls area is 3,500 feet MSL. The FAA and Transport Canada recommend pilots comply with the following procedures when conducting flight over that area:

1. Fly a clockwise pattern as depicted in the accompanying graphic display;
2. Do not proceed north of the Rainbow Bridge;
3. Prior to joining the pattern, broadcast flight intentions on frequency 122.05 MHZ; giving altitude and position, and monitor the frequency while in the pattern;
4. Use the Niagara Falls (IAG) altimeter setting—ATIS frequency 120.8 MHZ—or contact IAG tower 118.5;
5. Do not exceed 130 knots;
6. Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and
7. Use caution to avoid high-speed civil and military aircraft transiting the area to/from Niagara Falls Airport.

This procedure does not relieve pilots from the requirements of FAR 91.113 to see and avoid other aircraft.

The 1993 Public Meeting

On February 10, 1993, the FAA published a notice of public meeting, in the **Federal Register** (58 FR 7950), soliciting public comments for determining the most appropriate special flight rules in U.S. airspace in the vicinity of Niagara Falls. The public meeting was held on March 9, 1993, at Niagara Falls City Hall, Niagara Falls, NY. Reconsideration or possible modification of the Canadian airspace flight restriction was not discussed at this meeting. As a result of the public meeting, the FAA received approximately 28 comments. The **Federal Register** notice cited above stated that the FAA would consider all comments received as a result of the public meeting before issuing an NPRM. While we carefully reviewed and considered the public comments, we were not able to prepare an NPRM in a timely manner due to changing priorities and a lack of resources to devote to the task. At this time, we believe it would not be prudent now to develop an NPRM based on eight-year-old comments. For this reason, we are issuing for public comment an NPRM that would, if adopted, codify the existing temporary flight restriction. We are particularly interested in receiving comments on how well the existing flight restrictions are working.

Discussion of the Proposal

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, NY

Section 93.71 General Operating Procedures

The FAA proposes to add a new subpart E to 14 CFR part 93 (consisting of § 93.71) that would codify the current temporary flight restrictions in the vicinity of Niagara Falls. This proposed action would complement and support flight management procedures established by Transport Canada for Canadian airspace in the vicinity of Niagara Falls. Proposed § 93.71(a) would establish flight restrictions below 3,500 feet MSL in the airspace above Niagara Falls west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29′ N., longitude 79°03′30″ W. (the International Control Dam) to the United States Canadian Border to prevent unsafe congestion of sightseeing and other aircraft.

Proposed § 93.71(b) would prohibit flight in the area described in proposed paragraph (a) except for aircraft operations conducted directly to or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

Proposed § 93.71(c) would require pilots to check with Transport Canada for flight restrictions in Canadian airspace. It would also advise pilots that commercial air tour operations approved by Transport Canada are conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

Proposed § 93.71(d) would establish the minimum altitude for VFR flight over the scenic falls area as 3,500 feet MSL.

Proposed § 93.71(e) would require that pilots comply with the following procedures when conducting flight over the area described in proposed § 93.71(a):

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, pilots are to use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

Proposed § 93.71(f) would be a reminder that these procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

Proposed § 93.71(g) would advise pilots that flight following, to and from the area, is available through Buffalo Approach.

Editorial Changes to Parts 91 and 93

The FAA is also proposing a number of editorial changes to 14 CFR parts 91 and 93. These changes include the following:

- Change the title of part 93 from "Special Air Traffic Rules and Airport

Traffic Patterns" to "Special Air Traffic Rules." The proposed title would better describe the intent of part 93 and the activities it addresses.

- Change § 93.1 to reflect the deletion of the term "airport traffic area" and for the purposes of brevity and clarity. On December 17, 1991, the FAA published a final rule (56 FR 65638) that reclassified various airspace designations and deleted the term "airport traffic area." We intended these changes to apply to all similarly designated airspace areas. However, we have not proposed corresponding changes to part 93 until now.
- Change § 93.51 by deleting the phrase "and traffic patterns" to be consistent with the change to the title of part 93 described above.
- Divide existing § 93.81, which contains the special air traffic rule for the Valparaiso, Florida, Terminal Area, into two sections, 93.80 and 93.81, with minor editorial changes to new § 93.80, Applicability.
- Make a minor editorial change to § 93.117, which describes the applicability of the special air traffic rule for the Lorain County (Ohio) Regional Airport.
- Divide existing § 93.151, which describes the applicability of the special air traffic rule for the Ketchikan (Alaska) International Airport, into two sections, 93.151 and 93.152, with minor editorial changes to § 93.151.
- Change the alphabetical listing in section 4 of Appendix D to part 91, change the title of subpart T, and change §§ 93.251 and 93.253 to reflect the renaming of Ronald Reagan Washington National Airport.

We do not intend these editorial changes to change the substance of parts 91 or 93.

Procedural Matters

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that conflict with this NPRM.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the FAA has determined that there are no new requirements for information collection associated with this NPRM.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency 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 businesses and other 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).

In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits and not impose any costs and is not a "significant regulatory action" as defined in Executive Order 12866, and is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and (4) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the public docket for this rulemaking.

This NPRM would codify the current TFR for those aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for the Falls by Transport Canada. Additionally, this action proposes a number of editorial changes to 14 CFR parts 91 and 93.

As a rule, the FAA does a benefit-cost analysis when this agency makes a TFR permanent by rulemaking. However, this TFR has been in effect for almost eight years. This length of time makes it difficult to obtain data to estimate baseline costs before the imposition of the TFR. The FAA does not believe that the TFR imposed significant costs on aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY, and the FAA does not believe this rulemaking would impose significant costs on those operators. As part of this rulemaking action, the FAA solicits public comments regarding the costs imposed by this rulemaking.

Regarding benefits, the FAA is aware of the mid-air collision in the vicinity of Niagara Falls before the issuance of the TFR and before the flight management procedures established by Transport Canada. Since the issuance of the TFR and Canadian flight management procedures, there have been no mid-air collisions. The FAA believes that the flight management procedures established in the TFR and by Transport Canada are responsible for this improvement in aviation safety. The FAA is proposing to make the TFR permanent because we believe that there are positive aviation safety benefits from imposing these flight restrictions on aircraft operating in U.S. airspace in the vicinity of Niagara Falls. The FAA seeks public comments regarding these benefit findings.

The FAA finds that the safety benefits accruing to this rulemaking justify the costs imposed. Therefore, the FAA finds this proposed rule to be cost-beneficial.

Initial Regulatory Flexibility Determination

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, 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 RFA provides that the head of the agency

may so certify and a 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.

The FAA believes that this action imposes little costs on any small entities subject to this rule. Any costs of complying with the NPRM are already borne by those complying with the existing flight restrictions for the past eight years. Consequently, the FAA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FAA seeks public comments regarding this cost finding.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this NPRM to be minimal and therefore has determined that this proposed rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, 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. Section 204(a) of UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under UMRA is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency must have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. This NPRM does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of UMRA do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this NPRM under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this proposed rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

We have assessed the energy impact of this NPRM in accord with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this NPRM is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 93

Aircraft flight, Airspace, Aviation safety, Air traffic control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 91 and 93 of Title 14 Code of Federal Regulations (14 CFR parts 91 and 93) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C.106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Appendix D to Part 91—[Amended]

2. Amend section 4 of appendix D to part 91 by removing the words "Washington National Airport" and adding in their place the words "Ronald Reagan Washington National Airport" in the alphabetical list of cities and airports.

PART 93—SPECIAL AIR TRAFFIC RULES

3. The authority citation for 14 CFR part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. Revise the heading of part 93 to read as set forth above.

5. Revise § 93.1 to read as follows:

§ 93.1 Applicability.

This part prescribes special air traffic rules for operating aircraft in certain areas described in this part, unless otherwise authorized by air traffic control.

6. Revise § 93.51 to read as follows:

§ 93.51 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Anchorage, Alaska, Terminal Area.

7. Amend part 93 by adding Subpart E to read as follows:

Subpart E—Flight Restrictions in the Vicinity of Niagara Falls, New York

§ 93.71 General operating procedures.

(a) Flight restrictions are in effect below 3,500 feet MSL in the airspace above Niagara Falls west of a line from latitude 43°06′33″ N., longitude 79°03′30″ W. (the Whirlpool Rapids Bridge) to latitude 43°04′47″ N., longitude 79°02′44″ W. (the Niagara River Inlet) to latitude 43°04′29″ N., longitude 79°03′30″ W. (the International Control Dam) to the United States Canadian Border.

(b) No flight is authorized below 3,500 feet MSL in the area described in paragraph (a) of this section, except for aircraft operations conducted directly to

or from an airport/heliport within the area, aircraft operating on an ATC-approved IFR flight plan, aircraft operating the Scenic Falls Route pursuant to approval of Transport Canada, aircraft carrying law enforcement officials, or aircraft carrying properly accredited news representatives for which a flight plan has been filed with Buffalo NY (BUF) Automated Flight Service Station (AFSS).

(c) Pilots shall check with Transport Canada for flight restrictions in Canadian airspace. Commercial air tour operations approved by Transport Canada will be conducting a north/south orbit of the Niagara Falls area below 3,500 feet MSL over the Niagara River.

(d) Pursuant to the above flight restrictions, the minimum altitude for VFR flight over the Scenic Falls area is 3,500 feet MSL.

(e) Pilots must comply with the following procedures when conducting flight over the area described in paragraph (a) of this section:

(1) Fly a clockwise pattern;

(2) Do not proceed north of the Rainbow Bridge;

(3) Prior to joining the pattern, broadcast flight intentions on frequency 122.05 Mhz, giving altitude and position, and monitor the frequency while in the pattern;

(4) Use the Niagara Falls airport altimeter setting. Contact Niagara Falls Airport Traffic Control Tower to obtain the current altimeter setting, to facilitate the exchange of traffic advisories/restrictions, and to reduce the risk of midair collisions between aircraft operating in the vicinity of the Falls. If the Control Tower is closed, pilots are to use the appropriate Automatic Terminal Information Service (ATIS) Frequency;

(5) Do not exceed 130 knots;

(6) Anticipate heavy congestion of VFR traffic at or above 3,500 feet MSL; and

(7) Use caution to avoid high-speed civil and military aircraft transiting the area to or from Niagara Falls Airport.

(f) These procedures do not relieve pilots from the requirements of § 91.113 of this chapter to see and avoid other aircraft.

(g) Flight following, to and from the area, is available through Buffalo Approach.

8. Add new § 93.80 to subpart F to read as follows:

§ 93.80 Applicability.

This subpart prescribes special air traffic rules for aircraft operating in the Valparaiso, Florida, Terminal Area.

§ 93.81 [Amended]

9. Amend § 93.81 by removing paragraph (a); removing the paragraph designation of paragraph (b); and redesignating paragraphs (1), (2), (2)(i), (2)(ii), and (2)(iii) as (a), (b), (b)(1), (b)(2), and (b)(3) respectively.

10. Revise § 93.117 to read as follows:

§ 93.117 Applicability.

This subpart prescribes a special air traffic rule for aircraft operating at the Lorain County Regional Airport, Lorain County, Ohio.

11. Revise § 93.151 to read as follows:

§ 93.151 Applicability.

This subpart prescribes a special air traffic rule for aircraft conducting VFR operations in the vicinity of the Ketchikan International Airport or Ketchikan Harbor, Alaska.

12. Add new § 93.152 to read as follows:

§ 93.152 Description of area.

Within that airspace below 3,000 feet MSL within the lateral boundary of the surface area of the Ketchikan Class E airspace regardless of whether that airspace is in effect.

13. In the heading and text of subpart T, remove the words "Washington National Airport" wherever they appear and add, in their place, the words "Ronald Reagan Washington National Airport."

Issued in Washington, DC, on August 21, 2002.

Sabra W. Kaulia,

Program Director for Air Traffic Airspace Management.

[FR Doc. 02–22267 Filed 9–3–02; 8:45 am]

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- Iowa; comments due by 9-12-02; published 8-13-02 [FR 02-20465]
- Oklahoma; comments due by 9-11-02; published 8-27-02 [FR 02-21743]

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  - Vietnam, Cambodia, and Laos; waiver of criminal grounds of inadmissibility; comments due by 9-9-02; published 7-9-02 [FR 02-17117]

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  - Hand and edge tools; comments due by 9-9-02; published 8-28-02 [FR 02-21894]
- North American Industry Classification System; adoption; comments due by 9-12-02; published 8-13-02 [FR 02-20357]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 223/P.L. 107–211

To amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act. (Aug. 21, 2002; 116 Stat. 1050)

H.R. 309/P.L. 107–212

Guam Foreign Investment Equity Act (Aug. 21, 2002; 116 Stat. 1051)

H.R. 601/P.L. 107–213

To redesignate certain lands within the Craters of the Moon National Monument, and for other purposes. (Aug. 21, 2002; 116 Stat. 1052)

H.R. 1384/P.L. 107–214

Long Walk National Historic Trail Study Act (Aug. 21, 2002; 116 Stat. 1053)

H.R. 1456/P.L. 107–215

Booker T. Washington National Monument Boundary Adjustment Act of 2002 (Aug. 21, 2002; 116 Stat. 1054)

H.R. 1576/P.L. 107–216

James Peak Wilderness and Protection Area Act (Aug. 21, 2002; 116 Stat. 1055)

H.R. 2068/P.L. 107–217

To revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works". (Aug. 21, 2002; 116 Stat. 1062)

H.R. 2234/P.L. 107–218

Tumacacori National Historical Park Boundary Revision Act of 2002 (Aug. 21, 2002; 116 Stat. 1328)

H.R. 2440/P.L. 107–219

To rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes. (Aug. 21, 2002; 116 Stat. 1330)

H.R. 2441/P.L. 107–220

To amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes. (Aug. 21, 2002; 116 Stat. 1332)

H.R. 2643/P.L. 107–221

Fort Clatsop National Memorial Expansion Act of 2002 (Aug. 21, 2002; 116 Stat. 1333)

H.R. 3343/P.L. 107–222

To amend title X of the Energy Policy Act of 1992, and for other purposes. (Aug. 21, 2002; 116 Stat. 1336)

H.R. 3380/P.L. 107–223

23 To authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park. (Aug. 21, 2002; 116 Stat. 1338)

Last List August 12, 2002

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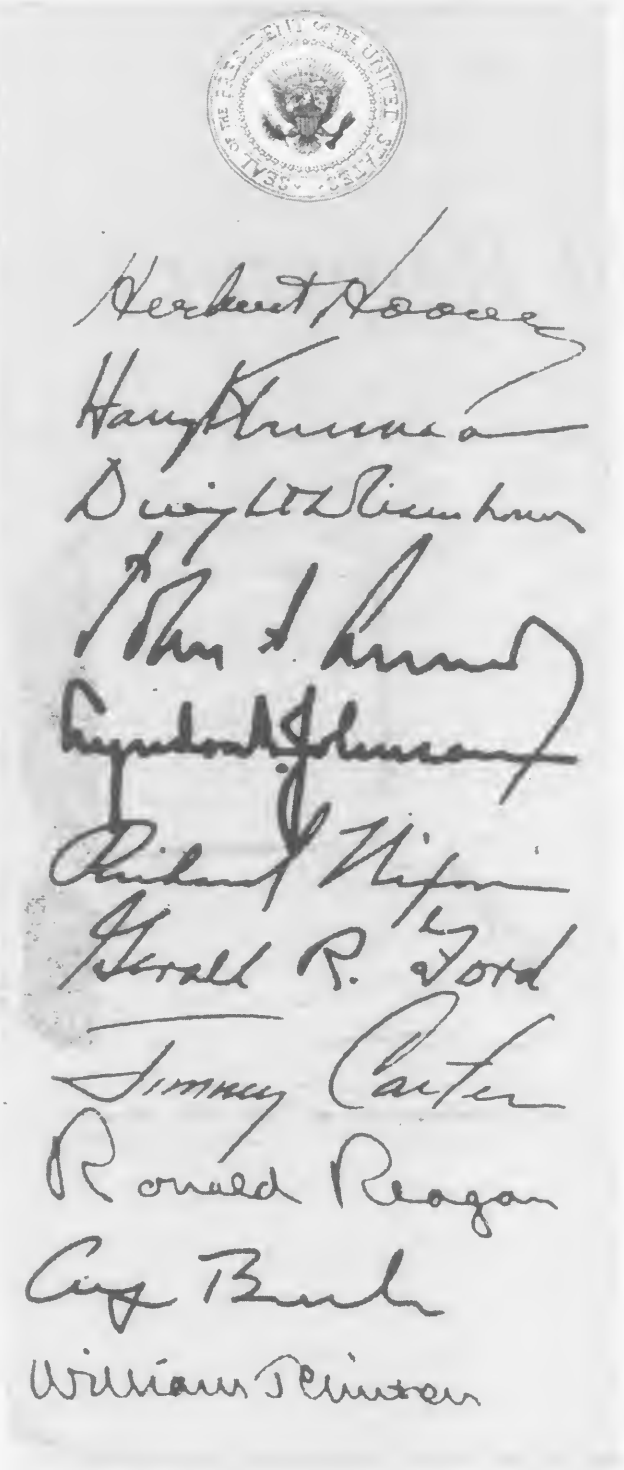

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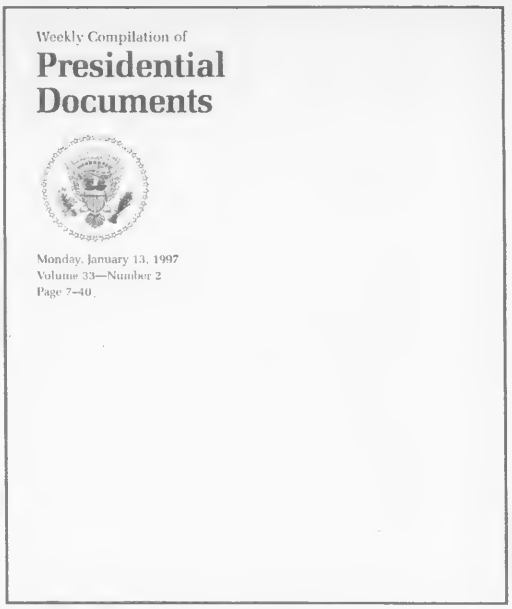

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