Federal Register

12–6–02 Friday
Vol. 67 No. 235 Dec. 6, 2002

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use $300

PERIODICALS
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-632o)

Federal Register

12–6–02 Friday
Vol. 67 No. 235 Dec. 6, 2002
Pages 72551–72826

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 67, No. 235

Friday, December 6, 2002

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamtions:
7632.....72551

12 CFR
Proposed Rules:
226.....72618

13 CFR
Proposed Rules:
120.....72622

14 CFR
39.....72553
97.....72553
119.....72726
121.....72726
129.....72726
135.....72726
183.....72726

21 CFR
336.....72555
338.....72555
341.....72555

33 CFR
117 (2 documents) 72559, 72560
165.....72561

36 CFR
Proposed Rules:
219 (2 documents) 72770, 72816

38 CFR
21.....72563

39 CFR
Proposed Rules:
111.....72626

40 CFR
52 (4 documents) 72573, 72574, 72576, 72579
61.....72579
63.....72580
86.....72821
180.....72585
1065.....72724
Proposed Rules:
86.....72818

44 CFR
64.....72593

50 CFR
679.....72595
Proposed Rules:
635.....72629

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

Presidential Documents

Title 3—

The President

Proclamation 7632 of December 3, 2002

National Drunk and Drugged Driving Prevention Month, 2002

By the President of the United States of America

A Proclamation

Drunk and drugged driving threatens the safety of millions of Americans. Reducing the incidence of impaired driving remains one of our Nation's greatest challenges. As we gather with family and friends to celebrate this holiday season, I urge all Americans to observe National Drunk and Drugged Driving Prevention Month by making responsible choices that will help keep our roads safer for all.

Drunk driving accidents take a life every 30 minutes and injure someone every 2 minutes. In the last 24 months, 41 percent of those killed in traffic accidents, which is almost 35,000 Americans, have been killed in alcohol-related crashes. To better protect our citizens and decrease the number of drunk and drugged driving traffic accidents, we must work together to educate our communities about the seriousness of this offense and we must raise awareness of its devastating consequences.

My Administration supports efforts to save lives and prevent injuries resulting from impaired driving. The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) works with local law enforcement agencies that conduct sobriety checkpoints and saturation patrols; and it also supports State efforts to pass legislation that increases punishment for those who drink and drive.

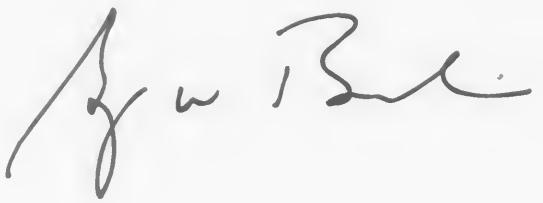
The NHTSA and its State and local partners are dedicated to eliminating impaired driving and stopping the associated injuries and fatalities. The NHTSA's national safety campaign—**You Drink & Drive. You Lose.**—aims to lower America's impaired driving fatality rate to less than 11,000 people per year by the year 2005. By providing its partner organizations with guidance on overcoming this national challenge, this important campaign is assisting local law enforcement agencies, community groups and organizations, public health professionals, and businesses to coordinate and address this vital issue.

As part of the **You Drink & Drive. You Lose.** campaign, law enforcement agencies across the Nation will be out in full force from December 20, 2002, to January 5, 2003, to stop drunk and drugged driving. During the holiday season, organizations and citizens throughout the country also will be working to prevent this deadly activity by encouraging citizens to choose sober, designated drivers, keep impaired family members and friends off our roads, report drivers who are under the influence, and educate young people about safe, alcohol- and drug-free driving behavior. Through cooperation and determination, every American can do something to make a difference and help stop impaired drivers before they harm others.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2002 as National Drunk and Drugged Driving Prevention Month. I call upon State and community leaders to join the **You Drink & Drive. You Lose.** national mobilization between December 20, 2002, and January 5, 2003. I also urge all Americans to work to enhance the safety of our Nation's roadways and protect the

well-being of our drivers, passengers, and pedestrians during this holiday season and every day of the year.

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



[FR Doc. 02–31068
Filed 12–5–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12916; AD 2002–21–10]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2002–21–10, applicable to Pratt and Whitney (PW) model 4000 series turbofan engines, that was published in the **Federal Register** on October 25, 2002 (67 FR 65484). A publish date for service information was inadvertently omitted from one of the compliance paragraphs in the regulatory information. Also, the same service information was inadvertently omitted from the table for Documents That Have Been Incorporated by Reference and the paragraph that follows the table. This document corrects these omissions. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 12, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments FR Doc. 02–26909, airworthiness directive applicable to Pratt and Whitney (PW) model 4000 series turbofan engines, was published in the **Federal Register** on October 25, 2002 (67 FR 65484). The following corrections are needed:

§ 39.13 [Corrected]

On page 65491, in the Regulatory Information, second column, paragraph (k)(2)(i), sixth line, remove the phrase "September 15, 2001. If the HPC rear hook is." and add in its place "March 15, 2002 or September 15, 2001. If the rear hook is."

Also, on page 65492, in the Regulatory Information, the table for Documents That Have Been Incorporated by Reference is corrected by adding the following:

"PW CIR 51A357, section 72–35–68, Inspection/Check–04, Indexes 8–11.	All	Original	March 15, 2002.

Total pages: 5"

Also, on page 65493, in the Regulatory Information, first column, thirteenth line, remove the phrase "PW4ENG72–749, dated June 17, 2002, EM" and add in its place "PW4ENG72–749, dated June 17, 2002, CIR 51A357, section 72–35–68, Inspection/Check–04, Indexes 8–11, dated March 15, 2002, EM".

Issued in Burlington, MA, on November 13, 2002.

Mark C. Fulmer,

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

[FR Doc. 02–29672 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30342; Amdt. No. 3034]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective December 6, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2002.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700 Washington, DC.

For Purchase

Individual SIAP copies may be obtained from:

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

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

By Subscription

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on November 22, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective Upon Publication.*

FDC date	State	City	Airport	FDC No.	Subject
03/11/02	MO	St Louis	Creve Couer	2/2128	RNAV (GPS) Rwy 34, Orig
11/06/02	NC	Raleigh/Durham	Raleigh-Durham Intl	2/1751	ILS Rwy 23L, Amdt 6A
11/07/02	TX	Houston	William P. Hobby	2/1774	RNAV (GPS) Rwy 30L, Orig-B
11/12/02	OK	Duncan	Halliburton Field	2/1875	LOC Rwy 35, Amdt 4B

FDC date	State	City	Airport	FDC No.	Subject
11/13/02	NJ	Lakewood	Lakewood	2/1904	RNAV (GPS) Rwy 6, Orig
11/13/02	NJ	Lakewood	Lakewood	2/1905	RNAV (GPS) Rwy 24, Orig
11/13/02	NJ	Lakewood	Lakewood	2/1906	VOR Rwy 6, Amdt 6
11/13/02	MI	Detroit	Grosse Ile Muni	2/1910	RNAV (GPS) Rwy 22, Orig
11/14/02	MI	Big Rapids	Roben-Hood	2/1942	GPS Rwy 27, Orig
11/15/02	MI	Hastings	Hastings	2/1984	VOR Rwy 12, Orig-A
11/15/02	IL	Salem	Salem-Leckrone	2/1992	NDB Rwy 18, Amdt 10A
11/18/02	MN	St Cloud	St Cloud Regional	2/2033	VOR/DME Rwy 13, Amdt 8B
11/19/02	MI	Detroit	Detroit Metropolitan Wayne County	2/2057	ILS Rwy 22R, Amdt 1

[FR Doc. 02–30440 Filed 12–5–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 336, 338, and 341

[Docket No. 97N–0128]

RIN 0910–AA01

Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monographs for over-the-counter (OTC) antiemetic, antihistamine, antitussive, and nighttime sleep-aid drug products to add a warning statement for oral products containing diphenhydramine citrate or diphenhydramine hydrochloride. The warning advises consumers not to use oral OTC diphenhydramine products with any other product containing diphenhydramine, including products used topically. This final rule also includes the agency's conclusions on additional warning statements and a direction statement for OTC external analgesic drug products containing diphenhydramine hydrochloride. These conclusions will be incorporated into the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**. FDA is issuing this final rule after considering public comments on the agency's proposed regulation and all new data and information on drug products containing diphenhydramine that have come to the agency's attention.

DATES:

Effective Date: This regulation is effective December 8, 2003.

Compliance Dates: The compliance date for oral products with annual sales less than $25,000 is December 6, 2004. The compliance date for all other oral products is December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 29, 1997 (62 FR 45767), FDA published a notice of proposed rulemaking to amend the tentative final monograph (TFM) for OTC external analgesic drug products (proposed 21 CFR 348.50(c)(10)) to add the following warning statement for diphenhydramine hydrochloride: "Do Not Use:" (these three words in bold print) "on chicken pox, poison ivy, sunburn, large areas of the body, broken, blistered, or oozing skin, more often than directed, or with any other product containing diphenhydramine, even one taken by mouth." The agency also proposed to amend the final monographs for OTC antiemetic (proposed 21 CFR 336.50(c)(8)), antihistamine (proposed 21 CFR 341.72(c)(6)(iv) and (c)(7)) and antitussive (proposed 21 CFR 341.74(c)(4)(viii)(C) and (c)(4)(ix)(C)), and nighttime sleep-aid (proposed 21 CFR 338.50(c)(5)) drug products to add the following warning statement for diphenhydramine ingredients: "Do Not Use" (these three words in bold print) "with any other product containing diphenhydramine, including one applied topically." The agency proposed these warnings based on reports of adverse events when oral and topical diphenhydramine products were used concurrently. In response to that proposal, two manufacturers and a marketing association submitted comments. The agency is responding to those comments and publishing a final rule that applies to oral diphenhydramine products now and to topical diphenhydramine products at a future date.

Twenty-four months after the date of publication in the **Federal Register**, for oral diphenhydramine-containing products with sales less than $25,000, and 12 months after the after the date of publication in the **Federal Register**, for all other such oral products, no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates of the final rule must be in compliance with the applicable monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

II. The Agency's Conclusion on the Comments

(Comment 1) One comment contended that the proposed label changes for diphenhydramine products are not necessary and would have no significant impact. The comment stated that the 23 reported cases of toxicity between 1979 and 1989 discussed in the proposal (62 FR 45767 at 45768) are minute compared to the millions of applications of these topical products. Further, in all cases, the toxicity was due to consumer noncompliance with directions and indications. In the majority of cases, no treatment was required except for discontinuance of the drug, with affected consumers released from medical care in 24 hours. The comment concluded that additional warnings would have no effect on consumers who have obviously ignored the existing warnings.

The agency disagrees. The agency recognizes that the number of reports is small compared to the total doses used. However, there is particular concern because of the reports of toxic psychosis, especially in children, discussed in the proposed rule. There is also concern of underreporting because there is no current reporting

requirement for topical diphenhydramine products marketed under the proposed OTC drug monograph. As pointed out in the proposal (62 FR 45767 at 45769), a major manufacturer voluntarily revised the warnings for its topical diphenhydramine products after receiving adverse reaction reports. The agency concludes that additional labeling information should help reduce possible misuse of these products and reduce the possibility of serious adverse reactions.

As noted, our decision to require the warning set forth in this final rule is based on other comments made in response to the proposed rule and our analysis of numerous adverse event reports that document the potential health risks associated with the concurrent use of OTC drug products that contain diphenhydramine. Mandating a warning does not require a finding that any or all of the OTC drug products that contain diphenhydramine actually caused an adverse event, and FDA does not so find. Nor does FDA's mandate of a warning repudiate the OTC drug monographs under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that this additional warning is necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks, and reflects our conclusion that even a potential link between the overuse of diphenhydramine and serious adverse health consequences warrants this action (see 21 CFR 330.10(a)).

FDA's decision to act in an instance such as this one need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F. 3d 986, 991 (8th Cir. 2001)). To mandate a warning, or take similar regulatory action, FDA need not show, nor do we allege, actual causation.

> The distinction between avoidance of risk through regulation and compensation for injuries after the fact is a fundamental one. In the former, risk assessments may lead to control of a toxic substance even though the probability of harm to any individual is small and the studies necessary to assess the risk are incomplete; society as a whole is willing to pay the price as a matter of policy. In the latter, a far higher probability (greater than 50%) is required since the law believes it is unfair to require an individual to pay for another's tragedy unless it is shown that it is more likely than not that he caused it * * *
>
> *In re "Agent Orange" Product Liability Litigation*, 597 F. Supp. 740, 781 (E.D.N.Y. 1984), aff'd., 818 F. 2d 145 (2d Cir. 1987) at 781. In making its decision, the agency follows "the preventive perspective that [ ] agencies adopt in order to reduce public exposure to harmful substances." *Glastetter*, 252 F.3d at 991, *quoting Hollander* v. *Sandoz Pharmaceuticals, Corp.*, 95 F. Supp.2d 1230, 1234 n. 9 (W.D. Okla. 2000). This is what we have done here.

(Comment 2) Two comments contended that OTC topical diphenhydramine products indicated for "pain and itch of sunburn and poison ivy" should not be contraindicated for the same uses and that the agency's proposed warning could confuse consumers. The comments added that the proposed labeling could be interpreted to mean that usage on large areas of the body is permitted as long as the product is not used more than three to four times daily. One comment stated that the proposal only cited two reports of toxicity when the drug was applied topically to a widespread area of intact sunburned skin and to a severe case of poison ivy. There were no reported cases when the drug was applied on limited areas of skin compromised with poison ivy or sunburn. The comment recommended that the labeling state "do not use more often than directed," and that this part of the warning be moved to "Directions" because the statement relates to dosing.

Another comment agreed that topical diphenhydramine products should not be used on large areas of skin either intact or with open lesions. However, it objected to warning against use on damaged skin conditions, specifically broken, blistered, or oozing skin, contending that such labeling may confuse consumers seeking use for skin conditions such as minor cuts, minor burns, or insect bites that are characterized by broken, blistered, or oozing skin. Further, the comment was unable to find any adverse event cases reported when the product was applied according to the labeled directions on limited areas of damaged skin. A second comment also was unable to find any adverse reports associated with use on limited areas of damaged skin. It noted the cited cases in the proposal concerned application on compromised skin over a large skin surface. The comment suggested that this problem is best addressed by the warning against use "on large areas of the body."

The agency agrees that topical diphenhydramine products should be indicated for use on limited areas of skin with poison ivy or sunburn and that the warning is intended to alert consumers not to use these products over large areas of the body or more often than directed for any condition. Because sunburn, poison ivy, and other conditions for which topical diphenhydramine is used (e.g., minor cuts and burns, and insect bites) could be characterized by "broken, blistered, or oozing skin," the agency is removing these conditions from the proposed warning.

Since the proposal was published, the agency has established a new labeling format for all OTC drug products (see section III in this document). That labeling format conveys information in a segmented manner. Based on the new labeling format and the revisions described in the previous paragraph, the information in the final warning for topical products would now appear as follows: "Do not use [bullet] on large areas of the body [bullet] with any other product containing diphenhydramine, even one taken by mouth," "Ask a doctor before use [bullet] on chicken pox [bullet] on measles," and under "Directions [bullet] do not use more often than directed." The proposed monograph directions for external analgesic drug products containing diphenhydramine are "Apply to affected area not more than 3 to 4 times daily." The agency concludes that the revised warnings and directions should be clearer and more understandable to consumers.

(Comment 3) One comment recommended changing "Do not use on chicken pox" to "Do not use on chicken pox, except as directed by a physician." The comment cited additional toxicity reports not included in the proposed rule in which diphenhydramine was applied liberally on children with large areas of chicken pox. However, the comment stated that since physicians may find use appropriate in select cases, consumers should be advised to consult their physicians. Another comment agreed because a doctor may advise use on a few itchy spots to help prevent scratching and the scarring that could result.

One comment from a manufacturer proposed that "measles" be included because a case of diphenhydramine toxicity after treatment with diphenhydramine for measles had been reported to the company. The comment noted that the adverse event was similar to the chicken pox cases discussed in the proposed rule, and that both chicken pox and measles may appear as a widespread rash. Another comment concurred and proposed the following:

"Ask a doctor before use on chicken pox or measles."

The agency agrees. In the proposal, the agency stated that because none of the case reports was associated with measles, that condition was not specifically listed in the warning (62 FR 45767 at 45771). The agency invited comments related to any adverse events associated with the topical application of diphenhydramine to measles. As there has been at least one measles case report and since chicken pox and measles may appear similar to consumers, the agency is including both conditions in product labeling. The agency did not receive any comments opposed to including measles in labeling. When the monograph for OTC external analgesic drug products becomes final, it will contain the following warning for topical diphenhydramine products: "Ask a doctor before use [bullet] on chicken pox [bullet] on measles."

(Comment 4) Two comments agreed that it was reasonable to add a warning to the labeling of OTC oral diphenhydramine products. The comments recommended revising the last part of the agency's proposed warning from "including one applied topically" to "even one used on skin" for two reasons. First, the revised language comprises six syllables in five words instead of nine syllables in four words, making it easier to read. Second, consumers who do not understand the meaning of the word "topically" are more likely to know what is meant by "on skin."

The agency agrees and has revised the labeling for OTC diphenhydramine oral products to read: "Do not use: [bullet] with any other product containing diphenhydramine, even one used on skin."

(Comment 5) One comment expressed concern over the cost of implementing the new labeling for a small manufacturer of topical products and contended: (1) The proposed labeling is an example of the type of regulation that Executive Order 12866 and the Regulatory Flexibility Act were intended to eliminate; (2) the cost to relabel would be substantially more than the $2,000 to $3,000 the agency mentioned in the proposal because of ordering requirements for tubes and boxes and a low dollar volume of annual sales; (3) existing inventory would have to be destroyed because it would not be used prior to the effective date for new labeling; and (4) there would be excessive costs associated with producing new graphics for labeling all products. The comment did not provide any specific data or figures to support its cost speculation.

The agency disagrees that the proposed labeling is an example of the type of regulation that Executive Order 12866 and the Regulatory Flexibility Act were intended to eliminate. The agency has determined that the additional warning statement is necessary for the safe and effective use of OTC drug products that contain diphenhydramine. The proposed rule (62 FR 45767 at 45772 to 45773) and this final rule (section V of this document) examine the impacts of the rule under Executive Order 12866 and the Regulatory Flexibility Act.

The $2,000 to $3,000 relabeling cost stated by the agency in the proposal (62 FR 45767 at 45772) was based on information that the agency obtained from various drug manufacturers, both small and large. That relabeling cost included the cost associated with producing new graphics for labeling products and the cost of tubes and boxes on which the labeling would be printed.

The agency does not anticipate that significant existing inventory would have to be destroyed because it would not be used prior to the effective date for new labeling. It has been almost 5 years since the proposed rule was published, and existing inventory should have been reduced during this time. In addition, manufacturers still have adequate time to deplete existing stocks of inventory. This final rule has a compliance date of 24 months after its publication in the **Federal Register** for oral products containing diphenhydramine citrate or diphenhydramine hydrochloride with annual sales less than $25,000, and a compliance date of 12 months after its publication in the **Federal Register** for all other oral products. The monograph for topical (external analgesic) drug products containing diphenhydramine [products in tubes] is not yet final and, when issued, will specify the time by which relabeling is required. Manufacturers of topically applied diphenhydramine products are encouraged to implement the new labeling at an earlier date should they need to order additional labeling for their products before the agency issues the final monograph for OTC external analgesic drug products.

Since the proposal was published in 1997, the agency issued a final rule on March 17, 1999 (64 FR 13254) establishing a new standardized labeling format and content for all OTC drug products (the 1999 final rule). That final rule contained an extensive discussion of the costs of relabeling OTC drug products, including the impact on small businesses (64 FR 13254 at 13284 to 13285). In an effort to reduce the economic impact on small businesses, the agency generally provides an additional 12 months of compliance time for relabeling of OTC drug products with annual sales less than $25,000 which is being provided for oral diphenhydramine drug products in this final rule.

III. New Labeling Format

In the 1999 final rule, the agency established standardized format and standardized content requirements for the labeling of OTC drug products set forth in § 201.66 (21 CFR 201.66). The requirements relate to the labeling for diphenhydramine-containing OTC drug products by including bullets prior to certain words under the "Warnings" subheadings "Do not use" and "Ask a doctor before use" and prior to the direction "do not use more often than directed." The subheadings are highlighted in bold type in accordance with § 201.66(c)(5). Pertinent parts of the new labeling are in tables 1 and 2 of this document.

TABLE 1.—WARNING FOR ORAL ANTIEMETIC, ANTIHISTAMINE, ANTITUSSIVE, AND NIGHTTIME SLEEP-AID DRUG PRODUCTS CONTAINING DIPHENHYDRAMINE INGREDIENTS

Warnings
Do not use • with any other product containing diphenhydramine, even one used on skin

TABLE 2.—WARNINGS AND DIRECTION FOR EXTERNAL ANALGESIC DRUG PRODUCTS CONTAINING DIPHENHYDRAMINE INGREDIENTS

Warnings
• For external use only
Do not use • on large areas of the body • with any other product containing diphenhydramine, even one taken by mouth
Ask a doctor before use • on chicken pox • on measles
Directions • do not use more often than directed

IV. The Agency's Final Conclusions

Based on the available evidence, the agency is issuing a final rule amending the final monographs for orally administered OTC antiemetic,

antihistamine, antitussive, and nighttime sleep-aid drug products containing diphenhydramine to include the new warning in table 1 of this document. This final rule also discusses new warnings and a direction in table 2 of this document that will be incorporated into the final monograph for OTC external analgesic drug products in a future issue of the **Federal Register**, when the complete monograph for those products is published.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to add the same warning statement for four categories of OTC drugs in three different OTC drug monographs that include products containing diphenhydramine taken orally. Based on information in the agency's drug listing system (DLS), there are approximately 95 manufacturers, 59 repackers, and 247 distributors of about 800 to 1,000 oral diphenhydramine products. The agency does not believe these companies would need to increase the package size to add this warning and, thus, they should incur only minor costs to relabel their products. The agency believes that relabeling costs of the type required by this final rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). Assuming that there are about 800 to 1,000 affected SKUs in the marketplace, total one-time costs of relabeling would be $1.6 million ($2,000 per SKU x 800 SKUs) to $3 million ($3,000 per SKU x 1,000 SKUs). The agency believes the actual cost would be lower because most of the labeling changes will be made by private label manufacturers that tend to use simpler and less expensive labeling.

Manufacturers of oral diphenhydramine-containing products will incur most of the costs associated with this final rule. The impact on any one firm will vary based on the number and types of products that need relabeling. About 85 percent of the manufacturers meet the Small Business Administration's definition of a small entity (fewer than 750 employees). In the proposal (62 FR 45767 at 45772 to 45773), the agency estimated that the proposed rule may have a significant impact on some small entities. On further analysis, the agency now believes that the final rule will not have a significant impact on a substantial number of small entities because about one-half of the firms have listed only one diphenhydramine-containing product with the agency, another 30 percent have listed two or three products, and all of the manufacturers produce a number of other OTC drug products not affected by this rule. The agency does not believe the cost to any one firm to relabel its products subject to this final rule will approach 1 percent of the entity's income.

The DLS also identifies approximately 30 manufacturers, 4 repackers, and 53 distributors of about 100 topical diphenhydramine products. The cost for these companies to relabel their products will be discussed in the final monograph for OTC external analgesic drug products.

The agency considered but rejected several alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that a shorter implementation period could significantly increase the compliance costs and these costs could be passed through to consumers. A longer time period would unnecessarily delay the benefit of new labeling to consumers who self-medicate with these OTC antiemetic, antihistamine, antitussive, and nighttime sleep-aid drug products. The agency rejected an exemption for small entities because the new labeling is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date until 24 months after date of publication in the **Federal Register** is being provided for products with annual sales less than $25,000.

For the reasons in this section and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does

not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Parts 336, 338, and 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 336, 338, and 341 are amended as follows:

PART 336—ANTIEMETIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 336 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 336.50 is amended by adding paragraph (c)(8) to read as follows:

§ 336.50 Labeling of antiemetic drug products.

* * * * *

(c) * * *

(8) *For products containing diphenhydramine hydrochloride identified in § 336.10(c).* "Do not use [bullet][1] with any other product containing diphenhydramine, including one used on skin".

* * * * *

PART 338—NIGHTTIME SLEEP-AID DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 338 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

4. Section 338.50 is amended by adding paragraph (c)(5) to read as follows:

§ 338.50 Labeling of nighttime sleep-aid drug products.

* * * * *

(c) * * *

(5) "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

* * * * *

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

6. Section 341.72 is amended by adding paragraphs (c)(6)(iv) and (c)(7) as follows:

§ 341.72 Labeling of antihistamine drug products.

* * * * *

(c) * * *

(6) * * *

(iv) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

(7) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.12(f) and (g).* "Do not use [bullet] with any other product containing diphenhydramine, even one used on skin".

* * * * *

7. Section 341.74 is amended by adding paragraphs (c)(4)(viii)(C) and (c)(4)(ix)(C) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(viii) * * *

(C) "Do not use [bullet][1] with any other product containing diphenhydramine, even one used on skin".

* * * * *

(ix) * * *

(C) "Do not use [bullet] with any other product containing diphenhydramine, even one used on skin".

* * * * *

Dated: November 25, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30641 Filed 12–5–02; 8:45 am]

BILLING CODE 4160–01–S

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–136]

RIN 2115–AE47

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Wreck Lead Bridge, mile 4.4, across Reynolds Channel at Hempstead, New York. This deviation from the regulations allows the bridge to remain in the closed position from 6:30 a.m. on December 10, 2002 through 6:30 a.m. on December 13, 2002. This deviation is necessary to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from December 10, 2002 through December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, Long Island Railroad, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs, replacement of structural bracing, couplings, and deteriorated concrete, at the bridge.

Under this deviation the Wreck Lead Bridge, mile 4.4, across Reynolds Channel at Hempstead, New York, may remain in the closed position from 6:30 a.m. on December 10, 2002 through 6:30 a.m. on December 13, 2002.

There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 22, 2002.

V.S. Crea,

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

[FR Doc. 02–30930 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–134]

RIN 2115–AE47

Drawbridge Operation Regulations; New Rochelle Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the Glen Island Bridge, at mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This change to the drawbridge operation regulations allows the bridge to remain closed to navigation from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003. This action is necessary to facilitate necessary repairs at the bridge.

DATES: This rule is effective from December 1, 2002 through April 1, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–134) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard coordinated the bridge repair project and related temporary bridge closure with the mariners who use this waterway. The mariners agreed that the temporary bridge closure will not affect the needs of waterway users. There is an alternate route to open water that mariners may use during this temporary bridge closure. The effective period of this temporary rule is traditionally the most dormant season for the vessel traffic on this waterway and accordingly, the best time to perform the necessary repairs at the bridge.

The Coast Guard believes that an NPRM is unnecessary because of the relatively low number of opening requests received at the bridge December through April, and the fact that an alternate route is available to the mariners.

Good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest. Delaying the start of this project would delay the completion date of this project, disrupting vehicular and marine traffic next spring when traffic is much heavier than during the winter months when this temporary operating schedule will be in effect.

Background and Purpose

The Glen Island Bridge has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water. The existing regulations are listed at 33 § CFR 117.802.

The bridge owner, Westchester Department of Public Works, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate mechanical and structural repairs at the bridge to be performed from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

The Coast Guard contacted the mariners who operate on New Rochelle Harbor River regarding this temporary bridge closure and no objections were received.

Discussion of Rule

The Coast Guard is temporarily changing the drawbridge operation regulations governing the Glen Island Bridge, mile 0.8, across New Rochelle Harbor at New Rochelle, New York. This temporary change to the drawbridge operation regulations will allow the bridge to remain in the closed position to navigation from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

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).

This conclusion is based on the fact that the mariners may use an alternate route to open water.

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 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 conclusion is based on the fact that the mariners may use an alternate route to open water.

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 State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive

Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From December 1, 2002 through April 1, 2003, in § 117.802, paragraph (a) is temporarily suspended and a new temporary paragraph (c) is added to read as follows:

§ 117.802 New Rochelle Harbor.

* * * * *

(c) The draw of the Glen Island Bridge, mile 0.8, at New Rochelle, New York, need not open for the passage of vessel traffic from 7 a.m. on December 1, 2002 through 5 p.m. on April 1, 2003.

Dated: November 22, 2002.

V.S. Crea,

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

[FR Doc. 02–30931 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–004]

RIN 2115–AA97

Security Zones; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around and under all cruise ships located on San Pedro Bay, California, in and near the ports of Los Angeles and Long Beach. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port Los Angeles-Long Beach.

DATES: This rule is effective December 1, 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 (COTP Los Angeles-Long Beach 02–004) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 28, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Pedro Bay, CA" in the **Federal Register** (67 FR 65746). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

On January 18, 2002, we published a similar temporary final rule (TFR) entitled "Security Zones; Port of Los Angeles and Catalina Island" in the **Federal Register** (67 FR 2571) that expired on May 1, 2002.

On May 13, 2002, we published a similar temporary final rule (TFR) entitled "Security Zones; Cruise Ships, San Pedro Bay, CA" in the **Federal Register** (67 FR 31955) that is set to expire December 1, 2002.

The Captain of the Port has determined the need for continued security regulations exists. Accordingly, this final rule creates a permanent regulation for security zones in the same locations covered by the temporary final rule published May 13, 2002.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The current TFR is set to expire December 1, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

Background and Purpose

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

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and

waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the ports of Los Angeles and Long Beach. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard has determined the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule. No public hearing was requested, and none was held. Therefore, we have made no changes and will implement the provisions of the proposed rule as written.

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 received no letters commenting on this section and have made no changes to the proposed rule.

Small Entities

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

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

We received no letters commenting on this section and have made no changes to the proposed rule.

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 letters commenting on this section and have made no changes to the proposed rule.

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

Collection of Information

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

Federalism

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

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

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.

We received no letters commenting on this section and have made no changes to the proposed rule.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

We received no letters commenting on this section and have made no changes to the proposed rule.

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 § 165.1154 to read as follows:

§ 165.1154 Security Zones; Cruise Ships, San Pedro Bay, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within 3 nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within 3 nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–USCG (8724) or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

Dated: November 26, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–30934 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK90

Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It revises the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation.

DATES: *Effective Date:* December 6, 2002.

Applicability Date: This rule is applicable retroactively to December 1, 2001, for benefits added by Public Law 106–419. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Consultant, Vocational Rehabilitation and Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; (202) 273–7344.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 2, 2002 (67 FR 215), we proposed to amend VA's "Vocational Rehabilitation and Education" regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations had only concerned the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. We proposed to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework, as well as to correct certain references and to make other nonsubstantive changes for purposes of clarity.

Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only

concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amended 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to as "covered birth defects").

Two companion proposed rule documents concerning the provision of benefits for certain children of Vietnam veterans under that legislation were also set forth in the January 2, 2002, issue of the **Federal Register**. One concerned monetary allowances and the identification of covered birth defects (RIN: 2900–AK67) (67 FR 200). The other concerned the provision of health care (RIN: 2900–AK88) (67 FR 209). With respect to the first document, we published a final rule entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" in the July 31, 2002, issue of the **Federal Register** (67 FR 49585).

For the proposed rule on vocational training and rehabilitation, we provided, except for the information collection provisions, a thirty-day period for public comments, which ended on February 1, 2002. Pursuant to the Paperwork Reduction Act, we provided for the information collections in the document a 60-day comment period, which ended on March 4, 2002. We received comments from the Spina Bifida Association of America and from two individuals. None of the comments concerned the information collections.

A comment was received from the Spina Bifida Association of America that discussed the importance of higher education for individuals with disabilities and requested that the regulations be changed to offer "48 months of either vocational or educational assistance." No changes are made based on this comment.

With respect to this commenter's request to include educational assistance, the provisions in proposed 38 CFR 21.8010, 21.8050, and 21.8120 appropriately reflect the legal limits on VA's authority to consider a program of education at an institution of higher learning to be within or outside the scope of vocational training benefits for children who are eligible for benefits under 38 U.S.C. chapter 18. Under the provisions concerning vocational training for children eligible for benefits under 38 U.S.C. chapter 18, 38 U.S.C. 1804(c)(1)(B) provides that a vocational training program "may include a program of education at an institution of higher learning if the Secretary determines that the program of education is predominantly vocational in content." We have no other legal authority to provide benefits for a program of education at an institution of higher learning for these children of Vietnam veterans.

With respect to the commenter's request that 48 months be the length of vocational assistance under these regulations, the proposed regulations in 38 CFR 21.8016, 21.8020, and 21.8170 appropriately reflect the statutory limits on the length of vocational assistance. Under 38 U.S.C. 1804(d)(1) and 1814, 24 months is the maximum length of a vocational training program for these children of Vietnam veterans, except that the Secretary may grant an extension for up to 24 additional months when the requirements of 38 U.S.C. 1804(d)(2) are met.

One of the individual commenters felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans, provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the statute's new vocational training benefits to children of male Vietnam veterans.

The other individual commenter suggested adding to 38 CFR 21.8370 a new paragraph concerning payment of transportation expenses that would constitute a substantive change in the provisions of § 21.8370 concerning those payments. The proposed rule in § 21.8370 has the same language concerning transportation expenses, with the exception of nonsubstantive changes, as in the current § 21.8370 concerning vocational training and rehabilitation for Vietnam veterans' children with spina bifida. We believe that a substantive change to the provisions concerning payment of transportation expenses for beneficiaries under 38 U.S.C. chapter 18 is beyond the scope of this rulemaking.

That same commenter also suggested changing the first sentence of proposed 38 CFR 21.8370(a), which states that "VA will authorize transportation services * * *", by replacing the word "will" with "shall" to show the obligation of VA. The commenter noted that "shall" is used in § 21.8370 as in effect prior to this final rule. In our view, adopting the proposed rule's change from "shall" to "will" would not change the meaning of the sentence. However, we have concluded that neither term is necessary in this context, and we are making in this final rule a nonsubstantive change from the proposed rule for purposes of clarification to state that "VA authorizes transportation services * * *."

We are also making nonsubstantive changes from the proposed rule for purposes of clarity or to remove obsolete nomenclature.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except that we are making the changes discussed above and we are adding a statement following each of the sections in the rule with information collection requirements to reflect the approval by the Office of Management and Budget (OMB) of the information collection requirements contained in those sections.

Administrative Procedure Act

This rule provides for new benefits and otherwise merely makes nonsubstantive changes. To avoid delay in furnishing the new benefits, we find that there is good cause to make this final rule effective without a 30-day delay of its effective date. Accordingly, under 5 U.S.C. 553, there is no need for delay in this rule's effective date.

Applicability Dates

This rule is applicable retroactively to the statutory effective date of December 1, 2001, for benefits added by section 401 of Public Law 106–419. This rule is otherwise applicable on the rule's effective date, December 6, 2002, for the already existing program of vocational training and rehabilitation for Vietnam veterans' children determined under 38 CFR 3.814 to suffer from spina bifida.

Paperwork Reduction Act

Information collection requirements associated with this final rule in 38 CFR 21.8014 and 21.8370 have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2900–0579 and 2900–0580. The information collection requirements of § 21.8014 concern applications for vocational training benefits for certain children of Vietnam veterans. The information collection requirements of § 21.8370 concern requests for transportation expense reimbursement. (In addition, OMB has approved VA's request to discontinue the information collection approval for 38 CFR 21.8016 concerning an election between benefits because its information collection requirements

affect fewer than 10 respondents annually.)

OMB assigns a control number for each collection of information it approves. VA 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.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for benefits affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In part 21, subpart M is revised to read as follows:

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

General

Sec.

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

General

§ 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Covered birth defect means the same as defined at § 3.815(c)(3) of this title.

Eligible child means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

Employment assistance means employment counseling, placement and

post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

Program of employment services means the services an eligible child may receive if the child's entire program consists only of employment assistance.

Program participant means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means the same as defined at § 3.814(c)(3) of this title.

Vietnam veteran means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable an eligible child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;
(6) Vocational goal;
(7) VRC (Vocational rehabilitation counselor); and
(8) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

§ 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0579)

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(1) Section 21.250(a) and (b)(2);
(2) Section 21.252;
(3) Section 21.254;
(4) Section 21.256 (not including paragraph (e)(2));
(5) Section 21.257; and
(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.*—(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

Services and Assistance to Program Participants

§ 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides

for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while

receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

Counseling

§ 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment pursuant to §§ 17.900 through 17.905 of this title for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:

(1) An initial or extended evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:

(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.

(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

§ 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, VA suspends the running of the basic 24-month period of entitlement, plus any extensions thereto, until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA authorizes transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* If a child is eligible for reimbursement of transportation services both under this section and under § 21.154, the child will receive only the benefit under § 21.154.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0580)

(Authority: 38 U.S.C. 1804(c), 1814)

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38

U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

[FR Doc. 02–30779 Filed 12–5–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 262–0371; FRL–7413–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on April 24, 2002 (67 FR 20078), and concern glass melting furnaces. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on January 6, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On April 24, 2002 (67 FR 20078), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4354	Glass Melting Furnaces	02/21/02	03/05/02

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments

EPA's proposed action provided a 30-day public comment period. During this period, we received no adverse comments.

III. EPA Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP. This permanently terminates all sanction and FIP clocks associated with our September 1, 2000 final action on a previous version of Rule 4354.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 3, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(301) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(a) * * *

(301) Amended regulation for the following APCD was submitted on March 5, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4354, adopted September 14, 1994 and amended February 21, 2002.

* * * * *

[FR Doc. 02–30765 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–049–7174a; A–1–FRL–7418–5]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; One-hour Ozone Attainment Demonstration for the New Hampshire Portion of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This action approves New Hampshire's one-hour ozone attainment demonstration for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, submitted by the New Hampshire Department of Environmental Services on June 30, 1998. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations. EPA is establishing an attainment date of November 15, 2007 for the entire multi-state nonattainment area, and is approving the attainment-level motor vehicle emissions budgets submitted by New Hampshire for the New Hampshire portion of the nonattainment area. A notice of proposed rulemaking was published on this action on October 21, 2002. EPA received no comments on that proposal.

EFFECTIVE DATE: This rule will become effective on January 6, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA; and at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

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

I. What New Hampshire SIP Revision Is the Topic of This Action?

A one-hour ozone attainment demonstration SIP was submitted on June 30, 1998 by the New Hampshire Department of Environmental Protection for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. The SIP revision was subject to public notice and comment by the state and a hearing was held in June 1998.

II. What Previous Action Has Been Taken on This SIP Revision?

EPA published a Notice of Proposed Rulemaking (NPR) for the New Hampshire attainment demonstration SIP on October 21, 2002 (67 FR 64582). In that action, EPA proposed to approve the ozone attainment demonstration and attainment-level motor vehicle emissions budgets submitted by the state. The rationale for EPA's action is discussed in full in the proposal, and readers are referred to the proposal for further information. EPA received no comments on the proposal.

EPA proposed approval of the Massachusetts ozone attainment demonstration for this nonattainment area on October 15, 2002 (67 FR 63586), and proposed an attainment date of November 15, 2007 for the entire nonattainment area including the New Hampshire portion. Final action on the Massachusetts ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area can be found in a document published elsewhere in this issue of the **Federal Register**.

III. What Motor Vehicle Emissions Budgets (MVEBs) Are We Approving?

On June 30, 1998, New Hampshire submitted its ozone attainment demonstration to EPA which establishes attainment-level motor vehicle emissions budgets for both VOC and NO_X. The VOC and NO_X budgets

established by the New Hampshire ozone attainment demonstration were formally determined adequate by EPA on August 19, 1998. The motor vehicle emissions budgets established by this plan that we are approving today are 10.72 tons per day for VOC and 21.37 tons per day for NO_x for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. Because EPA is establishing an attainment date of November 15, 2007 for the entire nonattainment area, New Hampshire will be required to use 2007 as a milestone year in future transportation conformity determinations.

IV. EPA Action

EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. EPA is approving the attainment date for this area as November 15, 2007. EPA also approves the attainment-level volatile organic compound and nitrogen oxide motor vehicle emissions budgets for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area for use in transportation conformity.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

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

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

2. Section 52.1523 is amended by revising the table to read as follows:

§ 52.1523 Attainment dates for national standards.

* * * * *

Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
NH portion Andoscoggin Valley Interstate AQCR 107	a	b	a	a	a	a
Central NH Intrastate AQCR 149	a	b	a	a	a	a

Air quality control region	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
NH portion Merrimack Valley-Southern NH Interstate 121:						
Belknap County	a	b	a	a	a	a
Sullivan County	a	b	a	a	a	a
Cheshire County	a	b	a	a	a	d
Portmouth-Dover-Rochester area (See 40 CFR 81.330)	a	b	a	a	a	e
NH portion Boston-Lawrence-Worcester area (See 40 CFR 81.330)	a	b	a	a	a	f
Manchester area (See 40 CFR 81.330)	a	b	a	a	a	c

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. November 15, 1993.
d. November 15, 1995.
e. November 15, 1999.
f. November 15, 2007.

3. Section 52.1534 of subpart EE is amended by adding paragraph (b) to read as follows:

§ 52.1534 Control strategy: Ozone

* * * * *

(b) Approval—Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Protection on June 1, 1998. The revisions are for the purpose of satisfying the one-hour ozone attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act, for the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area. The revision establishes a one-hour attainment date of November 15, 2007 for the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area. This revision establishes motor vehicle emissions budgets of 10.72 tons per day of volatile organic compounds (VOC) and 21.37 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the New Hampshire portion of the Boston-Lawrence-Worcester, MA-NH serious ozone nonattainment area.

[FR Doc. 02–30840 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA069–7205a; A–1–FRL–7418–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; One-hour Ozone Attainment Demonstration for the Massachusetts Portion of the Boston-Lawrence-Worcester, MA–NH Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This action approves Massachusetts' one-hour ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area, submitted by the Massachusetts Department of Environmental Protection on July 27, 1998, and supplemented on September 6, 2002. This action is based on the requirements of the Clean Air Act (CAA) as amended in 1990, related to one-hour ozone attainment demonstrations. EPA is establishing an attainment date of November 15, 2007, for the entire multi-state nonattainment area, and is approving the 2007 motor vehicle emissions budgets submitted by Massachusetts for the Massachusetts portion of the nonattainment area. EPA is also finding the 2003 motor vehicle emissions budgets submitted previously by Massachusetts inadequate. A notice of proposed rulemaking was published on this action on October 15, 2002. EPA received comments on that proposal. In this action, EPA responds to those comments.

EFFECTIVE DATE: This rule will become effective on January 6, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection by appointment weekdays from 9 a.m. to 4 p.m., at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th Floor, Boston, MA; and Division of Air Quality Control, Department of Environment Protection, One Winter Street, 8th Floor, Boston, MA 02108. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

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

I. What Massachusetts SIP Revision Is the Topic of This Action?

A one-hour ozone attainment demonstration SIP was submitted on July 27, 1998, by the Massachusetts Department of Environmental Protection for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. The SIP revision was subject to public notice and comment by the State and a hearing was held in June 1998. A supplement to the attainment demonstration SIP was submitted by the Massachusetts Department of Environmental Protection on September 6, 2002. The attainment demonstration supplement included a reasonably available control measures (RACM) analysis and 2007 motor vehicle emissions budgets for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. In the supplement, Massachusetts requested an attainment date for this area of November 15, 2007, and included a demonstration of how attainment will be reached by that date. The supplemental SIP revision was also

subject to public notice and comment by Massachusetts, and a hearing was held in July 2002.

II. What Previous Action Has Been Taken on This SIP Revision?

EPA published a notice of proposed rulemaking (NPR) for the Massachusetts attainment demonstration SIP on October 15, 2002 (67 FR 63586). In that action, EPA proposed to approve the ozone attainment demonstration submitted by the state, which includes a RACM analysis and 2007 motor vehicle emissions budgets with an attainment date of November 15, 2007. The proposed notice states EPA's conclusions regarding the approvability of the various portions of the SIP, which will not be repeated here. EPA also proposed to find the 2003 motor vehicle emissions budgets inadequate. The 2003 budgets were from the Massachusetts ozone attainment demonstration submitted in 1998. Readers are directed to the proposal for further information.

Comments received on the NPR for the attainment demonstration SIP for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area and EPA's responses are discussed in section V. below.

EPA proposed approval of the New Hampshire ozone attainment demonstration for this nonattainment area on October 21, 2002 (67 FR 64582). Final action on the New Hampshire ozone attainment demonstration for the New Hampshire portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area can be found in a document published elsewhere in this issue of the **Federal Register**.

III. What Motor Vehicle Emissions Budgets (MVEBs) Are We Approving?

On September 6, 2002, Massachusetts submitted motor vehicle emissions budgets for the 2007 attainment year for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area in their SIP. The attainment year motor vehicle emissions budgets established by this plan that we are approving are 86.700 tons per day for VOC and 226.363 tons per day for NO_X for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. Under EPA's policy[1] for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on the EPA Web site for public comment on September 17, 2002. As the SIP was available electronically on the Massachusetts Department of Environmental Protection Web site at *www.state.ma.us/dep/bwp/daqc/daqcpubs.htm#sip,* the public comment period was open for thirty days. No comments were received by EPA on these budgets during the adequacy comment period. EPA also received no comments on our October 15, 2002, proposed approval of these budgets. EPA is approving these 2007 motor vehicle emissions budgets because they are consistent with the control measures in the SIP, and the SIP as a whole demonstrates attainment of the 1-hour ozone standard. The rationale for our approval is detailed in the October 15, 2002, proposed action.

EPA is making a finding of inadequacy on the 2003 motor vehicle emission budgets of 117.118 tons per summer day for VOC, and 243.328 tons per summer day for NO_X. As the area will not attain the one-hour ozone standard in the year 2003, the motor vehicle emissions budgets for the year 2003 are no longer consistent with attainment. These 2003 motor vehicle emissions budgets which were submitted on July 27, 1998, were previously found adequate through a February 19, 1999. EPA letter, which we issued prior to EPA's Guidance for Determining the adequacy of the submitted budgets issued November 3, 1999, With this final action these budgets are no longer adequate and can no longer be used in future conformity determinations.

The approved 2007 motor vehicle emissions budgets would apply in all future conformity determinations for an analysis year of 2007 and later. Note that a conformity determination with an analysis year between the present and 2006 would use the year 1999 motor vehicle emissions budgets of 147.108 tons per summer day of VOC and 262.580 tons per summer day of NO_X established in the approved post-1996 rate-of-progress plan for Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area (67 FR 55121). However, at this time there is no analysis year required prior to 2007.

IV. What SIP Elements Did EPA Need To Take Action on Before Full Approval of the Attainment Demonstration Could Be Granted?

In the proposed rulemaking for the Massachusetts attainment demonstration SIP published on October 15, 2002, EPA stated that it intended to publish final rulemaking on the Massachusetts Low Emission Vehicle (LEV) program regulations which replaced the previously federally approved Massachusetts LEV I rules either before or at the same time as publication of final approval of the attainment demonstration. Approval of the emission reductions associated with this measure is needed to fully approve the attainment demonstration.

Final approval of Massachusetts LEV SIP was granted by EPA Region I's Regional Administrator on November 26, 2002. This approval will be published elsewhere in the **Federal Register**. The approval LEV SIP will be promulgated at 40 CFR 52.1120(c)(132).

V. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

EPA received comments on the Notice of Proposed Rulemaking published on October 15, 2002 (67 FR 63586). A letter dated November 13, 2002, from the Alliance of Automobile Manufacturers ("the Alliance") provided comments on two separate EPA proposed rulemaking notices published in the **Federal Register** on October 15, 2002: EPA's proposed approval of the Massachusetts's one-hour ozone attainment demonstration for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area (67 FR 63586), and EPA's proposed approval of the Massachusetts low-emission vehicle (LEV) program (67 FR 63583). The following discussion summarizes and responses to the comments that pertain to EPA's proposed approval of the Massachusetts ozone attainment demonstration. Those comments that pertain exclusively to the proposed approval of the Massachusetts LEV program are responded to in the final rulemaking action on that program signed by EPA Region I's Regional Administrator on November 26, 2002. The comments and responses in the Massachusetts LEV notice are included in the record for this final rule and apply to this notice. Publication of the Massachusetts LEV approval notice will be published elsewhere in the **Federal Register**. The approval LEV SIP will be promulgated at 40 CFR 52.1120(c)(132).

Comment: The Alliance states that the two notices published in the **Federal Register** on October 15 (67 FR 63583 and 63586) can be read inconsistently. According to the Alliance, in one notice EPA proposes to fully approve the attainment demonstration SIP revision submitted by Massachusetts, and in the other notice EPA "explains several reasons why full approval is not appropriate" for the Massachusetts LEV program.

[1] Memorandum from G. MacGregor, dated May 14, 1999, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision."

Response: As stated in the proposed approval of the Massachusetts LEV program (67 FR 63583), EPA proposed to approve all of the components of the LEV program that are necessary to achieve the emission reductions associated with the LEV program, which the state relies on for purposes of its attainment demonstration. In EPA's proposed action on the Massachusetts LEV program, EPA proposed no action on the zero emission vehicle (ZEV) program, however that does not affect the level of emission reductions from the Massachusetts LEV program. The motor vehicle emissions budgets established in the attainment plan do rely on the emission reductions from the December 24, 1999, version of the Massachusetts LEV program, which we are approving elsewhere in the **Federal Register**. This approval of the Massachusetts LEV program does not include the Massachusetts ZEV program. As such, there are no inconsistencies between the two proposed approvals published on October 15, 2002.

Comment: The Alliance requests clarification of one portion of Table 2 in the SIP revision notice (67 FR 63586, at 63591), which states that "EPA will publish final rules for the CA LEV II SIP before or at the same time as we publish final rules on the attainment demonstration." The Alliance state: "It is impossible to predict with any certainty when the necessary rulemaking will occur in California to amend the current ZEV rule, when the amended California program will be submitted to EPA, and what action EPA will take on that program under section 209. Because California withdrew from EPA's consideration the current version of the ZEV program in July 2002, both EPA and all the affected stakeholders have to await developments in California. We assume that it is not EPA's intent to delay action on the rest of the SIP submittal until EPA can proceed in the manner required by section 209 of the Clean Air Act with respect to ZEV regulations."

Response: As stated in the proposed approval of the Massachusetts LEV program (67 FR 63583), it was EPA's intent to approve the Massachusetts' December 24, 1999, version of 310 CMR 7.40, the "Low Emission Vehicle Program" except for those portions dealing with zero emission vehicles. Since the ZEV portion of the Massachusetts LEV program does not contribute further emission reductions to the attainment demonstration, EPA can fully approve the attainment demonstration, based on its approval of the LEV program, while not taking action on Massachusetts ZEV program. EPA stands by its statement in the proposed rule that it would not take final approval action of the attainment demonstration before it took final action approving the LEV SIP. As explained above, final approval of Massachusetts LEV SIP was granted by EPA Region I's Regional Administrator on November 26, 2002. This approval did not take any action on sections 310 CMR 7.40(2)(a)5, 7.40(2)(a)6, 7.40(2)(a)3, 7.40(10) and 7.40(12) that pertain to the ZEV program.

VI. EPA Action

As described above, EPA does not believe any of the comments received on the proposal published for the attainment demonstration SIP revision for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area change the basis for our proposed approval. Thus, EPA is approving the ground-level one-hour ozone attainment demonstration SIP for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. EPA is also approving the attainment date for this area as November 15, 2007. EPA also approves both the RACM analysis and the 2007 volatile organic compound and nitrogen oxide motor vehicle emissions budgets for the Massachusetts portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area for use in transportation conformity. Lastly, EPA is finding the 2003 motor vehicle emissions budgets previously submitted by Massachusetts inadequate.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 10–4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.

Robert W. Varney,

Regional Administrator, EPA-New England.

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

PART 52—[AMENDED]

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

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

Subpart W—Massachusetts

2. Section 52.1127 is amended by revising the table to read as follows:

§ 52.1127 Attainment dates for national standards.

Air quality control region	Pollutant					
	SO_2		PM_{10}	NO_2	CO	O_3
	Primary	Secondary				
AQCR 42: Hartford-New Haven-Springfield Interstate Area (*See* 40 CFR 81.26)	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 117: Berkshire Intrastat Area (*See* 40 CFR 81.141)	(a)	(b)	(a)	(a)	(a)	(c)
AQCR 118: Central Mass Intrastate Area (*See* 4r0 CFR 81.142)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 119: Metropolitan Boston Intrastate Area (*See* 40 CFR 81.19)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 120: Metropolitan Providence Interstate Area (*See* 40 CFR 81.31)	(a)	(b)	(a)	(a)	(a)	(d)
AQCR 121: Merrimack Valley-Southern NH Interstate Area (*See* 40 CFR 81.81)	(a)	(b)	(a)	(a)	(a)	(d)

a. Air quality presently below primary standards or area is unclassifiabale.
b. Air quality levels presently secondary standatrds or area is unclassifiable.
c. December 31, 2003.
d. November 15, 2007.

3. Section 52.1129 of subpart W is amended by adding paragraph (d) to read as follows:

§ 52.1129 Control strategy: Ozone.

* * * * *

(d) Approval—Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental protection on July 27, 1998, and September 6, 2002. The revisions are for the purpose of satisfying the one-hour ozone attainment demonstration requirements of section 182(c)92)(A) pof the Clean Air Act, for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattiainment area. The revision establishes a one-hour attainment date of November 15, 2007l, for the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area. This revision establishes motor vehicle emissions budgets for 2007 of 86.7 tons per day of volatile organic compounds and 226.363 tons per day of nitrogen oxides to be used in transportation conformity in the Massachusets portion of the Boston-Lawrence-Worcester, MA–NH serious ozone nonattainment area.

[FR Doc. 02–30841 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005a & 0007a; FRL–7419–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA has received adverse comments on our October 7, 2002 direct final rule (see 67 FR 62395) to approve revisions to various air pollution control rules in the North Dakota State Implementation Plan (SIP), which were submitted by the Governor of North Dakota with a letter dated June 21, 2001. In the October 7, 2002 direct final rule (67 FR 62395), we stated that if we received adverse comments by November 6, 2002, the direct final rule would be withdrawn and would not take effect. EPA has received adverse comments from the Dakota Resource Council, submitted with a letter dated November 6, 2002. The comments are specific to the North Dakota air pollution control rule regarding prevention of significant deterioration. Therefore, the sections of the direct final rule regarding the revisions to the North Dakota air pollution control rules are being withdrawn and all public comments received will be addressed in a subsequent final rule based on EPA's October 7, 2002 proposed rule (*see* 67 FR 62432). EPA will not institute a second comment period on this action.

Please note that this withdrawal does not withdraw or impact the sections of EPA's October 7, 2002 direct final rule regarding notice of delegation of authority for New Source Performance Standards nor the change to the

approved plan to remove the State's part 61 National Emission Standards for Hazardous Air Pollutants regulations from the federally-approved SIP (and related update to the part 61 table).

EFFECTIVE DATE: The additions of 40 CFR 52.1820(c)(32) is withdrawn as of December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the October 7, 2002 **Federal Register** (67 FR 62432).

List of Subjects

40 CFR Part 52

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

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, and Vinyl chloride.

Accordingly, the addition of 40 CFR 52.1820(c)(32) is withdrawn as of December 6, 2002.

Dated: November 26, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–30941 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7416–9]

RIN 2060–AJ57

National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA is taking final action today on certain amendments to the national emission standards for the portland cement manufacturing industry, which were originally promulgated on June 14, 1999 under the authority of section 112 of the Clean Air Act (CAA). The amendments make improvements to the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring where issues and questions were raised since promulgation of the rule.

On April 5, 2002, the EPA promulgated amendments to the national emission standards for the portland cement manufacturing industry as a direct final rule with a parallel proposal. On July 2, 2002, we withdrew certain provisions in the direct final rule in order to assess adverse comments. This action promulgates the amendments previously withdrawn based on the parallel proposal published on April 5, 2002.

EFFECTIVE DATE: December 6, 2002.

ADDRESSES: Docket A–92–53, containing supporting information used in developing these amendments, is available for public inspection and copying between 8 a.m and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. EPA, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460 in room B–108, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Wood, P.E., Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5446, facsimile number (919) 541–5600, electronic mail address: *wood.joe@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all of the information considered by EPA in the development of these final rule amendments. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. The docket number for this rulemaking is A–92–53.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of these final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 4, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to these final rule amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Regulated Entities. Entities potentially regulated by this action are those that manufacture portland cement. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Industry	32731	3241	Owners or operators of portland cement manufacturing plants.
Tribal associations	32731	3241	Owners or operators of portland cement associations manufacturing plants.
Federal agencies	(1)	(1)	(1)

[1] None.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1340 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The following outline is provided to aid in reading this preamble to these final rule amendments.

I. Background

On June 14, 1999 (64 FR 31898), we published the final rule entitled "National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry" (40 CFR part 63, subpart LLL). The American Portland Cement Alliance (APCA) petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the final rule under section 307(b)(1) of the CAA. (See 42 U.S.C. 7607(b)(1).) The APCA and the EPA have agreed to the terms of a settlement agreement and its implementation.

Consistent with the settlement agreement, we promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) on April 5, 2002. We issued the amendments as a direct final rule (67 FR 16614) with a parallel proposal (67 FR 16625) which we would finalize in the event that we received any adverse comments on the direct final rule. The amendments made specific changes to the NESHAP, generally relating to applicability, performance testing, and monitoring.

We received a total of five comment letters on the direct final rule amendments. Three comment letters were from the APCA, one was from an individual cement company, and one was from a private citizen. These commenters mainly requested additional clarification of and corrections to the final rule amendments. In response to some of the comments we received, we published a notice containing corrections and clarifications of two issues arising from explanatory language in the preamble to the direct final rule amendments (67 FR 44766, July 5, 2002).

Two adverse comments on the direct final rule amendments were included in the industry comments, and we also received three adverse comments from the private citizen. Consequently, we withdrew those amendments for which adverse comments were received (67 FR 44371, July 2, 2002). The amendments withdrawn were §§ 63.1340(c), 63.1344(a)(3), 63.1349(e)(3), and 63.1350(a)(4)(v) through (vii), (c)(2)(i), (d)(2)(i), and (e). In the withdrawal document, we stated that the adverse comments would be addressed in a subsequent final rule based on the proposed rule published on April 5, 2002. The remaining amendments not withdrawn became effective July 5, 2002.

After full and careful consideration of the adverse comments, we are promulgating the proposed amendments with a few minor changes summarized as follows. In the amendment related to the exemption from monitoring totally enclosed conveying system transfer points (§ 63.1350(a)(4)(v) through (vii)), we now require that the enclosures for these transfer points be operated and maintained as total enclosures on a continuing basis, as part of the source's operations and maintenance plan. In the amendments related to the daily monitoring of certain affected sources (§ 63.1350(c)(2)(i), (d)(2)(i), and (e)), we are dropping the requirement that the monitoring be conducted in accordance with § 63.7(e).

II. Response to Comments

A. Applicability of Rule to Crushers Following Raw Material Storage

Comment: The proposed amendment to § 63.1340(c) would clarify that primary and secondary crushers are not subject to the rule regardless of their location in the production line relative to raw material storage. One commenter argued that it is inappropriate to exempt crushers because the final rule explicitly qualified the applicability of the rule to crushers that follow raw material storage. Further, the commenter stated that if the present emission limit does not represent maximum achievable control technology (MACT), EPA must use available data to set a standard for crushers, or absent this, the promulgated standard should not be altered. The commenter stated that the new source performance standard (NSPS) applicability is irrelevant because it may not represent MACT, and not all sources are subject to the NSPS.

Response: As discussed in the preamble to the proposed rule (63 FR 14194, March 24, 1998), the final rule (64 FR 31900, June 14, 1999), and the direct final rule amendments that we withdrew (67 FR 16615, April 5, 2002), we never intended for the rule to cover crushers (whether located before or after raw material storage). The phrase "which precedes the raw material storage" was included inadvertently. While most crushers are located before raw material storage, a few may be located after raw material storage. Instead of clarifying that crushers are not covered by the rule, the existing rule language erroneously implies that crushers following raw material could be subject to the rule. Crushers are not included in this source category and it has never been our intent to include them in the rule. Further, we disagree that the applicability of the NSPS for the portland cement manufacturing industry (40 CFR 60, subpart F) is irrelevant. Although we have some discretion in defining the affected sources covered under a rule, we typically try to maintain consistency with previous regulatory history. See CAA section 112(c)(1), which states that EPA should endeavor in the MACT source listing process to be as consistent as possible with the categorization and subcategorization scheme used for issuing NSPS; in this case, EPA is acting consistently with the source category definition used for establishing NSPS. We are, therefore, amending the final rule as we proposed to clarify that primary and secondary crushers are not covered by the final rule regardless of

their location relative to raw material storage.

As to the comments regarding the emission limit and MACT for crushers under this rule, since crushers are not affected sources, there is no emission limit that applies to crushers.

B. Operating Limits for Kilns and In-Line Kiln/Raw Mills With Alkali Bypasses

Comment: Section 63.1344 of the final rule establishes operating limits for kilns and in-line kiln/raw mills. Paragraph (a)(3) of that section pertains to the operating temperature limit of an in-line kiln/raw mill equipped with an alkali bypass. The proposed amendment to § 63.1344(a)(3) would clarify that the operating limit for gas stream temperature at the inlet to the alkali bypass particulate matter (PM) control device may be established during a performance test either with or without the raw mill being in operation. One commenter objected to this amendment because EPA did not provide test data to support the assumption that the raw mill status does not affect alkali bypass emissions.

Response: The EPA does not believe that data are needed to support the Agency's view that the raw mill operating status does not affect the alkali bypass gas emissions, because the portion of the exhaust gas sent through the alkali bypass is directed there before the remaining exhaust gas reaches the raw mill. Thus, the raw mill operating status has no effect on levels of dioxin/furan (D/F; the HAP of concern for this emission point) in the gas stream. In contrast, we believe that the raw mill operational status could affect D/F emission levels in the main exhaust gas stream because, unlike alkali bypass emissions, this gas stream does pass through the raw mill. The rule accounts for these potential emissions. See paragraphs (1) and (2) of § 63.1344(a). But there is no reason to think the alkali bypass emissions would be affected by the raw mill operational status, since, as explained, these emissions do not pass through the raw mill. The amendment, thus, appropriately provides additional flexibility to the facility by allowing the test for D/F emissions from the alkali bypass to be conducted whether or not the raw mill is operating.

C. Performance Test Requirements When Operating Conditions Change

Comment: Paragraphs (1) and (2) of § 63.1349(e) require a new performance test if a plant anticipates making a significant operational change that may adversely affect compliance with an applicable D/F or PM emission limitation. We proposed to add new paragraphs (e)(3)(i) through (iv) allowing a source to operate under the planned operational change conditions for a period not to exceed 360 hours, provided that certain conditions are met. Two industry representatives support the proposed amendment but object to one of the four conditions that would be required—conducting and completing the test within the 360-hour period. The commenters argue that the test requirement should not be automatic because the operator may determine (after operating for 360 hours) that the operational change is not appropriate. They stated that portland cement plants should be allowed to file a notification stating that the operational change will not be implemented.

Response: The additional time allowed under the amendments allows the operator to fine-tune process operations under the new conditions (*e.g.*, a PM control device inlet temperature higher than the current temperature operating limit) and to conduct the test(s). One purpose of requiring that the performance test be conducted is to avoid sources claiming a waiver from their temperature operating limit under the guise of an operational change that they never intend to implement. Without the performance test requirement, a loophole is created whereby sources could take advantage of the 360 hours we give them to operate at a temperature higher than their operating limit any number of times without demonstrating compliance. Additionally, the change suggested by the commenters is outside the scope of what was agreed to under the terms of the settlement agreement. For these reasons, we have decided to promulgate the amendment as proposed, without the change recommended by the commenters.

D. Conveying System Transfer Points

Comment: Section 63.1350(a) of the existing rule establishes informational requirements for the operation and maintenance (O&M) plan. Paragraph (a)(4) of this section deals with procedures for visible emissions monitoring. The proposed amendments would add new paragraphs (a)(4)(v) through (vii) that exempt conveying system transfer points from visible emission monitoring if the transfer points are totally enclosed. One commenter stated that the proposed monitoring exemption must include specific criteria and methods to establish permanent total enclosure status.

Response: As stated in the preamble to the proposed amendments and in background language of the settlement agreement (but not in the rule text), "the enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan." We agree with the commenter, and because this issue is already discussed in the settlement agreement, we have added this statement to the rule text.

E. Visible Emission Monitoring At Highest Load or Capacity

Comment: Paragraphs (c)(2)(i), (d)(2)(i), and (e) of § 63.1350 of the existing rule require daily visible emission observations for certain affected sources when the emission unit is operating at the highest load or capacity level reasonably expected to occur. The proposed amendments would revise these paragraphs to require that performance tests be conducted under representative conditions in accordance with § 63.7(e). Two industry representatives believe the reference to § 63.7(e) is inappropriate and should be removed.

Response: We agree that the reference to § 63.7(e) is inappropriate because it pertains to performance tests, not monitoring requirements. We have removed the phase "in accordance with § 63.7(e)" from the final rule amendments.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these final rule amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

These final rule amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to the amendments. Thus, Executive Order 13132 does not apply to these final rule amendments.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." These final rule amendments do not have tribal implications, as specified in Executive Order 13175, because they will not have any substantial direct effects on an Indian tribe, the relationship between the Federal Government and an Indian tribe, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to these final rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (63 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are not an economically significant regulatory action as defined by Executive Order 12866, and because they are based on technology performance and not on health or safety risks.

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

These final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor do the amendments significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to these amendments.

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A portland cement manufacturing company with less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3)

a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive effect on the small entities subject to the rule. The amendments in today's rule make improvements to the emission standards, primarily by clarifying issues in the areas of applicability, testing, and monitoring. We have, therefore, concluded that today's final rule amendments will have no adverse impacts on any small entities and may relieve burden in some cases.

Although the final rule amendments will not have a significant economic impact on a substantial number of small entities, we worked with the portland cement industry, including small entities, throughout the rulemaking process. Meetings were held on a regular basis with industry representatives in connection with the settlement agreement to discuss the development of the final rule, exchange information, and solicit comments on final rule requirements.

H. Paperwork Reduction Act

The information collection requirements in the existing rule were submitted to and approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control No. 2060–0416. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1801.02) and a copy may be obtained from Susan Auby by mail at Office of Environmental Information, Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov/icr*.

Today's action makes clarifying changes to the existing rule and imposes no new information collection requirements on industry. Because only clarifying changes are being made, there is no additional burden on industry as a result of these final rule amendments and the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an Agency does not use available and applicable voluntary consensus standards.

Because today's action contains no new test methods, sampling procedures or other technical standards, there is no need to consider the availability of voluntary consensus standards.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter 1, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart LLL—[Amended]

2. Section 63.1340 is amended by revising paragraph (c) to read as follows:

§ 63.1340 Applicability and designation of affected sources.

* * * * *

(c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. Any equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage is not subject to this subpart. In addition, the primary and secondary crushers of the on-site nonmetallic mineral processing plant, regardless of whether they precede the raw material storage, are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.

* * * * *

3. Section 63.1344 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1344 Operating limits for kilns and in-line kiln/raw mills.

(a) * * *

(3) If the in-line kiln/raw mill is equipped with an alkali bypass, the applicable temperature limit for the alkali bypass specified in paragraph (b) of this section and established during the performance test, with or without the raw mill operating, is not exceeded.

* * * * *

4. Section 63.1349 is amended by adding new paragraph (e)(3) to read as follows:

§ 63.1349 Performance testing requirements.

* * * * *

(e) * * *

(3) In preparation for and while conducting a performance test required in paragraph (e)(1) of this section, a source may operate under the planned operational change conditions for a period not to exceed 360 hours, provided that the conditions in paragraphs (e)(3)(i) through (iv) of this section are met. The source shall submit temperature and other monitoring data that are recorded during the pretest operations.

(i) The source must provide the Administrator written notice at least 60 days prior to undertaking an operational change that may adversely affect compliance with an applicable standard under this subpart, or as soon as practicable where 60 days advance notice is not feasible. Notice provided under this paragraph shall include a description of the planned change, the emissions standards that may be affected by the change, and a schedule for completion of the performance test required under paragraph (e)(1) of this section, including when the planned operational change period would begin.

(ii) The performance test results must be documented in a test report according to paragraph (a) of this section.

(iii) A test plan must be made available to the Administrator prior to testing, if requested.

(iv) The performance test must be conducted, and it must be completed within 360 hours after the planned operational change period begins.

* * * * *

5. Section 63.1350 is amended by:

a. Adding paragraphs (a)(4)(v) through (vii);

b. Revising paragraph (c)(2)(i);

c. Revising paragraph (d)(2)(i); and

d. Revising paragraph (e) introductory text.

The revisions and additions read as follows:

§ 63.1350 Monitoring requirements.

(a) * * *

(4) * * *

(v) The requirement to conduct Method 22 visible emissions monitoring under this paragraph shall not apply to any totally enclosed conveying system transfer point, regardless of the location of the transfer point. "Totally enclosed conveying system transfer point" shall mean a conveying system transfer point that is enclosed on all sides, top, and bottom. The enclosures for these transfer points shall be operated and maintained as total enclosures on a continuing basis in accordance with the facility operations and maintenance plan.

(vi) If any partially enclosed or unenclosed conveying system transfer point is located in a building, the owner or operator of the portland cement plant shall have the option to conduct a Method 22 visible emissions monitoring test according to the requirements of paragraphs (a)(4)(i) through (iv) of this section for each such conveying system transfer point located within the building, or for the building itself, according to paragraph (a)(4)(vii) of this section.

(vii) If visible emissions from a building are monitored, the requirements of paragraphs (a)(4)(i) through (iv) of this section apply to the monitoring of the building, and you must also test visible emissions from each side, roof and vent of the building for at least 1 minute. The test must be conducted under normal operating conditions.

* * * * *

(c) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(d) * * *

(2) * * *

(i) Perform daily visual opacity observations of each stack in accordance with the procedures of Method 9 of appendix A to part 60 of this chapter. The Method 9 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 9 test shall be at least 30 minutes each day.

* * * * *

(e) The owner or operator of a raw mill or finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCD of these affected sources in accordance with the procedures of Method 22 of appendix A to part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the representative performance conditions. The duration of the Method 22 test shall be 6 minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:

* * * * *

[FR Doc. 02–30844 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0237; FRL–7274–8]

Cyromazine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of cyromazine in or on bean, dry at 3.0 parts per million (ppm). The Interregional Research Project Number 4 (IR-4), requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective December 6, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0237, must be received on or before February 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov@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:

- Industry (NAICS 111, 112, 311, 32532), *e.g.*, Crop production, Animal production, Food manufacturing, and 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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0237. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of July 17, 2002 (67 FR 4697) (FRL–7185–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0E6219) by IR-4. The notice included a summary of the petition prepared by Novartis Crop Protection Inc., Greensboro. NC 27419, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.414 be amended by establishing a tolerance for residues of the insecticide cyromazine, (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), in or on dry bean (except cowpea) at 3.0 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of cyromazine on dry bean at 0.3 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyromazine are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents—rat	NOAEL = 3.0 (milligram/kilogram/day (mg/kg/day) LOAEL = 30 mg/kg/day based on alteration in the liver weight changes in males

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3150	90-Day oral toxicity—dog	NOAEL = 7.5 mg/kg/day LOAEL = 25 mg/kg/day based on alteration in liver weight in males
870.3200	21-Day dermal toxicity	NOAEL = > 2,010 mg/kg/day LOAEL = > 2,010 mg/kg/day. No dermal irritation was noted. No treatment related systemic toxicity was noted.
870.3700	Developmental toxicity in rodents—rat	Maternal NOAEL = 100 mg/kg/day LOAEL = 300 mg/kg/day based on clinical signs (red or clear nasal discharge) and decrease body weights Developmental NOAEL = 300 mg/kg/day LOAEL = 600 mg/kg/day highest dose tested (HDT) based on increased incidence of minor skeletal variations
870.3700	Developmental toxicity in non-rodents—rabbit	Maternal NOAEL = 10 mg/kg/day LOAEL = 30 mg/kg/day based on reduced body weight Developmental NOAEL = > 60 mg/kg/day (HDT) LOAEL was not established
870.3800	2–Generation reproduction—rat	Parental/Systemic NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on based on decreased body weights that were associated with decreased food efficiency Reproductive NOAEL = > 150 mg/kg/day LOAEL = Not determined. No effects were noted on reproductive parameters at HDT Offspring NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on based on decreased body weights at birth and through weaning
870.4100	Chronic oral toxicity—dogs	NOAEL = 7.5 mg/kg/day LOAEL = 75.0 mg/kg/day based on alteration in the hematological parameters (hemoglobin and hermatocrit)
870.4300	Combined chronic/carcinogenicity—rats	NOAEL = 0.75 mg/kg/day LOAEL = 7.5 mg/kg/day based on based on decreased body weight There is no evidence of carcinogenicity.
870.4200	Carcinogenicity—mice	NOAEL = 7.5 mg/kg/day LOAEL = 50.0 mg/kg/day based on decreased body weight There is no evidence of carcinogenicity
	Mammalian chromosomal aberration	Negative for mutagenicity in Chinese hamster study
870.5100	Mutagenic—point mutation *Salmonella typhimurium*	Negative results for point mutations in TA1537, TA98, TA100, with and without activation
870.5450	Mutagenic—dominant lethal—mouse	Negative mutagen

B. Toxicological Endpoints

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

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

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

The linear default risk methodology (Q*) is the primary method currently

used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for cyromazine used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CYROMAZINE FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary General population including infants and children	Not Applicable (NA)	NA	An appropriate end point attributable to a single dose (exposure) was not observed in oral toxicity studies.
Chronic dietary All populations	NOAEL = 7.5 mg/kg/day UF = 100 Chronic RfD = 0.075 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD/FQPA SF = 0.075 mg/kg/day	6-Month Feeding—dog LOAEL = 75 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights
Incidental oral Short-term (1 to 30 days) (Residential)	NOAEL = 10	LOC for MOE = 100 (Residential)	Developmental toxicity—rabbit study. LOAEL = 30 mg/kg/day based on decreases in body weight gain and food consumption.
Incidental Oral Intermediate-term (1 to 6 months) (Residential)	NOAEL = 7.5 mg/kg/day	LOC for MOE = 100 (Residential)	6-Month feeding—dog LOAEL = 75 mg/kg/day based on alterations in hematological parameters [hematocrit, and body weight gain decreases and increase in several organ weights].
Dermal (any time period) (Residential)	NA	NA	Dermal risk assessments were not performed since no hazard was identified via dermal exposure; there are no concerns for pre-/post-natal toxicity and dermal exposure is not expected since there are no registered residential uses.
Short-term inhalation (1 to 30 days) (Residential)	Oral NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental toxicity—rabbit study LOAEL = 30 mg/kg/day based on decreases in body weight gain and food consumption
Intermediate-term inhalation (1 to 6 months) (Residential)	Oral study NOAEL = 7.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	6-Month feeding—dog study LOAEL = 75.0 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights.
Long-term inhalation (>6 months) (Residential)	Oral study NOAEL= 7.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	6-Month feeding—dog study LOAEL = 75.0 mg/kg/day based on alterations in hematological parameters [hematocrit, and hemoglobin (males)], body weight and body weight gain decreases and increase in several organ weights.
Cancer	NA	NA	Based on weight-of-the-evidence, classified in Category E "no evidence of carcinogenicity in humans"

* The reference to the Food Quality Protection Act Safety Factor (FQPA SF) refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.414) for the residues of cyromazine, in or on a variety of raw agricultural commodities. There are currently tolerances for cyromazine use on a number of food crops including cucurbits, leafy vegatables, onions, lima beans, pepper, potato, and tomato. Tolerances exist as well for livestock commodities. Cyromazine is generally used on terrestrial crops as a foliar spray throughout the growing season, although for onions it is used as a seed treatment and for poultry it is used as a feed-through to control flies breeding

in poultry waste. There are no existing or pending residential uses of cyromazine. Risk assessments were conducted by EPA to assess dietary exposures from cyromazine in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An endpoint was not identified for acute dietary exposure and risk assessment because no effects were observed in oral toxicity studies including developmental toxicity studies in rats or rabbits that could be attributable to a single dose (exposure). Therefore, an acute dietary exposure assessment was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States 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 chronic exposure assessments: Chronic dietary exposure estimates are based on tolerance level residues for plant and poultry commodities and on anticipated residue estimates for ruminant commodities. Dietary exposure estimates are also factored by the estimated (weighted average) usage of cyromazine, or "percent crop treated" (PCT) data.

iii. *Cancer.* Cyromazine is classified into Group E (non-carcinogen) based on carcinogenicity studies in rats and mice following long-term dietary administration. A quantified carinogenic risk estimate is not appropriate for cyromazine.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows.

Cantaloupe 0.3%; cucurbits 0.1%; lettuce 2.6%; leafy vegetables, other 9.4%; celery 14.2%; spinach 6.0%; onions 2.4%; pepper 5.3%; peppers, bell 9.0%; tomatoes 5.8%; tomatoes, fresh 22.2%; and watermelon 1.5%.

The Agency believes that the three conditions listed in this unit have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyromazine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cyromazine in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cyromazine.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

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

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

Based on the FIRST and SCI-GROW models the EECs of cyromazine for chronic exposures are estimated to be 16 parts per billion (ppb) for surface water and 5.0 ppb for ground water.

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

Cyromazine is not registered for use on any sites that would result in residential exposure.

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

Cyromazine is a member of the triazine class of chemicals. EPA evaluated available scientific evidence to determine whether a common mechanism of toxicity exists among certain triazine-containing pesticides. Based on the available weight-of-evidence, cyromazine can not be grouped with other triazines based on a common mechanism of toxicity. EPA determined that only atrazine, simazine, propazine, and their specified degradants could be grouped based a common mechanism of toxicity for disruption of the hypothalamic-pituitary-gonadal (HPG) axis. For purposes of this tolerance action, EPA has concluded that cyromazine does not have a common mechanism of toxicity with other triazine-containing compounds. If additional data become available to support its inclusion in a common mechanism group, these data will be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for pre-natal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Pre-natal and post-natal sensitivity.* The developmental and reproductive toxicity data from a pre-natal developmental study in rats, a pre-natal developmental study in rabbits, and a 2-generation reproductive toxicity study in rats, did not indicate increased susceptibility of young rats on rabbits to *un urero* and/or post-natal exposure.

3. *Conclusion.* There is a complete toxicity data base for cyromazine and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10x safety factor to protect infants and children should be reduced to 1x. The FQPA factor was reduced based on reliable data supporting the following weight-of-evidence considerations:

i. There are no data deficiencies and hence there are no residual uncertainties for pre- and/or post-natal exposure, and no additional traditional SFs are needed with regard to the completeness of the cyromazine toxicity data base;

ii. There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyromazine;

iii. There is no evidence of increased susceptibility of young rats in the reproduction study with cyromazine; and

iv. There are also no residual uncertainties identified in the exposure data bases.

E. Aggregate Risks and Determination of Safety

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

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

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

1. *Acute risk.* There were no toxicological effects attributable to a single exposure (dose) observed in the oral toxicity studies. A dose and an endpoint for an acute RfD was not selected. Therefore, acute risk from exposure to cyromazine is not expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cyromazine from food will utilize 2.0% of the cPAD for both males and females of the U.S. population, and 4.0% of the cPAD for children 1–6 years old, subpopulation at greatest exposure. There are no residential uses for cyromazine that result in chronic residential exposure to cyromazine. Based the use pattern, chronic residential exposure to residues of cyromazine is not expected. In addition, there is potential for chronic dietary exposure to cyromazine in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Males	0.075	2.0	16	5	2,550
Female	0.075	2.0	16	5	2,200
Children	0.075	4.0	16	5	700

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

Cyromazine is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for.U.S. population.* Cyromazine has been classified as a chemical showing "no evidence of carcinogenicity in humans." The Agency concludes that pesticidal uses of cyromazine are not likely to pose a carcinogenic risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Analytical methods, AG-408 and AG-417, as listed in the Food and Drug Administration's Pesticide Analytical Manual (PAM) II, are adequate for tolerance enforce purposes.

B. International Residue Limits

There are currently no codex, Canadian or Mexican limits for residues of cyromazine on dry bean.

V. Conclusion

Therefore, the tolerance is established for residues of cyromazine, (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine), in or on dry bean (except cowpea) at 3.0 ppm.

VI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0237 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 February 4, 2003.

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

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

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

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

of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0237, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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: November 15, 2002.

Peter Caulkins,

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 371.

2. Section 180.414 is amended by alphabetically adding a commodity to the table in paragraph (a)(1) to read as follows:

§ 180.414 Cyromazine, tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Bean, dry, except cowpea ..... * * * *	3.0 *

* * * * *

[FR Doc. 02–30839 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7797]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administrator, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania:				
Bullskin, Township of, Fayette County ..	421622	Mar. 23, 1976, Emerg.; April 16, 1991, Reg. December 6, 2002, Susp.	12/6/02	12/6/02.
Everson, Borough of, Fayette County ...	420462	July 2, 1975, Emerg.; August 1, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Hempfield, Township of, Westmoreland County.	420878	April 16, 1973, Emerg.; September 29, 1978, Reg. December 6, 2002, Susp.	.....do	Do.
Mount Pleasant, Township of, Westmoreland County.	420888	Sept. 26, 1973, Emerg.; July 18, 1977, Reg. December 6, 2002, Susp.	.....do	Do.
Scottsdale, Borough of, Westmoreland County.	420896	Jan. 26, 1973, Emerg.; November 18, 1981, Reg. December 6, 2002, Susp.	.....do	Do.
Upper Tyrone, Township of, Fayette County.	420467	June 6, 1973, Emerg.; March 15, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Region V				
Indiana: Hamilton, Town of, DeKalb and Steuben Counties.	180248	Nov. 20, 1975, Emerg.; August 19, 1986, Reg. December 6, 2002, Susp.	.....do	Do.
Region VIII				
Wyoming:				
Dubois, Town of, Fremont County	560018	May 9, 1997, Emerg.; November 1, 1998, Reg. December 6, 2002, Susp.	.....do	Do.
Fremont County, Unincorporated Areas	560080	July 8, 1975, Emerg.; February 1, 1979, Reg. December 6, 2002, Susp.	.....do	Do.
Region II				
New Jersey:				
Florham Park, Borough of, Morris County.	340342	July 21, 1972, Emerg.; September 14, 1979, Reg. December 20, 2002, Susp.	12/20/02	12/20/02.
Rahway, City of, Union County	345314	June 30, 1970, Emerg.; December 17, 1971, Reg. December 20, 2002, Susp.	.....do	Do.
New York: Campbell, Town of, Steuben County.	360768	April 19, 1973, Emerg.; September 17, 1980, Reg. December 20, 2002, Susp.	.....do	Do.
Region III				
West Virginia:				
Buckhannon, City of, Upshur County	540199	July 8, 1975, Emerg.; September 4, 1986, Reg. December 20, 2002, Susp.	.....do	Do.
Region V				
Elgin, City of, Cook and Kane Counties	170087	May 29, 1975, Emerg.; March 1, 1982, Reg. December 20, 2002, Susp.	.....do	Do.
South Elgin, Village of, Kane County	170332	June 13, 1975, Emerg.; July 16, 1981, Reg. December 20, 2002, Susp.	.....do	Do.
Region IX				
California:				
Davis, City of, Yolo County	060424	July 31, 1979, Emerg.; November 15, 1979, Reg. December 20, 2002, Susp.	.....do	Do.
Yolo County, Unincorporated Areas	060423	Mar. 16, 1973, Emerg.; December 16, 1980, Reg. December 20, 2002, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 2, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–30911 Filed 12–5–02; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020814193–2282–02; I.D. 070102C]

RIN 0648–AQ05

Fisheries of the Exclusive Economic Zone Off Alaska; Extend the Interim Groundfish Observer Program Through December 31, 2007, and Amend Regulations for the North Pacific Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to extend the applicability date of the existing regulations for the interim North Pacific Groundfish Observer Program (Observer Program), which otherwise expire December 31, 2002, through 2007. This final rule also amends regulations governing the Observer Program. These changes clarify and improve observer certification and decertification processes; change the duties and responsibilities of observers and observer providers to eliminate ambiguities and strengthen the regulations; and grant NMFS the authority to place NMFS staff and other qualified persons aboard vessels and at shoreside or floating stationary plants to increase NMFS' ability to interact effectively with observers, fishermen, and processing plant employees. These parts of the action are necessary to improve Observer Program support of the management objectives of 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) for those industry sectors already subject to such requirements. The intended effect is better managed fishery resources that result in the effective conservation of marine resources and habitat.

DATES: Amendments to § 679.50 are effective December 31, 2002. Amendments to § § 679.2, 679.79(a)(3), and 679.43(e) are effective January 1, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained by contacting the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Send comments on information collection requirements to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228; or *sue.salveson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (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.

Background

Groundfish fisheries in waters of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) are managed under quotas set annually for groundfish species and for several other species that the groundfish fishery is prohibited from retaining. These quotas may be apportioned among areas, seasons, gear types, processor and catcher vessel sectors, cooperatives, and individual fishermen. Both retained and discarded catch are credited against these annual quotas, which generally are based on stock assessments generated principally by NMFS and on recommendations from the North Pacific Fishery Management Council (Council). NMFS' Alaska Region is responsible for monitoring the progress of fisheries toward attainment of those quotas and allocations thereof and for closing the fisheries when quotas are reached. Stock assessments, quota monitoring, and management require collection of data from the fishery to account for all groundfish and prohibited species catch, including the portion of the catch that is discarded. North Pacific groundfish observers aboard vessels and at shoreside or floating stationary processors collect the data necessary for these purposes.

Observer requirements have been in place in Alaska since the mid–1970s, when the Fishery Conservation and Management Act (later re-named the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)) was implemented and monitoring and phasing out foreign groundfish fisheries in the U.S. Exclusive Economic Zone (EEZ) was a priority. Because these foreign fisheries ended by 1991, the Observer Program infrastructure was changed to provide observer coverage for domestic vessels and shoreside processing plants participating in the Alaskan groundfish fisheries. A domestic Observer Program was developed by NMFS in consultation with the Council and implemented through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989, and 55 FR 4839, February 12, 1990). The Observer Program established observer coverage requirements that have remained generally unchanged through 2002.

High quality observer data are a cornerstone of Alaska groundfish fisheries management. Numerous changes to the Observer Program have been implemented to promote continued collection of quality data. These changes have ranged from relatively minor adjustments to the Program to changes that would address fundamental concerns. Minor adjustments, for example, may address logistic or data acquisition concerns. Changes that would address fundamental concerns, however, may address issues of data quality, the distribution of costs for observer coverage, and accountability of observer providers and observers for maintaining specified performance standards. Several attempts for long term restructuring of the Observer Program to address these fundamental issues have failed. One attempt to rectify these failures has been the Council's recommendation for establishment of an interim Observer Program in anticipation of developing a long term restructuring plan. The existing observer Program expires at the end of 2002.

At its April 2002 meeting, the Council recommended an extension of the interim Observer Program through 2007, as well as changes to the program to address several legal concerns, to clarify responsibilities of observers and observer providers and to authorize placement of NMFS staff aboard vessels or at shoreside or floating processors to support observer functions. As in past years, the Council's recommended action is intended to allow additional time for the development and analysis of alternatives that would address

numerous issues facing the Observer Program, including ways to improve the quality of data collected by observers and to redistribute costs for observer coverage. The Council intends to select and implement a preferred alternative to address those issues and concerns by January 1, 2008. The Council's recommended action would also improve regulations governing observer and observer provider responsibilities through modifications and additions to existing observer and observer provider duties and obligations. This action would further increase the ability of NMFS to interact effectively with observers, fishermen, and processing plant employees by authorizing NMFS to place NMFS staff and authorized individuals aboard groundfish and halibut vessels and at shoreside and stationary floating processors that require observer coverage.

The objective of these actions is to ensure that the Observer Program will continue to perform and improve its critical scientific, conservation, and management functions. As noted above, data provided by the Observer Program are, collectively, a critical element in the conservation and management of groundfish, other living marine resources, and their habitat. These data contribute to the current level of confidence in the management of federally managed fisheries in Alaska. Accurate catch accounting results in prosecution of fisheries at harvest levels that better approach actual allocations without exceeding them, thereby maintaining resource management objectives and avoiding, to the extent practicable, losses of revenue from potential misallocations resulting from the underharvest of total allowable catch (TAC). In recent years, the reliance on observer data for individual vessel accounting has been of particular importance in the management of the Western Alaska Community Development Quota (CDQ) program and American Fisheries Act (AFA) fisheries.

Because of the critical uses of observer data, extending the Observer Program beyond 2002 is essential. Improvements to the Observer Program are necessary to address both perceived and actual sources of data quality problems. In the absence of observer data or of some equivalent alternative source of fishery data, NMFS cannot fulfill its conservation and management obligations, as prescribed under the Magnuson-Stevens Act and other law.

On September 16, 2002, a proposed rule to extend the Observer Program through December 31, 2007, with modifications, was published in the **Federal Register** for a 30–day public review and comment period that ended October 11, 2002. Four letters of comments were received during the comment period that cumulatively contained 40 unique comments on the proposed rule. These comments and NMFS' responses are summarized under Response to Comments. The proposed rule discusses the history of the Observer Program, describes various attempts to modify its infrastructure to address long term concerns about data quality and accountability, and details descriptions of and justification for the changes to the Observer Program that are implemented under this action. These changes are summarized below.

Initial Permitting or Certification Determination. This final rule establishes an application procedure for both observers and observer providers and creates a mechanism for an official, or board of officials, appointed by the Regional Administrator, Alaska Region, NMFS (Regional Administrator), to review applications, determine who meets the certification or permitting criteria, and issue the appropriate certification or permit.

The denial of an observer certification or observer provider permit will be appealable. The Alaska Region's Office of Administrative Appeals (OAA) will review denials for both observers and observer providers upon request. Each decision from the OAA will be referred to the Regional Administrator. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency action can be further appealed to the U.S. District Court. The specific processes for appeals of a denial of an observer provider permit or an observer certification are summarized below (See Observer Provider Permit Application and Observer Certification Process).

Permit vs. Certification for Observer Providers. This final rule changes the nomenclature for observer provider licensing that will result in the providers being "permitted," rather than "certified," to provide observer services to industry. Just as commercial fishing is authorized by a permit, observer providers will receive a permit from the agency, clarifying the role of observer providers in the structure of NMFS fishery regulations. Whereas a certification grants permission to the holder to perform tasks with some minimum required training, a permit is more business-oriented, granting permission to perform activities that do not require training by the agency.

Observer Provider Permit Application Requirements. Under the final rule, new persons wishing to provide observer services in Alaska groundfish fisheries would be required to apply for a permit that authorizes this activity. Applications may be submitted at any time.

Observer providers previously certified by NMFS to provide observers and who actively deployed observers in Alaska groundfish fisheries in 2002 would be considered to be qualified for these permits in 2003 by their demonstrated performance and their existing documentation on file. Such providers will not be required to submit a new application, and the owner(s) will be issued a permit based on their existing record. These observer providers will continue to be accountable for any violations of regulations that occurred while they were functioning as NMFS-certified observer providers prior to January 1, 2003. Upon issuance of a new observer provider permit, these observer provider permit holders must comply with all applicable regulations promulgated by NMFS while participating in the Observer Program. Former NMFS-certified providers need only comply with those regulations in force at the time of their participation in the program.

Because accurate identification of the business' ownership is required for issuance of the permit, each existing NMFS-certified provider will be required to correct or update any changes to ownership, management, and/or contact information set forth under § 679.50(i)(1)(ii)(A)and (B) of this final rule within 30 days of receiving a permit. Subsequent changes in ownership of an observer provider that involve a new person will require the observer provider to submit a new permit application prior to the effective date of the new ownership arrangement.

A new applicant for an observer provider permit will be required to submit a narrative application that contains information necessary for NMFS to evaluate the applicant to determine if he or she is qualified to be an observer provider. Observer providers contribute an important service to NMFS by recruiting, hiring, and deploying high-quality individuals to serve as observers. NMFS must ensure that observer providers meet minimum requirements so that this important service is consistently maintained. NMFS would permit all applicants who: (1) demonstrate that they understand the scope of applicable regulations; (2) document how they will comply with those regulations; (3) demonstrate that they have the business infrastructure necessary to carry out the job; (4) are free from conflict of interest;

(5) do not have past performance problems on a Federal contract or any history of decertification as either an observer or observer provider; and (6) are free from criminal convictions for certain serious offenses that could reflect on their ability to carry out the role of an observer provider.

Each application for an observer provider permit must contain several elements. These elements are fully described and justified in the proposed rule (67 FR 58452, September 16, 2002) and are summarized below as follows:

(A) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company including, but not limited to, owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(B) Contact information for the owner, authorized agent, and company information. This information includes mailing addresses, physical location of the company, telephone and fax numbers, and business e-mail address for each office and authorized agent.

In addition, an applicant with ownership based outside of the United States would be required to identify an authorized agent and provide contact information for that agent, including mailing address, and phone and fax numbers where the agent can be contacted for official correspondence.

(C) A signed acknowledgment, under penalty of perjury, from each owner, or owners, board members and officers, of a corporation, certifying that they are free from a conflict of interest as defined in the final rule at § 679.50(i)(3). NMFS will provide an acknowledgment template form, which applicants may use to satisfy this part of the application.

(D) A statement signed under penalty of perjury from each owner, or owners, board members and officers of a corporation, describing any criminal convictions, performance ratings on any Federal contracts held by the observer provider, and any previous decertification while working as an observer or observer provider.

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to recruiting, hiring, deployment, and personnel administration.

(F) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider, and the arrangements to be used to achieve such responsibilities and duties.

The final rule also requires observer providers to notify and update NMFS through the Observer Program Office within 30 days when any of the required elements listed in § 679.50(i)(1)(ii)(A) and (B) of the final rule change. Signed statements from new board members or corporation officers under § 679.50(i)(1)(ii)(C) or (D) also will be required (See changes from the proposed rule to the final rule). These requirements will help facilitate the communication between NMFS and observer providers and help ensure ongoing credibility and accountability of observer providers.

Observer Provider Permit Application Evaluation. The Regional Administrator will appoint NMFS' staff members to a review board that will evaluate applications for an observer provider permit. The board will evaluate each application to determine whether it is complete and whether established criteria are met (see below). The board could seek further clarification from the applicant if necessary. Once the board's review is complete, it would make a determination on the application.

The criteria that will be used to evaluate an application are listed below; the proposed rule (57 FR 58452, September 16, 2002) explained why each criterion is needed.

(1) Absence of conflict of interest. Observer providers cannot have a conflict of interest as defined under § 679.50(i)(3) of this final rule.

(2) Absence of criminal convictions related to embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property; or the commission of any other offense indicating a lack of business integrity or business honesty that would seriously and directly affect the fitness of an applicant in providing observer services under this section.

(3) Performance ratings on a Federal contract. This evaluation criterion would help eliminate applicants with a history of past performance problems as a Federal contractor.

(4) Absence of any history of decertification as either an observer or observer provider.

The review board will make an initial administrative determination to approve the application or provide written notice of an evidentiary period for the applicant to provide additional information or evidence to support the application. If the review board approves the application, NMFS will issue an observer provider permit to the applicant. The applicant will then be authorized to provide observers to industry and will also be subject to the regulations governing observer providers.

If the review board provides an applicant with written notice of an evidentiary period to provide further information, it would be due to the application being deficient in some manner. The written notice will identify where the application is deficient and provide the applicant with a 60–day period to provide additional information to correct the deficiency. After that 60–day period, the review board will review any additional material provided and issue an Initial Administrative Determination (IAD) that would either approve or deny the application.

An applicant for an observer provider permit who is issued an IAD denying the application may appeal the determination to the OAA. Under existing regulations at § 679.43, the OAA would review the appeal and make an independent judgement. No right to administrative appeal for the OAA decision is available. However, the Regional Administrator, on his or her own initiative, may overturn the OAA decision; in this case, the Regional Administrator's decision would become final agency action. This Regional Administrator discretion will be required to be exercised within 30 days. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency actions can be further appealed to the U.S. District Court. As part of the change to this appeals process under this final rule, regulations at § 679.43 are amended to provide for the establishment of an Address of Record for the observer provider applicant who wishes to appeal an adverse IAD.

Observer Provider Permit Duration. A permit issued to an observer provider will remain effective through December 31, 2007, unless: (1) the observer provider company has a new owner, which requires that a new permit application process be initiated under § 679.50(i)(1)(vi) of the final rule; (2) the permitted provider ceases to deploy observers to groundfish fisheries in the North Pacific during a period of 12 continuous months under § 679.50(i)(1)(vii) of the final rule; or (3) the permit issued to an observer provider is suspended or revoked under § 679.50(i)(1)(viii) of the final rule.

If a permit lapses after a period of 12 months of inactivity as described above,

NMFS will issue an IAD to the permit holder stating that NMFS records indicate that the permit has lapsed and that the permit holder has the opportunity to appeal the determination. The IAD will also detail the appeals process available to the permit holder. Permit holders who appeal

this IAD will be issued an interim permit so they can operate while their appeal is reviewed.

Observer Provider Sanctions. This final rule changes the process for observer provider permit revocation or suspension from an administrative process conducted by the Observer Program Office and the Alaska Regional Office to an enforcement process. Exclusive use of the agency's enforcement process for permit sanctions will enhance the agency's ability to obtain compliance with its regulations and create a consistent permit suspension and revocation process. Under this process, potential violations of performance standards by an observer provider are investigated by NMFS Enforcement and referred to General Counsel for Enforcement, Alaska Region (GCEL/AK). GCEL/AK may initiate civil prosecution proceedings and may issue a Notice of Violation and Assessment (NOVA) to the provider. The NOVA advises the provider of the alleged violation and the monetary amount of the assessment. The NOVA also describes the appeals process, which is presided over by an Administrative Law Judge (ALJ).

The NOVA and Notice of Permit Sanction procedures are established at 15 CFR part 904. This final rule removes all the observer provider suspension and decertification procedure regulations at § 679.50, to the extent they are replaced by 15 CFR part 904. The Observer Program/Alaska Regional Office will cease to maintain a separate process for suspension or revocation of an observer provider permit. Under 15 CFR part 904, appeals of enforcement actions are heard through an ALJ system. The ALJ is an entity independent from NOAA and the observer provider. The ALJ's decision is appealable to the U.S. District Court.

Certification Requirements and Procedures for North Pacific Groundfish Observers. Individuals wishing to be certified as North Pacific Groundfish Observers are required to complete an observer training course and to meet other requirements established by the Observer Program Office. Such certification allows them to be deployed through private observer provider companies to vessels and processors in Alaska that harvest or process groundfish and require observer coverage. NMFS provides certification training throughout the calendar year, depending on the availability of trainers and training needs.

Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not since been decertified or had their certification suspended will be considered to have met certification requirements under this final rule. NMFS will issue each of these observers a new certification and certification training endorsement prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, performed sampling duties, and debriefed successfully in the preceding 18 months. Under the final rule, these observers would be required to obtain subsequently the appropriate endorsements (described below) to their certification prior to each subsequent deployment. These observers will be subject to any enforcement actions for violations that occurred prior to January 1, 2003, as well as to all regulations governing observers beginning January 1, 2003.

Observer Certification Process. This final rule modifies existing procedures and adds certain new requirements. The Observer Program will continue to require that new candidates for observer certification meet standards developed to ensure that individuals will be able to complete their duties and responsibilities and work safely in the marine environment. Under the final rule, NMFS will certify individuals who: (1) meet any educational or other requirements for registration in an observer certification training class; (2) successfully complete the NMFS-approved observer certification training class; and (3) meet all pre-deployment requirements set forth in the final rule, including education requirements at § 679.50(i)(2)(i)(A)(*1*) through (*4*), a signed statement that discloses any criminal convictions under § 679.50(i)(2)(x)(A)(*1*)(*iv*), and a physical examination as required under § 679.50(i)(2)(x)(C).

The observer provider is required to submit substantiating information for certification, with one exception, to NMFS at least 5 business days prior to the beginning of a scheduled observer training. If the required observer information is not submitted 5 business days prior to the beginning of a scheduled training session, the observer provider could still register a candidate for a subsequent training session, provided all relevant materials are submitted in a timely manner for that training session. The exception to the above submission deadline is that the required, signed statement from a licensed physician asserting that the observer candidate is in proper health and physical condition for the job must be submitted prior to certification. While individuals whose certification has expired previously can be re-certified by successfully completing specified requirements, an individual who has previously been decertified cannot obtain a new observer certification.

The determination to either certify or deny certification will be made by a certification official within the Observer Program, appointed by the Regional Administrator. As is current practice, certification will be issued when the candidate has demonstrated his or her abilities and has met all certification requirements.

If a candidate fails training, he or she will be verbally notified on or before the last day of training. Within 10 business days of the verbal notification, the candidate and his or her observer provider will be notified in writing. The written notification will indicate the reasons the candidate failed the training and whether the candidate would be allowed to retake the training. If the candidate is allowed to retake the training, the conditions for re-training will be specified in the notice. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification.

Candidates' appeals from an IAD to deny certification would be made to the OAA rather than to the Observer Program Office, as is the current practice. Regulations at § 679.43 are amended under this final rule to provide for the establishment of an Address of Record for the observer or observer candidate who wishes to appeal an adverse IAD. A candidate who appeals the IAD and prevails will not receive certification until after the final resolution of that appeal. If unsuccessful, the candidate could further appeal to the U.S. District Court.

Endorsements. This final rule replaces the current system of pre-deployment certification with a system of certification endorsements. Under this action, observers will receive a certification that will expire with the expiration of the interim Observer Program on December 31, 2007. To ensure that observers are properly prepared for each assignment, the following series of endorsements to the certification will be required to deploy as an observer:

(1) Certification training endorsement. A certification training endorsement will signify the successful completion of the training course required to obtain observer certification. This endorsement will be granted with the initial issuance of an observer certification and will be required for any deployment as an observer in the BSAI or GOA groundfish fisheries. This endorsement will expire when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time, specified by the Observer Program Office, after his or her most recent debriefing. An observer may renew this endorsement by successfully completing the certification training course once more.

(2) Annual general endorsements. Each observer will be required to obtain an annual general endorsement to his or her certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer will be required to successfully complete the annual briefing requirements specified in writing by the Observer Program Office.

(3) Deployment endorsements. Each observer who has completed an initial deployment after certification or an annual briefing will be required to receive a deployment endorsement to his or her certification prior to any subsequent deployments that year. An observer will be able to obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements, including, but not limited to, all briefing attendance requirements, and by maintaining all performance and conduct standards. These requirements will be specified in writing by the Observer Program Office during the observer's most recent debriefing.

(4) Level 2 and Level 2 "Lead" endorsements. Observers wishing to deploy aboard vessels participating in CDQ fisheries and in AFA fisheries as "level 2" observers currently are required to meet specific levels of observer experience and to successfully complete additional training to obtain a "CDQ" certification. Under this final rule, these requirements would not change, with one nomenclature exception. The term "CDQ certification" will be changed to "Level 2 endorsement" on the observer's basic certification. This change reflects the similarities in the additional level of experience and training required to monitor the CDQ and AFA fisheries. The term "Level 2" is more generic in terms of applicability to various fisheries management programs, specifically denoting an observer with a higher level of experience and training. The certification will be changed to an endorsement for the reasons stated above. Similar changes for current Level 2 "lead" observer certifications are made as well. A level 2 "lead" endorsement reflects specific experience on different types of vessels using different gear types.

One minor change to criteria for obtaining the Level 2 endorsement is that an observer would be required to receive an evaluation rating that the observer has met NMFS' deployment expectations for his or her most recent deployment. Current regulations require a deployment rating of "1" or "2" (meets or exceeds NMFS' deployment expectations), but the Observer Program has changed its deployment rating system. This action will require that an observer receive an evaluation by NMFS that indicates that the observer's performance met Observer Program expectations for the previous deployment.

Observer Sanctions. Observer suspension and decertification proceedings currently occur entirely within the Observer Program, including both initial determinations on sanctions and appeals of those determinations. Only criminal proceedings against observers under 15 CFR part 904 occur outside the Observer Program, with NMFS Enforcement, U.S. Department of Justice and NOAA General Counsel conducting those efforts. The final rule will maintain initial observer suspension and decertification determinations within the purview of the Observer Program but moves appeals of these determinations to the OAA to provide more assurance of objectivity in final decision making. The Observer Program will continue to address less serious observer misconduct or poor performance issues through policies and procedures that currently are in practice. These written policies are available to observers during certification training and subsequently from the Observer Program Office upon request.

Under this final rule, the Regional Administrator will appoint an observer suspension/decertification officer or officers to review cases referred by Observer Program staff for suspension or decertification, or both, and to issue a written notice to the observer if NMFS intends to proceed with the action. If the action is pursued, this notice will detail the reasons for and the terms of the action. The notice will also indicate to the observer his or her right to appeal the decision and the procedure for filing such an appeal. The observer would have an opportunity to present documentation that would show mitigating circumstances or refute the evidence before the official. Under this procedure, the observer suspension/decertification officer will create a written record. If the observer does not contest the proposal to decertify or suspend the certificate, the observer suspension/decertification officer's initial decision will become final.

If the observer wants to appeal an adverse initial determination by the observer suspension/decertification officer(s), the decision will be referred to the OAA. The OAA will provide a hearing officer who has special training in reviewing administrative records. Additionally, the OAA could preside over fact-finding hearings, hear testimony or review evidence and issue written decisions with determinations of factual issues and application of the regulations. The OAA's determination will be referred to the Regional Administrator. The Regional Administrator, on his or her own initiative, may overturn the OAA decision; in this case, the Regional Administrator's decision would become final agency action. The Regional Administrator will be required to exercise this discretion within 30 days. If the Regional Administrator does not act to overturn the OAA decision within 30 days, the OAA decision becomes the final agency action. Final agency actions can be further appealed to the U.S. District Court.

The OAA system will provide an efficient mechanism for decisions on observer appeals, suited to observers' needs for a straight-forward procedure and for pursuing appeals and resolution. Rather than resulting in monetary fines, these cases result in administrative sanctions, which the OAA is appropriately prepared to address.

The agency will continue to refer to NMFS' Alaska Enforcement Division (AED) certain cases for investigation that may involve serious observer misconduct, such as the exceptional cases where observers should be prosecuted for criminal offenses or receive monetary sanctions for egregious violations of the regulations. These would be instances of fraud, assault, or other more serious violations. Prosecution of these cases will continue to be handled by GCEL/AK, with appeals directed to ALJs. Successful prosecution of these cases will result in penal sanctions. Penal sanctions are those penalties that result from criminal prosecution or from civil prosecution that result in monetary fines.

Predictably, given past experience, these will be very rare actions. Only one such observer case has been referred to GCEL/AK.

Observer and Observer Provider Responsibilities. The final rule modifies existing observer and observer provider responsibilities to clarify NMFS' intent and to eliminate ambiguities. Five new observer provider responsibilities, described below, also are established to better address observer and observer provider performance issues of particular concern.

New observer provider responsibilities. Five new provisions are established to require (1) that a new observer drug and alcohol policy provided by NMFS to observer providers is included in written contracts or contract addendums between observer providers and observers; (2) that observer providers verify valid U.S. Coast Guard vessel safety decals before placing an observer aboard; (3) that limitations placed upon reassignment of observers to vessels and/or processors be followed; (4) that observer duties be completed prior to an observer's assignment being changed; and (5) that observer providers provide observer candidates with a NMFS-produced pamphlet describing the duties of an observer. The NMFS-produced pamphlet describing the duties and working environment of the observer will be available prior to 2003 and will be required to be issued to observer candidates by observer providers during candidate interviews under this final rule.

A full description of the new responsibilities and reasons for them are set forth in the preamble to the proposed rule (67 FR 58452, September 16, 2002) and are not repeated here. NMFS did propose an additional requirement, which is included in the final rule, that will require observer providers to have a signed written contract or contract addendum with each observer prior to each deployment. Most observer providers already follow this practice. However, this provision is necessary to ensure the observer's protection against potential non-payment for work performed and as added insurance of observer compliance with certain assigned duties and requirements.

Authority to Place NMFS' Staff and Individuals Authorized by NMFS as Observers on Vessels, Shoreside Processors, and Stationary Floating Processors. This final rule authorizes NMFS to deploy staff and individuals authorized by NMFS as observers on fishing vessels and at shoreside processors and stationary floating processors that currently are required to carry NMFS-certified observers. This action is necessary to improve the ability of observers to operate successfully in these environments, resulting in more effective monitoring of groundfish harvest, bycatch, and impacts to protected species and the marine environment for conservation and management purposes. NMFS expects this action to improve its working relationship with industry and improve sampling conditions and support for observers in the field by allowing for more interaction and collaboration among NMFS staff, industry, observers, and observer providers.

The Magnuson-Stevens Act provisions authorizing collection of information for purposes of conservation and management of a fishery provide statutory authority to place observers aboard vessels. However, current regulations at § 679.2 define an observer as "any individual who is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor (provider) for the purpose of providing observer services to vessels, shoreside processors, or stationary floating processors under this part, and is acting within the scope of his/her employment." This final rule modifies the definition of an observer to include NMFS staff and individuals authorized by NMFS and provides the regulatory authority to deploy staff to vessels or processors to perform observer duties or collect related information to be used for the conservation and management of marine resources.

Staff observers will provide information that could be used to better train, support, and debrief groundfish observers. Staff observer deployments will be used to improve fisheries conservation and management through: (1) solving sampling issues specific to individual vessels, shoreside processors, or stationary floating processors; (2) creating new sampling protocols; (3) developing and implementing research projects; (4) maintaining knowledge of current vessel, shoreside processor, or stationary floating processors operations; and (5) providing on-site training for an observer(s) employed by an observer provider. Further discussion and justification of this program is presented in the preamble to the proposed rule (67 FR 58452, September 16, 2002).

Observer Coverage Requirements and Observer Procurement. This final rule requires vessels, shoreside processors, or stationary floating processors to carry NMFS staff or other individuals authorized by NMFS upon written request by the agency. These individuals will be deployed in lieu of, or in addition to, observers procured through private observer provider companies. Determinations regarding the most appropriate use of staff observers will be made with consideration of observer accounts of sampling difficulty, alternative ways to collect data, and improvements that could be made on vessels and at processing facilities that would facilitate data collection and enhance data quality. Evaluation of observer sampling protocols related to new or existing management and research needs will also be considered.

A majority of staff deployments to vessels and processors are expected to satisfy requirements for observer coverage as specified in §§ 679.7(f)(4) and 679.50(c) and (d). A determination on whether any staff deployment will meet coverage requirements for a specific vessel or processor will be made by NMFS in advance of each staff deployment. Notification of the determination will be made in writing to the vessel owner and/or operator, as well as to any observer provider contracted by the vessel to provide observer coverage. This determination largely will be based on whether NMFS staff or individuals authorized by NMFS are deployed to perform the duties of an observer. If the duties of the deployed staff observer do not include complete collection of data normally performed by an observer procured through a permitted observer provider for purposes of meeting regulatory coverage requirements, the staff observer deployment may not be used to satisfy observer coverage requirements.

The Observer Program would work with vessels and processors that are selected to carry NMFS staff or an individual authorized by NMFS to determine when and where deployments would begin and end. NMFS also will notify affected observer providers to the extent that the deployment of NMFS staff or other authorized individuals would affect prior arrangements for observer coverage. NMFS will not have regulatory authority to order a vessel to port to commence such a deployment. However, a vessel selected for a deployment will be required to work with NMFS to develop deployment logistics. This will include communicating vessel schedule and logistics to NMFS. NMFS does not intend to alter fishing operations or schedules in order to facilitate these deployments and will be responsible for

transportation and shoreside lodging costs associated with staff deployments.

Requests for Staff Observers. Owners and operators of vessels, shoreside processors, and stationary floating processors, observers, and observer providers will be able to submit written requests for assistance from NMFS to improve observer data quality or resolve observer sampling issues. Fulfilling these requests will be at the discretion of NMFS, and requests will be evaluated according to specific needs and staff resources.

Response to Comments

Four letters were received during the public review and comment period on the proposed rule. These letters contained 40 unique comments that are summarized and responded to below.

Comment 1: The permit process for the observer providers needs to include observer input as part of the evaluation process. In our opinion, the permit is analogous to a Federal contract and services provided under such contracts are evaluated at regular intervals. We do not feel that a permitted provider should be exempt from similar evaluations.

Response: NMFS disagrees that issuance of an observer provider permit is analogous to a Federal contract. NMFS does value the input from observers concerning the performance of their observer providers and has given observers the opportunity to provide that input through an anonymous exit survey at the end of each cruise. A portion of this survey questions observers specifically about their observer provider's performance. At least once a year, NMFS summarizes this information and reviews it with each provider. NMFS will continue this type of review under the new regulations. NMFS has not conducted formal evaluations of observer provider performance for many years and does not intend to begin doing so. NMFS will continue to address performance issues as they arise with individual providers.

Comment 2: Previously, the regulations included a caveat to lower hiring standards if an insufficient number of applications were submitted from candidates with bachelor degrees. Is this regulation no longer applicable?

Response: A December 30, 1997, final rule extended the Observer Program through 1998 and included a change to the non-codified elements of the Observer Program that outline observer qualifications. For prospective observers, the change established: (1) minimum education and experience requirements, (2) specific coursework and skills requirements, and (3) that candidates successfully complete a screening test of basic mathematics, algebra, and computer skills. Since this was a new, non-codified requirement, NMFS included a caveat that if a sufficient number of candidates meeting these requirements were not available, the observer provider could seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or an Associate of Arts degree in fisheries, wildlife science, equivalent degree, or other relevant experience or training.

The caveat was inserted to help providers during the transition to higher standards, but the education and experience requirements have been in place for over 4 years and NMFS feels the observer providers are finding and recruiting qualified applicants. For that reason, the non-codified exception to these requirements has been removed and is no longer applicable.

Comment 3: At § 679.50 (i)(2)(vii), the proposed rule states, "Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not: (B) deploy an observer for more than 90 days;". It would be useful to define when deployment time starts and stops. Our current understanding is that the countdown begins the day the observer boards his or her first vessel and ends the day the observer disembarks his or her last vessel. With the current wording, deployment time could be defined as starting when an observer leaves the site of their briefing for the field and continuing until they leave the field to debrief.

Response: Deployment is defined at § 679.2. The definition reads, "Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing." To further clarify, arrival at the point of embarkation is when an observer boards his or her first vessel or arrives onsite at his or her first processor.

Comment 4: We have requested that safety training for prior observers be modified to coincide with requirements of sea-going NMFS staff, other survey staff such as IPHC, or other observer programs. This request does not appear to be addressed in the proposed rule. We would like to see this policy modified within the Observer Program regardless of whether it appears in the final rule.

Response: Safety training is an important priority in the Observer Program. In September and October 2002, NMFS held four meetings on observer safety to gather ideas. Participants in these meetings included representatives from the Association for Professional Observers, observers, observer providers, NMFS staff, and Observer Training Center (OTC) staff. Once compiled, the results of each meeting will be used to modify and improve the safety training observers receive. In addition, NMFS has been working with the OTC to evaluate observer training and to explore options for offering returning observers advanced training.

Comment 5: Paragraph one on page 58468 of the proposed rule states, "The proposed regulation would require that observers complete a NMFS electronic vessel and/or processor survey prior to their final debriefing..." Did you mean "prior to being deployed in a non-groundfish fishery?"

Response: NMFS agrees that the proposed rule preamble language was not completely accurate. However, the proposed regulatory text did correctly require that observers complete a NMFS electronic vessel and/or processor surveys before performing other jobs or duties which are not part of NMFS groundfish observer requirements.

Comment 6: The proposed rule states development and implementation of research projects are a component that will justify NMFS placement of staff on board vessels. We support this justification but request the agency publish an annual report or summary of these projects. We have requested specific information on data needs and priorities from NMFS for almost a decade to no avail. Some people feel the lack of agency articulation regarding data needs is a major stumbling block in redesigning/restructuring the Observer Program.

Response: If requested by the Council, NMFS will provide periodic reports on NMFS staff involvement in the development and implementation of research projects that this rule making will allow. NMFS may also pursue other outlets such as the Alaska Fisheries Science Center's Quarterly Report. The broader issue of requesting specific information on data needs and priorities is beyond the scope of this rule making. Nonetheless, NMFS is committed to working with the Council and other interested parties in providing information necessary to support long term planning for the Observer Program. Also see response to Comment 30.

Comment 7: It concerns us to find proposed regulations in the **Federal Register** that had previously been rejected, were significantly altered after being accepted by the Council, or were entirely new and not previously discussed in a public forum.

Response: NMFS acknowledges that the development of regulatory text after Council action, and the subsequent agency and NOAA General Counsel review of draft text, resulted in numerous changes or additions to regulatory text to meet or clarify intent. NMFS disagrees that regulatory provisions were included in the proposed rule that had been "rejected" by the Council. The opportunity for prior public notice and comment on the proposed regulations is intended to give additional opportunity for public review of policy and intent beyond the Council process and how that intent is incorporated in proposed rule making. While not all detailed issues may be addressed in the Council process, they must be addressed by NMFS during the public rule making process. This process complies with the Magnuson-Stevens Act, the Administrative Procedure Act, and other applicable law.

Comment 8: Section 679.50 (h) Procurement of observer services. As written in the proposed rule, this regulation has no qualification or certification process for NMFS staff assigned to vessels. Significant potential exists for untrained individuals to be assigned to vessels in lieu of qualified observers.

Response: It would serve no purpose for NMFS to deploy untrained individuals in lieu of observers. NMFS intends to deploy NMFS staff and other qualified persons who meet or exceed the requirements an observer must meet. Most if not all individuals being considered for deployment are former groundfish observers who currently train or debrief groundfish observers.

Comment 9: Without a cap on the number of days NMFS can deploy staff on vessels, the possibility arises that NMFS could use this regulation to alter the Observer Program extensively without further deliberation in the Council process. The potential impact on free enterprise has not been considered, nor the enforcement and monitoring implications to the vessels.

Response: NMFS presented several options to the Council that would have limited the number of annual deployment days. Following deliberation on these options, the Council selected no annual cap. NMFS does not have the budget or staff to extensively impact free enterprise with respect to providing observer services and intends to deploy NMFS staff or qualified persons in lieu of observers only when necessary. NMFS fails to see how the lack of a cap on NMFS deployments has enforcement and monitoring implications for vessels.

Comment 10: We would like to request that NMFS notify the observer provider that a vessel they provide coverage for will be required to carry NMFS staff at the same time NMFS notifies the vessel or processor.

Response: NMFS agrees that observer providers need as much advance notice as possible when a vessel or processor will carry NMFS staff in lieu of an observer. NMFS will make these notifications to observer providers.

Comment 11: The owner and operator's right to contact NMFS in writing to request assistance in improving observer data quality and resolving observer issues at § 679.50 (e)(3) should be extended to observers and observer providers.

Response: Observers and observer providers may contact NMFS with requests and the appropriate changes have been made to § 679.50 (e)(3).

Comment 12: In the preamble on page 58457 NMFS would require all observer applicants to meet all pre-deployment requirements established by the Observer Program. We are uncertain what these requirements are and how they would affect the observer providers and observers.

Response: The preamble to the proposed rule states that NMFS would certify individuals who: (1) meet any educational or other requirements for registration in an observer certification training class; (2) successfully complete the NMFS-approved observer training class; and (3) meet all pre-deployment requirements established by the Observer Program. The pre-deployment requirements were described in the proposed rule in two places, at § 679.50 (i)(2)(i)(A)(*1–4*) on page 58473 and § 679.50 (i)(2)(x)(A)(*1*)(*iv*) and (i)(2)(x)(C) on page 58474. The preamble to the final rule clarifies that these requirements are set forth in regulations.

Comment 13: NMFS states they will notify observer candidates in writing if the candidate fails the training class. We would like to request that NMFS also notify the observer providers in writing if an observer candidate fails.

Response: NMFS has amended § 679.50 (j)(1)(iii)(B)(*4*)(*ii*) to clarify NMFS' responsibilities if an observer candidate fails training. On or before the last day of training, NMFS will verbally notify the observer candidate whether he or she has failed training and also provide the reasons for failure. Within 10 business days, NMFS will notify the observer candidate in writing. The notification will indicate the reasons the candidate failed and whether the candidate can retake the training.

NMFS is not able to provide either verbal or written notification of this type to observer providers under the Privacy Act unless the observer candidate has signed a written waiver authorizing the disclosure of this information to an observer provider. However, contract provisions between observer providers and observer candidates could include such a waiver so that NMFS could release this information to observer providers. Similarly, observer candidates could provide their observer provider any written correspondence from NMFS. Given Privacy Act constraints and options to observer providers to obtain this information under consent of an observer candidate, NMFS is not pursuing a regulatory change that would authorize the release of verbal or written notification to observer providers.

Comment 14: Under the proposed regulation change an observer candidate will be notified whether he or she will be allowed to retake the training class should he or she fail training. We request that NMFS clarify the criteria for applicants retaking the NMFS training class.

Response: Historically, NMFS has not allowed candidates to retake training if they failed the NMFS certification training. NMFS has allowed candidates to retake training if they withdrew from training to address personal issues that developed during the course of the training or to address deficiencies noted prior to the end of training. NMFS will continue to allow candidates who meet the two conditions noted above to retake training. Outside of those conditions, candidates may fail for a host of reasons ranging from behavior problems to lack of technical skills. For this reason, each observer candidate must be evaluated on a case-by-case basis taking into account the reasons behind their failure. Regardless of whether NMFS decides an observer can or cannot retake the certification training, NMFS' decision can be appealed by the observer under the new regulations.

Comment 15: Under the proposed rule, NMFS would require observer providers to contact the Observer Program within 5 days after completion of an observer's deployment to schedule a debriefing. Please clarify if that is 5 calendar days or 5 business days?

Response: NMFS has clarified the requirement at § 679.50(i)(2)(x)(E) as 5 business days.

Comment 16: We would like clarification as to how NMFS-provided pamphlets and other literature describing observer duties and the Observer Program's drug and alcohol policy may be distributed to observer candidates. Does each candidate need to be mailed or faxed a hard copy or can

this information be provided electronically (e.g., e-mail or web site)? We are also unsure what the content of the pamphlet on observer duties will be.

Response: The informational pamphlet on observer duties and the Observer Program's drug and alcohol policy will be available in hard copy upon request and on the Observer Program's web site. NMFS agrees that this information can be provided to observer candidates electronically. The pamphlet on observer duties will describe what role observers fill, the job training, living and working conditions, observer job duties, and basic requirements to qualify as an observer.

Comment 17: The proposed rule requires observer providers to distribute copies of the NMFS drug and alcohol policies to their observers. We are not opposed to having or distributing such policies, but we would like the opportunity to comment on such policies before distributing them.

Response: NMFS solicited comments from a variety of sources and distributed a draft of the Drug and Alcohol policy to all observer providers on August 26, 2002. NMFS requested comments by September 15, 2002, but no comments were received by the deadline. One observer provider commented after the deadline and their comments will be taken into account as we finalize the policy. If subsequent input on this policy suggest the policy should be modified, NMFS will consider doing so.

Comment 18: The proposed rule requires a statement from observer (provider) applicants "describing any criminal convictions" by the applicant, which are later described in § 679.50(i)(1)(iii)(A)(*2*) as: (i) embezzlement, theft, forgery, bribery, falsification, destruction of records, making false statements, receiving stolen property, or (ii) any other crimes of dishonesty, as defined by Alaska State Law or Federal Law that would seriously and directly affect the fitness of an applicant in providing observer services. While we understand the rationale behind this regulation, this was never discussed as part of the application process and we recommend it be removed from the rule.

Response: Criminal conviction disclosure will be in place for persons wishing to become new observer providers and any new persons in the management, organizational structure, and ownership structure of an observer provider. Without this information, NMFS could not be assured of having knowledge of new applicants, managers or owners, and it is in the public interest for NMFS to screen these applicants. This screening process includes an evaluation of their criminal convictions because convictions relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property could influence a person's ability to fulfill the expectations of an observer provider and predispose an applicant toward future compliance issues. Given these factors, NMFS needs to have the ability to assess persons relative to potential regulatory compliance issues and protect the fishing industry and observers from individuals whose credibility and accountability to the program are questionable. Also see response to Comment 7.

Comment 19: In reference to observer candidates disclosing criminal convictions, we are concerned that this regulation, in its present form, has not been discussed with the observer providers. We are also concerned about the use and intent of this regulation. Will some applicants not be admitted to training and could prior observers lose their job? We would like to see specific information and guidelines as to how NMFS will use this information. The types of convictions an observer must disclose is vague, the regulation should be refined to include either felonies as discussed with the Council or be expanded similar to the observer provider disclosure.

Response: This regulation was discussed at length during the Council process. Observers whose certification was current prior to this rule taking effect will not be required to disclose their history unless their certification lapses and they need to reapply for certification (see § 679.50(j)(iii)). Applicant disclosure of criminal convictions will be used to screen applicants and may be grounds for not admitting individuals to training. NMFS received specific guidance from the Council on this issue and the Council motion suggested NMFS screen applicants on a case-by-case basis and that applicants disclose their past criminal record without regard to the type of conviction. The outcome of each screening will be based on the nature of the criminal conviction as it relates to the job NMFS expects observers to perform.

Comment 20: Some of the background provided as supplementary information for this rule making is clearly out of date. For instance (from the proposed rule, pg. 58452), "Competitive pressure to reduce coverage costs to the industry keeps observer salaries low, resulting in reduced observer availability." Observer salaries will range from $3,900 per month for new observers to $5,610 per month for experienced observers in 2003. Also, "Instability in the fishing and observer provider industries has created situations in the past where observers were not paid for work performed." That would have been 1994 or so: if observer morale is still low, as the background alleges, events of 1994 can not be blamed.

Response: NMFS agrees that some of the issues experienced within the Observer Program in past years no longer appear to be a problem. However, we have no assurance that similar issues will not be encountered again in the future. A strong, credible Observer Program is of paramount importance to the monitoring and management of the North Pacific fishery resources. Recognition of this fact continues to provide the initiative for improvements to this program, including this final rule.

Comment 21: The new permitting, certification, and decertification procedures for observers and observer providers appear in large part to be a continuation of current practice dressed up in new terminology. We want to point out that any new system of "observer certification endorsements" needs to be implemented in such a way as to allow the "certification official" to issue these endorsements on the very afternoon an observer completes training or briefing. If the new system is not able to meet this time line, it will result in an Observer Program that is less efficient and less responsive to industry needs which will cost industry more money.

Response: NMFS understands the need for timely decisions for all observer endorsements under the new system. The system will be set up such that the certification official can issue endorsements the same day observers successfully complete training or briefing, which will ensure they are available for immediate deployment.

Comment 22: The proposed rule calls for providers to replace lost or damaged gear, but that raises the question as to whether gear that wears out due to normal use is also our responsibility. It would also be helpful if the Observer Program would provide us with a list of required and optional gear that NMFS provides for observers and with a list of vendors and replacement cost for each item in the event we need to purchase replacement gear. Would the observer provider replace the gear itself or simply reimburse NMFS? How and when will NMFS notify us that gear has been lost or damaged? We request that NMFS be required to notify providers within 5 business days of receiving an observer's gear of any items in need of

replacement. This will allow us to recoup costs from our observers if gear was lost or damaged due to negligence.

Response: Upon request, NMFS can provide a list of required and optional gear that includes a list of accountable items. NMFS does not expect observer providers to replace gear that wears out due to normal use. NMFS does not have a way of accepting reimbursements for lost or damaged gear. Instead, observer providers are expected to purchase replacement gear and have it shipped to the nearest Observer Program facility. If an accountable gear item is lost or damaged NMFS will notify observer providers within 5 business days of learning accountable gear has been lost or damaged. Included with that notification will be a list of vendors and estimated cost for replacement.

Comment 23: This proposed rule requires observer providers to provide observers as requested by vessels and processors who need to fulfill their observer coverage requirements. Will we be required to respond to any such request, even if it is made by a vessel who failed to pay us last year? By a vessel we abandoned as unsafe last month? By a vessel who calls only two weeks or two days before needing an observer? By a vessel with which we have no contract? The answer we will give to any of these questions is "No", but the question is, by so answering, will we be in violation? If the answer to that question is "Yes", then the proposed text needs to be re-written. We suggest the wording to this regulation be changed to, "An observer provider must provide an observer for deployments as requested by vessels and processors, with which the provider has a current signed contract, to fulfill vessel and processor requirements..." Similar wording was proposed in an earlier draft, but it has been changed. This change is necessary to protect the provider from being penalized for not providing observers for vessels that have not been offered a contract.

Response: The proposed rule does not change existing regulatory text addressing the expectation that observer providers supply observers as requested by vessels and processors to fulfill industry observer coverage requirements. As in the past, NMFS and NOAA will take into account any and all mitigating factors (such as those outlined in the comment) prior to making a decision to pursue an enforcement action against an observer provider. While NMFS supports private contract arrangements between observer providers and their clientele, NMFS is not optimistic about a contract requirement being able to unilaterally assure industry that observers always will be available when necessary to satisfy coverage requirements, particularly if a lack of planning results in last minute requests. NMFS also recognizes countervailing needs of observer providers and vessel or processor owners and operators who require observer services to maintain compliance with observer coverage requirements. Observer providers cannot be forced to enter into a contract arrangement with a person they believe represents inappropriate business or safety risks. Conversely, industry members need assurance that observer services will be available when they need them so that fishing operations are not negatively impacted. NMFS is optimistic that the existing program can be enhanced in the future to address these issues and is working with the Council and its Observer Advisory Committee to develop alternatives for analysis.

Comment 24: The proposed rule requires that a written contract exist between observer providers and observers. Most observers are currently employed by providers who have a contract with the Alaska Fisheries Division of the United Industrial Workers. These providers have contracts with the union, not with individual observers. To be accurate, the text should require either "written contracts" for non-union providers or "written contract addendums" for union providers.

Response: NMFS recognizes there are both union and non-union observer providers and has made a change to the regulation language at § 679.50(i)(2)(i)(C) to include both contracts and contract addendums.

Comment 25: During the Council process it was decided that language would be added that allows for observers to verbally agree to a contract extension. In some cases observers are working different contracts (i.e., ADF&G Shellfish, NMFS Marine Mammal). Observer providers may ask a prior observer to switch between assignments in the field. Providers should only be required to provide new contracts if there is a substantial change in contract language or during the first contract for a new calendar year. We suggest the language, "The contract must be signed by the observer and observer provider prior to the observer's deployment..." be replaced with, "The contract must be signed by the observer and observer provider prior to the observer's initial deployment in a new calendar year..."

Response: For each cruise an observer participates in it is important there be a signed contract or contract addendum between the observer and observer provider. As pointed out in Comment 24, not all observer providers have a contract with the union, therefore, without this regulation NMFS has no assurances that observers will have the protection of a contract. In addition, regulations such as § 679.50(i)(2)(v) rely on there being a contract between the observer and observer provider.

Comment 26: Observers often line up work while they are traveling and without access to fax, e-mail, or mail. In addition, observers often arrive in Seattle and depart for Anchorage that same evening, and in such cases we should not be expected to get a contract addendum to them until they are already in briefing. In other cases, observers who have been granted a briefing waiver and are being deployed on an emergency basis (to take the place of an injured or ill observer for instance) do not stop in Seattle or Anchorage before reaching their port of embarkation. In these cases we should not be expected to get a contract addendum to them until early in their field deployment. As written, this requirement for a contract between an observer and their provider will decrease the flexibility we have developed to cope with unforseen coverage problems. We are bound by our contract with the union whether or not we have a signed addendum with an observer; as a union contractor, we find this regulation unnecessary.

Response: Regulations at § 679.50(i)(2)(C) require that a written contract must be signed prior to an observer's deployment. According to § 679.2, a deployment begins upon arrival at the point of embarkation (see also response to Comment 3). Except for emergency situations, as outlined in the comment, obtaining a signed written contract should not be problematic for observer providers. At least one observer provider has an office in each of the major ports or cities observers travel through on their way to deployments (i.e., Anchorage, Seattle, Kodiak and Dutch Harbor). Given the fact that an observer must travel through at least one of these locations in order to reach a vessel or processor, NMFS believes observer providers will have ample opportunity to get a contract or contract addendum to observers prior to their deployment. See also response to Comments 24 and 25.

Comment 27: We are opposed to the proposed regulation that NMFS would require observer providers to obtain a signed contract from the observer prior to deployment. We had a teleconference on this issue and after much discussion, NMFS said they would not pursue this

regulation. This proposed regulation was not included in the changes proposed to the Council so they have not had an opportunity to comment on it.

Response: NMFS would like to clarify. The meeting referred to in the comment occurred on November 7, 2001, which was very early on in the regulatory process. At this meeting NMFS agreed to not pursue a requirement that observer providers have a signed contract with each observer before the observer enters training or briefing. NMFS agreed to this for the reasons outlined in Comment 26. The regulation was resurrected in a new format, which requires a signed contract prior to deployment, as the regulations were developed for reasons outlined in the response to Comment 25. See also response to Comment 7.

Comment 28: In the section of the proposed regulations that deals with new physical ailments prior to observer deployment, we believe the word "not" has been misplaced. We believe the regulation should read, "An observer provider must assign to vessels or shoreside or floating processors only observers: who have not informed the observer provider at the time of embarkation that he or she is experiencing any new physical ailments or injury since submission of the physician's statement..." By rewording the regulation observers will only be required to contact their provider if there is a problem, which will cut down on unnecessary communication expenses and free up time better spent dealing with observers who have informed us of an illness or injury. We think it is a mistake to single out "physical" ailments for reporting. Mental illness needs to be included in whatever language is settled upon.

Response: NMFS agrees and has made the necessary word change and added mental illness to § 679.50(i)(2)(iii)(B).

Comment 29: Observers are responsible for informing us in a timely manner if they are sick or injured, and we are responsible for having their illness or injury addressed before they return to work, whether on the same or another vessel. Under our approach, medical personnel determine whether an observer can work or not. Usually the medical personnel and the observer are in agreement as to the observer's fitness, but where there is disagreement, the situation is most likely to be one where the observer thinks they can go on working, but medical staff disagree. The proposed text, which would allow the provider to take an observer's word as to their fitness, could lead us to deploy observers who are less fit as a group than the observers who get deployed under our current approach.

Response: NMFS agrees. See response to comment 28.

Comment 30: We view this regulatory package as yet another short-term band-aid for problems that require a long-term solution. The background statement indicates the Observer Advisory Committee and Council have failed to develop a new plan. The agency needs to take the lead to revamp the Observer Program by instituting the Research Plan (or something similar) with or without the Council's approval. The Council process has not produced a solution in over a decade; why should we expect this to change within the next five years?

Response: NMFS agrees that long term solutions to several longstanding issues within the Observer Program have been difficult to identify, develop, and implement. NMFS recognizes that a leadership role exists for the agency in providing long term changes to the Observer Program and is committed to refocusing effort toward this goal. NMFS recognizes, however, that effective change will require support from the Council and intends to work within the public Council process to develop and ultimately implement necessary changes. Notwithstanding lack of action since repeal of the Research Plan in 1995, we remain optimistic that meaningful changes can and will be pursued over the next 5–year period.

Comment 31: The proposed rule states, "Vessels carrying observers are required under regulations at § 679.50(f)(1)(ii) to have on board a valid commercial fishing vessel safety decal issued by the Coast Guard. However, obtaining this decal through a Coast Guard inspection is a voluntary program and vessels are not prevented from operating without one." This language is confusing since many vessels require 100 percent observer coverage and the general prohibitions of the Magnuson-Stevens Act (MSA) at § 600.725(s) state that vessels may not "fish without an observer when the vessel is required to carry an observer." The proposed rule seems to conflict with the MSA.

Response: NMFS would like to clarify statements made in the preamble to the proposed rule. Vessels carrying observers are required under regulations at § 679.50(f)(1)(ii) to have on board a valid commercial fishing vessel safety decal issued by the Coast Guard. From the perspective of the Coast Guard, this program is voluntary as the Coast Guard does not require commercial fishing vessels to undergo these inspections. NMFS, however, mandates otherwise in regulations that require fishing vessels carrying observers to obtain a Coast Guard inspection in order to be issued a valid commercial fishing vessel safety decal. Thus, while the Coast Guard program is voluntary, obtaining a valid safety decal is mandatory under NMFS regulations for vessels carrying observers. NMFS disagrees that this approach conflicts with the Magnuson-Stevens Act.

Comment 32: While we would prefer that staff be able to verify fishing vessel safety decals, it just is not possible for staff to be in every single port where we deploy observers. If an observer verifies the decal, will that alone meet this NMFS requirement? If our records indicated that an observer verified the decal last week or last month and that it is still current, does that suffice, or does the next observer need to call it in too? Would it be more efficient to have safety decal information provided by the Observer Program and/or the Coast Guard about who has current stickers and/or safety concerns/complaints?

Response: On page 58467 of the proposed rule, NMFS outlined who could verify fishing vessel safety decals to satisfy this requirement. One of the options allows observer provider employees, including observers, to verify the presence of a valid decal and convey that information to the observer provider via phone, fax, or e-mail. As outlined above, this verification must be conveyed to the observer provider prior to the observer(s) embarking. A decal must be verified before every observer or set of observers embarks on a vessel. In addition to decals expiring, they can be revoked by the Coast Guard if safety violations are noted. For this reason, NMFS believes the most efficient way to verify safety decal information is for the observer provider to do it prior to each observer embarking on a vessel.

Comment 33: A fishing vessel safety decal does not ensure a vessel is currently safe. Decals are good for two years! Having a Coast Guard safety decal is not an effective solution to the problem at hand. We feel the regulations should be strengthened on the backside of the issue. What steps does an observer provider take if an observer reports an unsafe vessel? Our policy has always been to support the observer should he or she decide not to board a vessel due to safety concerns.

Response: NMFS agrees that having a valid fishing vessel safety decal does not guarantee a vessel is safe. However, it does mean that the vessel has undergone an inspection by Coast Guard personnel who are specialists in fishing vessel safety. If an observer reports an unsafe vessel to their provider, regulations at § 679.50(i)(2)(x)(I)(*3*)

require the observer provider to report any concerns about vessel safety or marine casualty to the Observer Program within 24 hours. NMFS has a long history of working with the Coast Guard to investigate and correct safety issues. Observer providers and other entities are encouraged to forward specific safety suggestions to the Coast Guard. Also see response to Comment 4.

Comment 34: NMFS should focus on improving the communication between NMFS, providers, USCG, and vessels to create a database of safety issues. NMFS must notify providers if observers or NMFS staff raise safety concerns about a vessel. NMFS should develop training protocols to ensure observers can verify vessel safety. The proposed regulation on verifying fishing vessel safety decals does not adequately address the issue, and it will be difficult to enforce. It seems the main purpose of this regulation is to protect NMFS' liability interests and not the real issue of vessel safety.

Response: NMFS has worked very closely with the Coast Guard, NMFS Enforcement, observer providers, and the fishing industry when vessel safety issues arise. This cooperation will continue in the future. NMFS continues to develop observer safety training and works in cooperation with the Coast Guard to ensure observers are able to identify and verify safety equipment when they board a vessel. Safety issues identified by NMFS staff and observers are documented and passed on to the appropriate authorities for resolution. Specific recommendations on how to improve observer safety are welcome. Also see responses to Comment 4 and Comments 31 - 33.

Comment 35: The regulation requiring mid-cruise data reviews has been debated endlessly, and we agree with the final wording in principle, but we request it be amended to read, "The observer does not at any time during their deployment travel through a location where Observer Program staff are available and able to complete in a timely manner an in-person data review." We are concerned that if NMFS staff are not able to complete mid-cruises in a timely manner (e.g., due to office closures, observers arriving in Anchorage after business hours, etc.) that observers, vessels, and observer providers will be forced to wait. We would also like NMFS to clarify that the observer providers will not have to change their normal logistics if doing so would adversely affect the deployment of observers. For example, there will be situations where an observer will fly through Anchorage but only to make a connecting flight to another port.

Response: As worded, this regulation states that NMFS staff must be available for an observer to complete an in-person mid-deployment data review. If an observer will be traveling on a weekend, holiday, or after business hours through a location where the Observer Program has staff, NMFS has committed to making staff available for in-person mid-deployment data reviews. NMFS staff expect observer providers to advise them in advance in these situations. If after such notification NMFS staff are not available, the observer provider would be required to ensure their observer complete a phone or fax mid-deployment data review as described in the observer manual. In certain situations it may be necessary for NMFS to affect normal deployment logistics if an observer's errors were so egregious that the agency felt they could only be dealt with in-person. NMFS does not believe this will happen very often, but affecting logistics for an in-person data review would be in the public's interest if it does.

Comment 36: In the preamble, NMFS states, "The duties of an observer aboard a vessel delivering to a shoreside or floating processor are complete only when the vessel has finished offloading its catch and the observer has sampled that catch as it flows past the observer on a conveyor, typically as the fish enters the plant." This is true of pollock but not of cod, rockfish, flatfish, etc. In its current form, this topic has not been addressed and will place unnecessary financial burden on both observer providers and industry.

Response: The preamble language of the proposed rule was too vague and did not adequately describe the new regulation. However, the regulatory text was correct. At § 679.50(i)(2)(vii)(D) the regulations state, "An observer provider must not: (D) Move an observer from a vessel or floating or shoreside processor before that observer has completed his or her sampling or data transmission duties." NMFS asserts that in the pollock fishery an observer samples the catch typically as it enters the plant, but observers delivering from other fisheries typically do not have duties at the plant other than transmitting their data to NMFS. The regulation clearly describes that observers must be allowed to sample and transmit their data, neither of which will place an unnecessary burden on observer providers or industry.

Comment 37: There was no discussion of a NMFS-provided pamphlet to be distributed to physicians by the observer provider at any time during the Council process. We have not had time to review this regulation with the Council or NMFS and are uncertain what function it would serve. We feel it would duplicate unnecessarily information that is already provided to observers, observer providers, and physicians. We request this regulation be removed for proper review.

Response: NMFS did not specifically discuss the distribution of the pamphlet to physicians with the Council. NMFS did, however, discuss the necessity for this pamphlet to be distributed to potential observers. The purpose of the pamphlet, in part, is to provide consistent, factual information about observing to observer candidates so that they can make an informed decision as to whether observing is for them. NMFS feels that physicians, who judge an observer candidate's fitness for this job, should have that same information. Regulations at § 679.50(i)(2)(x)(C) require that, "...prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work..." NMFS feels distribution of the NMFS-provided pamphlet to physicians by observer providers is the most effective way to ensure they make informed decisions on observer fitness. See also response to Comment 16.

Comment 38: Within the proposed regulation at § 679.50(j)(2)(ii)(D)(*3*) we are unclear what "substantially affected" means in this context. For example, if an observer has a boyfriend/girlfriend that works on a vessel, can the observer be deployed to a different vessel within the same fishing company? Please clarify and provide examples.

Response: If the performance or non-performance of an observer's duties would benefit or harm the value or substance of vessel or processing plant personnel or the profits such individuals receive, it would meet the definition of "substantially affected." NMFS encourages observer providers to seek guidance from NMFS for unique situations to better ensure that conflict of interest standards are not violated.

Comment 39: With respect to observer provider responsibilities in the proposed rule, item 2 under § 679.50(i)(2)(i)(C) requires the observer's signed contract to contain, as a condition of continued employment, a provision that catch messages be submitted to the Observer Program at least every 7 days. If an observer has been deployed to shoreside fisheries and is not able to submit their catch message prior to their next assignment (due to waiting for a fish ticket, paperwork not complete, no access to communications equipment at the plant,

etc.) and the observer is deployed to a vessel that will not return to port within seven days so the catch message may be submitted, is the observer in breach of contract? We request NMFS clarify what "unless otherwise specified by the Observer Program" means as it relates to this proposed wording.

Response: NMFS has specified that catch messages be received at least every 7 days because that schedule typically satisfies the quota tracking needs. In certain situations (e.g., a fishery is about to close), NMFS requests that observers submit their catch messages twice per week or daily to allow for a more exact estimation of when fishing needs to cease before the quota is exceeded. The wording, "unless otherwise specified by the Observer Program" is necessary to accommodate more frequent data needs in these situations. As outlined in the comment, situations exist when an observer cannot submit their catch message at least every 7 days, and NMFS fully understands this. When catch messages are not being received at least every 7 days, NMFS will examine the situation and make a determination as to whether the observer is being negligent in the performance of their duties and therefore not fulfilling an element of their contract. This information will be provided to the observer provider.

Comment 40: NMFS would like to require that observer providers submit in a weekly deployment/logistics report the location of unassigned observers. This is another new requirement added with no previous discussion. We would like NMFS to provide information as to why this is important and how it will be used. An unassigned observer's location may change several times before the next weekly report is submitted. Why does NMFS need to know where these individuals are?

Response: Following the Council process and during the development of these regulations, NMFS recognized that groundfish observers work as observers in other fisheries and sometimes have breaks in the middle of a cruise. NMFS also recognized that it did not always know where these observers were. At times NMFS needs to locate these individuals to get data that has not been received, correct data that may be erroneous, or put them in contact with NMFS Enforcement for a violation they witnessed. While NMFS understands than an observer's location may be in flux, the agency feels it is important to know where observers with an open cruise are or at least have an idea of where they are throughout their cruise so they may be contacted.

Changes From the Proposed rule to the Final Rule

Several changes from the proposed rule to the final rule are implemented under this action. These changes and the reasons for them are listed below.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§679.50(e)(3) Vessel, shoreside processor, and stationary floating processor owners and operators may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE, BIN C15700 Building 4, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066.	§679.50(e)(3) ..... Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, P.O. Box 15700, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066..	Changed as a response to Comment 11 and an update to the mailing address of the NMFS Observer program
§679.50(e)(1), (h), and (h)(1)-(2)	Replace the term "carry" with "use"	The proposed rule terminology referring to vessels and shoreside processors "carrying" observers or NMFS staff or individuals authorized by NMFS, is not technically correct with respect to shoreside processors. Thus, replacing word "used" with "carry" in the regulatory text will more uniformly apply to both vessels and shoreside processors.
§679.50(h)(1) and (2)	Add the phrase "or for other conservation and management purposes" to the end of each paragraph.	This addition is necessary to acknowledge that the possibility exists that the deployment of NMFS staff or an individual authorized by NMFS may result in deployments to vessels or processors beyond those currently required at §679.50(c) and (d), or §679.7(f)(4). Vessels and processors currently not required to carry observers under §679.50(c) and (d) or §679.7(f)(4) would not be subject to deployment of NMFS staff or other authorized individuals for purposes of paragraph (h) of this section in this final rule.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§679.50(i)(1)(v) (v) Agency determination on an application--(A) Approval of an application. If an IAD is made to approve the application, the observer provider permit application review board will issue an observer provider permit to the applicant upon determination by the review board that the application is complete and all evaluation criteria are met.	§679.50(i)(1)(v) ..... (v) Agency determination on an application--(A) Approval of an application. Upon determination by the review board that the application is complete and all evaluation criteria are met, an IAD is made to approve the application and the observer provider permit application review board will issue an observer provider permit to the applicant..	This revision simply reflects a technical edit to clarify regulatory text.
§679.50(i)(2)(i)(B)(*2*) Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section.	§679.50(i)(2)(i)(B)(*2*) ..... Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section or at the Observer Program's web site at *http://www.afsc.noaa.gov/refm/observers/default.htm*..	Changed as a response to Comment 16 to clarify that Observer Program documents and policy guidance also can be obtained from the Observer Program website.
§679.50(i)(2)(i)(C) A written contract must exist between the observer provider and each observer employed by the observer provider. The contract must be signed by the observer and observer provider prior to the observer's deployment and must contain the following provisions for continued employment:	§679.50(i)(2)(i)(C) ..... For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that must contains the following provisions for continued employment:.	Changed as a response to Comment 24
§679.50(i)(2)(iii)(B) Who have informed the provider at the time of embarkation that he or she is not experiencing any new physical ailments or injury since submission of the physician's statement as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing their assigned duties; and	§679.50(i)(2)(iii)(B) ..... Who have not informed the provider prior to at the time of embarkation that he or she is not experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (i)(2)(ix)(C) of this section, that would prevent him or her from performing his or her assigned duties; and.	Changed as a response to Comment 28. A similar provision also was added to the list of responsibilities of observer providers at §679.50(i)(2)(i)(C)(*4*) that requires providers to include a provision in their contract or contract addendum with observers that observers inform them of any newly developed mental or physical aliment prior to embarkation.
§679.50(i)(2)(x)(E) Observer debriefing registration. The observer provider must contact the Observer Program within 5 days after the completion of an observer's deployment	§679.50(i)(2)(x)(E) ..... Observer debriefing registration. The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment.	Changed as a response to Comment 15.
§679.50(i)(2)(x)(G) Copies of contracts with observer providers and observers.	§679.50 (i) (2) (x) (G) ..... Copies of observer provider contracts with entities requiring observer services and with observers..	The revision to the heading of this paragraph (G) is edited to more accurately reflect the content of the regulatory text in this paragraph
§679.50(i)(2)(x)(H) Change in observer provider management and contact information. An observer provider must submit notification of any change to the information submitted on the provider's permit application under paragraph (i)(1)(ii)(A) or (B) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section.	§679.50(i)(2)(x)(H) ..... Change in observer provider management and contact information. Except for changes in ownership addressed under paragraph (i)(1)(vi) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraph (i)(1)(ii)(A) through (D) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section. Any information submitted under (i)(1)(ii)(C) or (i)(1)(ii)(D) of this section will be subject to NMFS review and determinations under (i)(1)(iii) through (viii) of this section..	Changes in observer provider management information, including changes to board members or corporate officers who provide input into company decisions and operating protocol, must be assessed relative to potential conflict of interest and culpability as set forth under (i)(1)(ii)(C) and (D). This is necessary for the same reasons this information is important in the original observer provider application process.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§ 679.50(i)(3)(iii) Limitations on conflict of interest. Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.	§ 679.50(i)(3)(iii) ..... Limitations on conflict of interest. Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers..	Many activities are regulated by NMFS, but only regulated fishing and fish processing activities are related to the conflict of interest issue being considered. Thus, the intended effect of this revision to the proposed rule is to narrow the scope of activities that could lead to conflict of interest concerns.
(j)(1)(iii)(A) Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had his or her certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002.	(j)(1)(iii)(A) ..... Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had his or her certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, or has not performed sampling duties, or has not been debriefed successfully in the preceding 18 months..	This change is necessary to limit automatic re-certification to only those prior observers who were deployed within the 18 months preceding their first deployment after December 31, 2002. An 18–month time frame is reasonable, given the changes in fisheries and fishery regulations that typically occur over this time period that could affect the applicability of certification training received prior to 2003.
(j)(1)(iii)(B) (*4*) (*ii*) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions, or; whether the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section.	(j)(1)(iii)(B)(4)(ii) ..... If a candidate fails training, he or she will be verbally notified of the unsatisfactory status of his or her training in writing on or before the last day of training. Within 10 business days of the verbal notification, the observer candidate will be notified in writing. The written notification will indicate why the candidate failed the training; whether the candidate can retake the training, and whether the candidate may or may not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section..	Change in response to Comment 13 and to provide a more realistic time frame for written notification.
§ 679.50 (j) (1) (v) (A) Certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement is required* * *	§ 679.50(j)(1)(v)(A)Certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification this endorsement. A certification training endorsement is required ***.	Technical edit to clarify the subject of the regulatory text.

PROPOSED RULE CITATION AND TEXT	FINAL RULE CITATION AND TEXT	REASONS FOR CHANGE
§ 679.50 (j) (3) (iii) Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.	§ 679.50(j)(3)(iii) ..... Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or those cases in which public health, interest, or safety require such actions. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action..	NMFS is revising the proposed rule regulatory text to more accurately reflect the specific legal process for suspension and decertification of certified observers at time of issuance of an IAD under 5 U.S.C. 558.

Classification

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act and which have been approved by OMB under OMB control number 0648–0318. These requirements and their associated burden estimates per response are: 60 hours for application for a new observer provider permit; 15 minutes for observer candidates to provide copies of college transcripts and disclosure statements to their observer provider; 15 minutes for observer providers to submit to NMFS copies of observer candidates' college transcripts and disclosure statements; 5 minutes for notice of observer physical examination; 2 hours for observer time for a physical examination; 7 minutes for notice of projected observer assignment; 7 minutes for submission of information to register observers for different types of briefing sessions; 12 minutes for certificate for insurance; 15 minutes for copies of different types of contracts; 7 minutes for weekly deployment/logistics report; 7 minutes for notice of observer debriefing registration; 2 hours for report of observer harassment, observer safety concerns, or observer performance problems; 30 minutes for Industry Request for Assistance in Improving Observer Data Quality Issues; 15 minutes for the addition of permit information updates by observer providers to keep permit information current; 40 hours for the observer provider appeals process if a provider disagrees with agency action to deny issuance of a permit; and 20 hours for an observer candidate's appeal if denied certification.

The response times 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any 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.

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

NMFS prepared a FRFA, which describes the impact this final rule may have on small entities. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). No comments on the IRFA were received during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 58452, September 16, 2002).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 27, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679- FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition for "Observer Contractor" is removed; the definition for "Observer" is revised, and the definition of "Observer Provider" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Observer means any

(1) Individual who is awarded NMFS observer certification to carry out observer responsibilities under this part, and who is employed by an observer provider for the purposes of providing observer services to vessels, shoreside processors or stationary floating processors under this part; or

(2) NMFS staff or other individual authorized by NMFS deployed, at the

direction of the Regional Administrator, aboard vessels or at shoreside processors or stationary floating processors for purposes of providing observer services as required for vessels, shoreside processors or stationary floating processors under § 679.50(c) or (d), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

* * * * *

Observer Provider means any person or commercial enterprise that is granted a permit by NMFS to provide observer services to vessels, shoreside processors, or stationary floating processors for observer coverage credit as required in subpart E of this part.

* * * * *

3. In § 679.7, paragraph (a)(3) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by NMFS staff or other individuals authorized by NMFS under § 679.50(e), provide observer services to the North Pacific Groundfish fisheries without an observer provider permit issued under § 679.50(i)(1).

* * * * *

4. In § 679.43, paragraph (e) is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(e) *Address of record.* General - NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS concerning the application. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

* * * * *

5. In § 679.50 make the following amendments:

a. Revise the references "(h)(1)(i)(D) and (E)" to read "(j)(1)(v)(D) and (E)" in paragraphs (c)(4)(i), (c)(4)(ii), and (c)(4)(vi)(B) and (c)(4)(vi)(C);

b. Revise the reference "(h)(1)(i)(D)" to read "(j)(1)(v)(D)" in paragraphs (c)(4)(iv), (c)(4)(v)(A), and (d)(4)(i);

c. Revise the reference "(h)(1)(i)(E)" to read "(j)(1)(v)(E)" in paragraphs (c)(4)(iii), (c)(4)(v)(B), and (c)(4)(vi)(A).

d. Revise the reference "(h)(1)(i)(E)(*1*)" to read "(j)(1)(v)(E)" in paragraph (c)(6)(ii).

e. Remove paragraph (j); redesignate paragraphs (e) through (i) as (f) through (j), respectively; add a new paragraph (e); and revise the section heading and the newly redesignated paragraphs (h), (i), and (j) to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(e) *NMFS staff observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraph (c) or (d) of this section or under § 679.7(f)(4) must use, upon written notification by the agency, NMFS staff or an individual authorized by NMFS for purposes of coverage requirements as specified in paragraphs (c) and (d) of this section or for other conservation and management purposes.

(2) Prior to deployment of NMFS staff or individuals authorized by NMFS, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, P.O. Box 15700, Seattle, Washington 98115–0070 or transmitted by facsimile to 206–526–4066.

* * * * *

(h) *Procurement of observer services.* Owners of vessels, shoreside processors, or stationary floating processors required to use observers under paragraphs (c) and (d) of this section must arrange for observer services from a permitted observer provider, except that:

(1) Owners of vessels, shoreside processors, or stationary floating processors are required to procure observer services directly from NMFS when the agency has determined and notified them under paragraph (e) of this section that their vessel, shoreside processor, or stationary floating processor will use NMFS staff or an individual authorized by NMFS in lieu of an observer provided through a permitted observer provider to satisfy requirements under paragraphs (c) and (d) of this section or for other conservation and management purposes.

(2) Owners of vessels, shoreside processors, or stationary floating processors are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and notified them under paragraph (e) of this section, that their vessel, shoreside processor, or stationary floating processor will use NMFS staff or individuals authorized by NMFS, in addition to an observer provided through an observer provider to satisfy requirements under paragraphs (c) and (d) of this section or for other conservation and management purposes.

(i) *Observer provider permitting and responsibilities*--(1) *Observer provider permits*--(i) *General.* (A) Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(B) *New observer providers.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section.

(C) *Existing observer providers as of 2002.* NMFS-certified providers who deployed observers under the North Pacific Groundfish Observer Program in 2002 are exempt from the requirement to apply for a permit and will be issued an observer provider permit, except that a change in ownership of an existing observer provider after January 1, 2003, requires a new permit application under paragraph (i)(1)(vi) of this section if the change involves a new person. Such observer providers must submit to the Observer Program Office within 30 days of receiving the observer provider permit issued under this paragraph any changes or corrections regarding information required under paragraphs (i)(1)(ii)(A) and (i)(1)(ii)(B) of this section.

(ii) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains the following:

(A) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a

corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(B) *Contact information*--(*1*) *Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(*2*) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(*3*) *Authorized agent.* For observer providers with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(C) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they are free from a conflict of interest as described under paragraph (i)(3) of this section.

(D) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(E) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(F) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (i)(2) of this section, and the arrangements to be used.

(iii) *Application evaluation.* (A) The Regional Administrator will establish an observer provider permit application review board to review and evaluate an application submitted under paragraph (i)(1) of this section. The board will be comprised of NMFS staff. Issuance of a permit will be based on the completeness of the applicant's application, as well as the following evaluation criteria for each owner, or owners, board members, and officers if a corporation:

(*1*) Absence of conflict of interest as defined under paragraph (i)(3) of this section;

(*2*) Absence of criminal convictions related to:

(*i*) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(*ii*) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(*3*) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(*4*) Absence of any history of decertification as either an observer or observer provider;

(B) The evaluation by the review board will provide a basis for the board's initial agency determination (IAD) on whether the application is complete and all evaluation criteria are met.

(iv) *Evidentiary period.* The observer provider permitting review board will specify, by letter via certified return-receipt mail, a 60–day evidentiary period during which a candidate may provide additional information or evidence to support the application, if the application is found to be deficient.

(v) *Agency determination on an application*--(A) *Approval of an application.* Upon determination by the review board that the application is complete and all evaluation criteria are met, an IAD is made to approve the application and the observer provider permit application review board will issue an observer provider permit to the applicant.

(B) *Denial of an application.* An application will be denied if the observer provider permit application review board determines that the information provided in the application was not complete or all the evaluation criteria were not met. The observer provider permit application review board will prepare and send a written IAD to the applicant upon evaluation of a completed application. The IAD will identify any deficiencies in the application or any information submitted in support of the application. An applicant who receives an IAD that denies his or her application may appeal under § 679.43. An applicant who appeals the IAD will not be issued an interim observer provider permit and will not receive a permit unless the final resolution of that appeal is in favor of the applicant.

(vi) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph.

(vii) *Expiration of Permit.* (A) The observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish industry.

(B) The Regional Administrator will provide a written determination to an observer provider if NMFS deployment records indicate that the permit has expired. An observer provider who receives a written IAD of permit expiration may appeal under § 679.43. A permit holder who appeals the IAD will be issued an extension of the expiration date of the permit until after the final resolution of that appeal.

(viii) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(*2*) *Responsibilities of observer providers.* Observer providers must:

(i) *Provide qualified candidates to serve as observers.* (A) To be qualified, a candidate must have:

(*1*) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(*2*) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(*3*) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(*4*) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(B) Prior to hiring an observer candidate, the observer provider must:

(*1*) Provide to the candidate copies of NMFS-provided pamphlets and other literature describing observer duties; and

(*2*) Provide to the candidate a copy of the Observer Program's drug and alcohol policy. Observer job pamphlets and the drug and alcohol policy are available from the Observer Program Office at the address listed in paragraph (e)(3) of this section or at the Observer Program's web site at *http://www.afsc.noaa.gov/refm/observers/default.htm.*

(C) For each observer employed by an observer provider, either a written

contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that contains the following provisions for continued employment:

(*1*) That the observer comply with the Observer Program's drug and alcohol policy;

(*2*) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(*3*) That the observer completes in-person mid-deployment data reviews, unless:

(*i*) The observer is specifically exempted by the Observer Program, or

(*ii*) The observer does not at any time during their deployment travel through a location where Observer Program staff are available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(*4*) The observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing their assigned duties;

(ii) *Ensure that observers complete duties in a timely manner.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(A) Once an observer is scheduled for a final deployment debriefing under paragraph (i)(2)(ix)(E) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(B) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties which are not part of NMFS groundfish observer requirements;

(C) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(D) Return all sampling and safety gear to the Observer Program Office.

(iii) *Observer vessel and processor assignment.* An observer provider must assign to vessels or shoreside or floating processors only observers:

(A) With valid North Pacific groundfish observer certifications and endorsements to provide observer services;

(B) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (i)(2)(ix)(C) of this section that would prevent him or her from performing his or her assigned duties; and

(C) Who have successfully completed all NMFS required training and briefing before deployment.

(iv) *Response to industry requests for observers.* An observer provider must provide an observer for deployment as requested by vessels and processors to fulfill vessel and processor requirements for observer coverage under sections (c) and (d) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

(v) *Observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vi) *Observer deployment logistics.* An observer provider must provide all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities.

(vii) *Observer deployment limitations.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(A) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12–month period;

(B) Deploy an observer for more than 90 days in a single deployment;

(C) Include in a single deployment of an observer assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(D) Move an observer from a vessel or floating or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(viii) *Vessel safety decal verification.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (g)(1)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) an employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) the observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(ix) *Communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed at shoreside or floating processor facilities, in transit, or in port awaiting vessel or processor reassignment.

(x) *Communications with the Observer Program Office.* An observer provider must provide all of the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials. This information must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(*1*) Observer training registration, including:

(*i*) Date of requested training;

(*ii*) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle and last names), date of birth, and sex;

(*iii*) A copy of each candidate's academic transcripts and resume; and

(*iv*) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions.

(*2*) Observer briefing registration. including:

(*i*) Date and type of requested briefing session and briefing location; and

(*ii*) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(B) *Projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, shoreside processor, or stationary floating

processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(C) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared pamphlet, provided to the candidate by the observer provider as specified in paragraph (i)(2)(i)(B)(*1*) of this section. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(D) *Observer deployment/logistics reports.* A deployment/logistics report must be submitted by Wednesday, 4:30 pm, Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. If the observer is currently not assigned to a vessel, shoreside processor, or stationary floating processor, the observer's location must be included in the report.

(E) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(F) *Certificates of Insurance.* Copies of "certificates of insurance", that name the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(*1*) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum).

(*2*) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum).

(*3*) States Worker's Compensation as required.

(*4*) Commercial General Liability.

(G) *Copies of observer provider contracts with entities requiring observer services and with observers.* Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraphs (c) and (d) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in paragraph (e)(3) of this section. Signed and valid contracts include the contracts an observer provider has with:

(*1*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (c)(1)(iv) of this section;

(*2*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (c)(1)(v), and (c)(1)(vii) of this section;

(*3*) Shoreside processors or stationary floating processors required to have observer coverage as specified at paragraph (d)(1) of this section;

(*4*) Shoreside processors or stationary floating processors required to have observer coverage as specified at paragraph (d)(2) of this section; and

(*5*) Observers.

(H) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (i)(1)(vi) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (i)(1)(ii)(A) through (D) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph (e)(3) of this section. Any information submitted under (i)(1)(ii)(C) or (i)(1)(ii)(D) of this section will be subject to NMFS review and determinations under (i)(1)(iii) through (viii) of this section.

(I) Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(*1*) Any information regarding possible observer harassment;

(*2*) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t) and (u);

(*3*) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7), or processor safety;

(*4*) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(*5*) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described at (h)(2)(i) or (h)(2)(ii) of this section.

(xi) *Replacement of lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(3) *Limitations on conflict of interest.* Observer providers:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed under an FMP for the waters off the coast of Alaska, including, but not limited to,

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the

catching, taking, harvesting or processing of fish,

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska, or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska.

(ii) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or floating stationary processors other than when an observer will be deployed.

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(j) *Observer certification and responsibilities*--(1) *Observer Certification*--(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (j)(1)(v) of this section.

(ii) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.* (A) Existing Observers. Observers who completed sampling activities between June 30, 2001, and December 31, 2002, and have not had their certification revoked during or after that time period, will be considered to have met certification requirements under this section. These observers will be issued a new certification prior to their first deployment after December 31, 2002, unless NMFS determines that the observer has not been deployed, or has not performed sampling duties, or has not been debriefed successfully in the preceding 18 months.

(B) *New Observers.* NMFS will certify individuals who:

(*1*) Are employed by a permitted observer provider company at the time of the issuance of the certification;

(*2*) Have provided, through their observer provider:

(*i*) Information identified by NMFS at paragraphs (i)(2)(x)(A)(*1*)(*iii*) and (*iv*) of this section and in writing from the Observer Program; and

(*ii*) Information identified by NMFS at paragraph (i)(2)(x)(C) of this section regarding the observer candidate's health and physical fitness for the job;

(*3*) Meet all education and health standards as specified in paragraphs (i)(2)(i)(A) and (i)(2)(x)(C) of this section, respectively;

(*4*) Have successfully completed a NMFS-approved training as prescribed by the Observer Program.

(*i*) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(*ii*) If a candidate fails training, he or she will be verbally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the verbal notification, the observer candidate will be notified in writing. The written notification will indicate why the candidate failed the training; whether the candidate can retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (j)(1)(iv)(A) of this section.

(*5*) Have not been decertified under paragraph (j)(3) of this section.

(iv) *Agency determinations on observer certification*--(A) *Denial of a certification.* The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (j)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to § 679.43 of this part. A candidate who appeals the IAD will not be issued an interim observer certification and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (j)(1)(iii) of this section.

(v) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(A) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. Renewal can be obtained by the observer successfully completing certification training once more. Observers will be notified of any changes to the endorsement expiration period prior to that change taking place. Observers who have been issued certificates under paragraph (j)(1)(iii)(A) of this section will be issued a new certification training endorsement upon issuance of their observer certification prior to their first deployment after December 31, 2002.

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified

in writing by the Observer Program during the observer's most recent debriefing.

(D) *Level 2 endorsements.* A certified observer may obtain a Level 2 endorsement to their certification. A Level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in the CDQ or AFA fisheries as prescribed in paragraphs (c) and (d) of this section. A Level 2 endorsement to an observer's certification may be obtained by meeting the following requirements:

(*1*) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection;

(*2*) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(*3*) Successfully complete a NMFS-approved Level 2 observer training as prescribed by the Observer Program; and

(*4*) Comply with all of the other requirements of this section.

(E) An observer who has achieved a Level 2 endorsement to their observer certification as specified in paragraph (j)(1)(v) (D) of this section may additionally receive a Level 2 "lead" observer endorsement by meeting the following requirements:

(*1*) A Level 2 "lead" observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(*2*) A Level 2 "lead" observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(*3*) A Level 2 "lead" observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(vi) *Expiration of a certification.* The observer certification will expire on December 31, 2007.

(2) *Standards of observer conduct*--(i) *Limitations on conflict of interest.* (A) Observers:

(*1*) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, including, but not limited to,

(*i*) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(*ii*) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska, or

(*iii*) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska.

(*2*) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(*3*) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(*4*) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(ii) *Standards of Behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(*1*) Violating the drug and alcohol policy established by and available from the Observer Program;

(*2*) Engaging in the use, possession, or distribution of illegal drugs; or

(*3*) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(3) *Suspension and Decertification*--(i) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(ii) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(A) When it is alleged that the observer has committed any acts or omissions of any of the following:

(*1*) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(*2*) Failed to abide by the standards of conduct for observers as prescribed under paragraph (j)(2) of this section;

(B) Upon conviction of a crime or upon entry of a civil judgement for:

(*1*) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(*2*) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(*3*) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (j)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific

reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or those cases in which public health, interest, or safety require such actions. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

* * * * *

[FR Doc. 02–30694 Filed 12–2–02; 4:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 235
Friday, December 6, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1136]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; official staff commentary.

SUMMARY: This proposal would revise the official staff commentary to Regulation Z, which implements the Truth in Lending Act. The commentary interprets the requirements of Regulation Z. The proposed update would clarify the status of certain credit card-related fees. It also discusses the rules for replacing an accepted credit card with one or more cards; the treatment of private mortgage insurance payments in disclosing the payment schedule; and the selection of Treasury security yields for the purpose of determining whether a mortgage loan is covered by provisions in Regulation Z that implement the Home Ownership and Equity Protection Act.

DATES: Comments must be received on or before January 27, 2003.

ADDRESSES: Comments should refer to Docket No. R–1136 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may also be delivered, between 8:45 a.m. and 5:15 p.m., to the Board's mail facility in the West Courtyard, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy or Dan S. Sokolov, Attorneys, or Daniel G. Lonergan, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board has delegated to officials in the Board's Division of Consumer and Community Affairs authority to issue official staff interpretations of Regulation Z. These interpretations, except in unusual circumstances, are incorporated in the official staff commentary (12 CFR part 226 (Supp. I)), which provides guidance to creditors in applying the regulation to specific transactions. Good faith compliance with the commentary affords creditors protection from liability under section 130(f) of TILA. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

Comments on all aspects of the proposed revision to the official staff commentary are invited. It is expected that final revisions to the commentary will be adopted in March 2003. To the extent the revisions impose new requirements on creditors, the effective date for mandatory compliance would be October 1, 2003. See TILA section 105(d).

II. Proposed Revisions

Subpart B—Open-End Credit

Section 226.6—Initial Disclosure Statement

6(b) Other Charges

Representatives of the credit card industry have requested official guidance on the status under Regulation Z of two fees charged to consumers in connection with open-end credit plans—a fee imposed when a consumer requests that a particular payment on the credit plan be expedited and a fee imposed when a consumer requests expedited mailing of a credit card. Because the proper characterization of these fees under TILA previously has been unclear, the proposal would revise comment 6(b) to provide guidance on how these fees should be treated for purposes of Regulation Z. For purposes of the proposal, "expedited" refers to any form of payment or delivery other than the standard mail service generally made available to the creditor's customers.

Under Regulation Z, creditors must disclose fees that are "finance charges," which are defined as "charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." For open-end credit plans, fees that are not finance charges must be disclosed as "other charges" if they are significant fees related to the plan. Regulation Z does not require disclosure of charges that are not considered finance charges or "other charges."

Card issuers increasingly have been making expedited payment services available to consumers. The expedited payment service provides consumers an alternative to mailing a payment that might not reach the card issuer by the due date. To avoid being assessed a late payment fee, the consumer requests expedited payment service for a lesser charge. The service is typically an electronic funds transfer or a draft on the customer's checking account.

A fee charged for expediting a consumer's payment would not appear to be incidental to the extension of credit if this payment method is not established as the regular payment method for the account. Accordingly, the proposal indicates that an expedited payment charge under these

circumstances would not be a finance charge.

Comment 6(b)–1 provides examples of "other charges" that must be disclosed to consumers under Regulation Z. The proposal would revise comment 6(b)–1 to indicate that a card issuer's fee for expediting a particular payment should be disclosed as an "other charge" provided that the method of payment was not authorized in advance as the regular payment method for the account. The charge appears to be a significant charge related to the credit plan because the fee is for a service provided in connection with a consumer's payment on the account and because typically the fee is paid to enable the consumer to avoid a late payment fee that is also considered to be an "other charge" for purposes of Regulation Z. Moreover, both expedited payment fees and late payment fees might be imposed on many consumers participating in a credit card plan and, for some consumers, might be regularly occurring charges.

The proposal would also amend comment 6(b)–2, which provides examples of charges that are not "other charges" under Regulation Z, to indicate that a card issuer's fee for expediting delivery of a credit card is not required to be disclosed either as a finance charge or as an "other charge" under the regulation. An expedited delivery fee does not appear to be a finance charge because it would not be incidental to the extension of credit where the card is also available to consumers by standard mail service without paying the fee.

Moreover, the charge would not appear to be an "other charge" under Regulation Z. The service does not appear to be a significant part of the credit plan because the card is also available without paying the fee and because the service is requested by consumers only occasionally, such as when a consumer seeks to replace a lost or stolen credit card and requests expedited mailing.

Staff notes that where a creditor merely passes through a third-party delivery charge, such as an express courier fee, and the creditor does not require the use of the service or retain any portion of the fee, the fee is not a finance charge or "other charge" that must be disclosed under Regulation Z.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

Comment 9(c)(2)–1 would be revised to indicate that a change-in-terms notice is not required when the change involves the fee charged for expediting a consumer's payment. Card issuers generally inform consumers of the amount of the specific charge at the time the consumer agrees to the expedited service. As noted above, consumers typically request the service and pay the expedited payment fee to avoid a late fee. Accordingly, the proposed comment would treat expedited payment fees that are disclosed as "other charges," consistent with the treatment of fees for unanticipated late payment, which also do not require a change-in-terms notice.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Section 132 of TILA, which is implemented by § 226.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to requests or applications for cards. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. Existing comment 12(a)(2)–5, the "one-for-one rule," interprets these statutory and regulatory provisions by providing that, in general, a creditor may not issue more than one credit card as a renewal of or substitute for an accepted card (as that term is defined under Regulation Z). The existing staff commentary, however, does not construe Section 132 as requiring one-for-one replacement in all circumstances: existing comment 12(a)(2)–6 provides that an accepted credit/debit card may be replaced by a credit card, and a second card with only debit functions (with or without overdraft capability), since debit cards may be issued on an unsolicited basis under the Electronic Fund Transfer Act and the Board's Regulation E.

Advances in the technology used to send transaction information have allowed card issuers to issue credit cards in different sizes and formats. These changes may generally enhance consumer convenience. A merchant's equipment, however, may determine whether a consumer can use a particular credit card. Certain cards that are reduced in size can be used only if they are swiped through a card reader, while some merchants and automated teller machines use equipment that requires insertion of a "full-size" credit card. Accordingly, some card issuers have requested guidance on the issuance of cards using new technologies, which are intended to supplement but not necessarily replace a cardholder's existing card.

To address these developments, comment 12(a)(2)–6 would be revised consistent with the statute and legislative purpose, to indicate that card issuers may replace an accepted card with more than one renewal or substitute card on the same account where the consumer's total liability for unauthorized use with respect to the account does not increase. In addition, any replacement cards must access only the account of the accepted card and all cards issued under that account must be governed by the same terms and conditions.

Section 132 was one of several credit card provisions added to TILA in 1970, in response to the then-existing practice of mailing unsolicited credit cards to consumers. Proponents of these provisions asserted that unsolicited credit card mailings encouraged some consumers to spend beyond their means, were inconvenient to dispose of, were too easily stolen in the mails, and were a source of anxiety for consumers worried about theft and their own personal liability for unauthorized use. The legislative history also reflects concern about the resulting inconvenience to consumers of refuting unwarranted claims of liability.

Under section 133 of TILA, consumers have no liability for unauthorized use of a credit card unless they have accepted the card. A credit card issued as a renewal or substitution is not deemed to be accepted until it is received by the cardholder. See 12 CFR 226.12(a), footnote 21. To avoid monetary losses from the theft of credit cards sent though the mail, card issuers generally send cards that are not activated and employ security procedures requiring the consumer to verify receipt of the card. These industry practices should be as effective when replacing an accepted card with one or more renewal or substitute cards.

The proposed commentary revision is limited to interpreting the provision in section 132 of TILA that allows an unrequested card to be sent as a renewal of or substitution for an accepted card. Comment is also solicited on whether it would be appropriate to apply this view to additional cards issued for an existing account on the conditions specified in the proposal even when there is no renewal of or substitution for the cardholder's existing card.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(g) Payment Schedule

The disclosures for closed-end loans must include the number, amounts, and timing of payments scheduled to repay

the obligation. Premiums paid for insurance that protects the creditor against the consumer's default or other credit loss (sometimes referred to as private mortgage insurance) are finance charges that must be included in the payment schedule. Under the Homeowners Protection Act of 1998, such insurance generally must terminate before the term of the loan expires, and the payment schedule should reflect this fact. Comment 18(g)–5 would be revised to provide additional guidance on how mortgage insurance premiums should be disclosed on the payment schedule when some premiums are collected in advance and escrowed at the time the loan is closed. The proposed comment provides an example to facilitate compliance.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

A technical amendment to comment 19(b)(1)–2 is proposed to change the citation to comment 19(b)–5, as amended (65 FR 17129, March 31, 2000). No substantive change is intended.

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

Section 226.32 implements the Home Ownership and Equity Protection Act of 1994 (HOEPA), which is part of the Truth in Lending Act. HOEPA requires additional disclosures and provides substantive protections for certain home-secured loans carrying rates or fees above a specified amount. HOEPA's rate-based trigger covers mortgage loans where the annual percentage rate (APR) on the loan exceeds the yield on Treasury securities with a comparable maturity by a specified number of percentage points (8 for first-lien loans, 10 for subordinate-lien loans). For purposes of determining coverage under HOEPA, the loan's APR is compared with the yield on Treasury securities as of the 15th day of the month immediately preceding the month of application. Comment 32(a)(1)(i)–4 would be revised to clarify how creditors should determine the applicable yield on Treasury securities.

Currently, comment 32(a)(1)(i)–4 provides that creditors may use the actual results of Treasury auctions or the Board's "Selected Interest Rates" (statistical release H–15), which is published daily and lists the yield on actively traded issues adjusted to constant maturities. The H–15 is posted on the Board's Internet Web site at: *http://www.federalreserve.gov/releases/h15/update*. The comment would be revised to respond to requests for additional guidance on using the H–15. In addition, for the reasons discussed below, the option to use actual auction results would be eliminated.

H–15 constant maturities. The H–15 lists yields for various instruments. Creditors that rely on the H–15 have asked for additional guidance on the appropriate instrument to use when the loan maturity is comparable with more than one instrument. For example, the H–15 lists yields for 6-month Treasury bills as well as for actively traded Treasury securities adjusted to constant maturities of 6 months. To ease compliance and aid in uniformity, the proposed comment would clarify that creditors should use the Treasury constant maturities listed on the H–15.

Loans with 30-year maturities. Creditors relying on the H–15 have requested guidance on which Treasury security is deemed to have a maturity comparable with 30-year mortgage loans. The Department of the Treasury recently ceased auctioning 30-year securities; the H–15 currently lists a long-term average of the yields for Treasury securities with terms to maturity of 25 years and over, and refers to Treasury's formula for estimating a 30-year yield.

The proposed comment would clarify that for purposes of HOEPA's rate-based trigger, creditors should compare the APR on 30-year loans (and other loans longer than 20 years) with the yield for a 20-year constant maturity, and not with the average long-term yield for maturities over 25 years or an estimate for a 30-year yield.

Actual auction results. The proposal would revise comment 32(a)(1)(i)–4 to eliminate the option to use yields of actual auction results. Currently, the longest maturity for auctioned Treasury securities is 10 years, while home-secured loans commonly have terms of 15 years or more. Further, Treasury auctions are held infrequently. The H–15 is updated daily, which affords a more precise determination of the yield for Treasury securities as of the fifteenth day of the month preceding the application, the date mandated by HOEPA. Requiring all creditors to use the H–15 would ensure uniform application of HOEPA by eliminating the possibility that some creditors could use yields from auctions held several months before the loan application, which might differ significantly from the yields updated daily on the H–15. Many creditors already rely on the H–15 rather than actual auction results, and the revision is not expected to significantly affect creditor practices.

Additional Issue

Some financial institutions offer a service to transaction account customers that is commonly referred to as "bounce protection." Institutions apparently provide "bounce protection" in lieu of establishing an overdraft line of credit for the customer. The service varies among institutions and questions have been raised about whether there are circumstances in which the service might be covered by TILA and Regulation Z.

Although the institution generally reserves the right not to pay particular items, under these bounce protection programs, the institution typically establishes a dollar limit for the account holder, and then routinely pays overdrafts on the account up to that amount without a case-by-case assessment. Account holders whose overdrafts are paid pursuant to this service are assessed a fee; in some cases it may be the same amount that would be charged for an overdraft item that is returned unpaid or that is paid by the institution on an ad hoc basis.

In the case of the traditional overdraft line of credit, a financial institution pays an overdraft on a consumer transaction account and extends consumer credit. An institution is not a "creditor" subject to the disclosure requirements of TILA and Regulation Z, however, if the extension of credit is not subject to a finance charge. *See* § 226.2(a)(17). Under Regulation Z, a finance charge does not include a charge imposed by a financial institution for paying items that overdraw an account unless, as is typically the case for overdraft lines of credit, the payment of such items and the imposition of the charge are previously agreed upon in writing. *See* § 226.4(c)(3).

Fees imposed in connection with "bounce protection" services may or may not meet the definition of a finance charge. *See* § 226.4. Information and comment are solicited on how "bounce protection" services are designed and operated and how these services should be treated for purposes of TILA in order to assist the Board in determining whether and how to provide guidance on potential coverage under Regulation Z or to address possible concerns under fair lending or other laws.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–1136 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate

automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*. If accompanied by an original document in paper form, comments also may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed commentary is clearly stated and effectively organized, and how the Board might make the commentary easier to understand.

List of Subjects in 12 CFR Part 226

Consumer protection, Disclosures, Federal Reserve System, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the text of the staff commentary. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226:

a. Under *Section 226.6—Initial Disclosure Statement*, under *6(b) Other charges*, paragraph 1.i. and paragraph 2. are revised.

b. Under *Section 226.9—Subsequent Disclosure Requirements*, under *9(c)(2) Notice Not Required*, paragraph 1. is revised.

c. Under *Section 226.12—Special Credit Card Provisions*, under *Paragraph 12(a)(2)*, paragraph 6. is revised.

d. Under *Section 226.18—Content of Disclosures*, under *18(g) Payment schedule*, paragraph 5. is revised.

e. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(1)*, paragraph 2. is amended by removing "comment 19(b)–4" and adding "comment 19(b)–5" in its place.

f. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(i)*, paragraph 4. is revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.6—Initial Disclosure Statement

* * * * *

6(b) Other charges.

1. *General: examples of other charges.*

* * *

[i. Late payment and over-the-credit-limit charges.]

►i. Over-the-credit-limit charges, late payment charges, and charges imposed for expediting a consumer's payment provided that method of payment was not established as the regular payment method for the account.◄

* * * * *

2. *Exclusions.* The following are examples of charges that are not "other charges":

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under § 226.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (see commentary to § 226.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (See also comment 7(b)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

►ix. Fees to expedite delivery of a credit card, either at account opening or during the life of the account, when card delivery is also available by standard mail service without paying the fee.◄

* * * * *

Section 226.9—Subsequent Disclosure Requirements

* * * * *

9(c)(2) Notice Not Required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

►vi. A change in late payment charges or over-the-limit-charges, or a change in the charge for expediting a consumer's payment provided that method of payment was not established in advance as the regular payment method for the account.◄

* * * * *

Section 226.12—Special Credit Card Provisions

12(a) Issuance of credit cards.

* * * * *

Paragraph 12(a)(2).

* * * * *

6. *One-for-one rule—exception* ►*s.*◄ The regulation does not prohibit the card issuer from:

►*i.*◄ Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

►ii. Replacing an accepted card with more than one renewal or substitute card, provided that: any replacement cards access only the account of the accepted card; all cards issued under that account are governed by the same terms and conditions; and under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.◄

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.18—Content of Disclosures

* * * * *

18(g) Payment schedule.

* * * * *

5. *Mortgage insurance.* The payment schedule should reflect the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. ►The payment schedule must reflect the legal obligation. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If the legal obligation provides that the creditor will collect 130 payments and refund the escrowed payments when the insurance is terminated, the payment schedule should reflect 130 premium payments. If the legal obligation provides that the creditor will apply the amount escrowed to the two final insurance payments, the payment schedule should reflect 128 monthly premium payments.◄ (For assumptions in calculating a payment schedule that includes mortgage insurance that must be automatically terminated, see comments 17(c)(1)–8 and 17(c)(1)–10.)

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

* * * * *

32(a) Coverage.

Paragraph 32 (a)(1)(i).

* * * * *

►4. *Treasury securities.* To determine the yield on comparable Treasury securities for the annual percentage rate test, creditors may use the yield on actively traded issues adjusted to constant maturities published in the Board's "Selected Interest Rates" (statistical release H–15). Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity. If the loan's maturity is exactly halfway between security maturities, the annual percentage rate on the loan should be compared with the yield for Treasury securities having the lower yield. For example:

i. If the H–15 contains a yield for Treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the annual percentage rate for an 8-year mortgage loan is compared with the yield of securities having a 7-year maturity, and the annual percentage rate for a 9-year mortgage loan is compared with the yield of securities having a 10-year maturity.

ii. If a mortgage loan has a term of 15 years, and the H–15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the annual percentage rate for a 15-year mortgage loan with the yield for constant maturities of 10 years.

iii. If a mortgage loan has a term of 30 years, and the H–15 does not contain a yield for 30-year constant maturities, but contains a yield for 20-year constant maturities, and an average yield for securities with remaining terms to maturity of 25 years and over, then the annual percentage rate on the loan is compared with the yield for 20-year constant maturities.◄

[4. *Treasury securities.* To determine the yield on a Treasury security for the annual percentage rate test, creditors may use the Board's "Selected Interest Rates" (statistical release H–15) or the actual auction results. Treasury auctions are held at regular intervals for the different types of securities. These figures are published by major financial and metropolitan newspapers and are also available from Federal Reserve Banks. Creditors must use the yield on the security that has the nearest maturity at issuance to the loan's maturity. For example, if a creditor must compare the annual percentage rate to Treasury securities with either 7-year or 10-year maturities, the annual percentage rate for an 8-year loan is compared with securities that have a 7-year maturity; the annual percentage rate for a 9-year loan is compared with securities that have a 10-year maturity. If the loan maturity is exactly halfway between, the annual percentage rate is compared with the Treasury security that has the lower yield. For example, if the loan has a maturity of 20 years and comparable securities have maturities of 10 years with a yield of 6.501 percent and 30 years with a yield of 6.906 percent, the annual percentage rate is compared with 10 percentage points over the yield of 6.501 percent, the lower of the two yields.]

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, November 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30545 Filed 12–5–02; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration.

ACTION: Advanced notice of proposed rulemaking (ANPRM).

SUMMARY: The U.S. Small Business Administration (SBA) is considering ways to improve coverage of the Certified Development Company (CDC) Loan Program (the "CDC Program" or the "504 Program") to ensure that all small businesses have access to long-term fixed-rate financing. After a review of public comments, SBA will consider proposing amendments to existing program regulations that will improve overall program management. SBA also anticipates that some changes suggested by commenters may ultimately require new legislation.

SBA is revisiting the 504 Program policies as a prudent management exercise in light of major changes in the economy, the financial services industry, technology, and in CDCs' operations since the program's inception in 1980. The review has also been prompted by SBA's on-going discussions with the 504 industry and by specific requests made to SBA to expand CDCs' product base to include 7(a) loans or Small Business Investment Companies. In particular, SBA is seeking comments on the following: Whether the 504 Program is meeting its statutory purpose as defined in section 501(a) of the Small Business Investment Act; the appropriate long-term goals and annual performance measures for the program given its statutory requirement; the appropriate data elements required to assure solid program oversight while minimizing public data collection burdens; operational or regulatory impediments to providing long-term financing in rural or urban areas; and programmatic changes that could increase CDC competition and increase small businesses' access to loans.

This ANPRM and request for comments are intended to stimulate dialogue on these and other issues pertaining to the CDC Program.

DATES: All interested parties are invited to submit written comments. Comments must be received on or before February 4, 2003.

ADDRESSES: Mail written comments to: James E. Rivera, Associate Administrator for Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Comments may be sent by e-mail to *ANPR@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416. Questions may be sent by e-mail to *gail.hepler@sba.gov* or by telephone at (202) 205–7530. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

History and Purpose of the 504 Program

During the late 1970s and early 1980s, the prime interest rate and unemployment reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation.

Congress enacted Section 503 of Title V of the Small Business Investment Act in 1980. The 504 Program was intended to provide fixed-rate financing for small businesses at favorable terms unavailable in the marketplace. Congress specified in the Act that this program "foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns . . ."

The statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans (504 Loans) issued by Certified Development Companies (CDCs). It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

SBA guarantees the debentures pursuant to terms and conditions set forth in SBA regulations. These regulations are found at 13 CFR Part 120. Sections 120.800 through 120.991 are exclusive to the CDC Program. In support of the statutory mandate to create or preserve jobs, SBA currently requires each CDC to affirm that its 504 loan portfolio creates, on average, one job per $35,000 of CDC financing.

Certified Development Companies

Since enactment of the 504 program, the CDC industry has been developed to meet the job creation and economic development goals of the program. Several hundred CDCs either were started in local communities or amended their existing operations to participate in the program. There are currently approximately 270 CDCs. Each CDC has a specific geographic area of operations. In general, CDCs have a membership comprised of financial institutions, community organizations, businesses, and government organizations responsible for economic development in the CDC's area of operations. Over the years, SBA has made changes to the CDC program to help ensure its vitality. For example, the original job opportunity objective was one job created or retained per $15,000 of guaranteed debenture investment. In 1990, SBA raised the job opportunity objective to one job per $35,000 of guaranteed debenture investment to reflect the inflationary factors of the previous 10 years. Congress also has amended the program legislation in a variety of ways including incorporating other economic development goals such as assisting businesses located in rural areas or veteran-owned businesses.

The characteristics of individual CDCs vary significantly. Some are independent entities devoted primarily to making 504 Loans. Others are part of local or state governments. These organizations use the 504 Program along with many other economic development programs such as HUD 108 and EDA revolving loan funds. For these entities, the 504 Program is but one program in an array of economic development tools. Any cash flow over and above related 504 staff and overhead expenses is available to these CDCs to support other economic development activities such as establishing revolving loans funds or microloan programs. Most CDCs fall in between these two types of entities.

The role of a CDC in the 504 Program loan process has expanded over the years. Initially, the CDC identified prospective small business borrowers and assisted with application processing and servicing. SBA made all credit decisions and approved, in advance, all servicing actions. The CDC did not have any financial stake in the loan other than the on-going servicing fee that it was paid by the borrower. As the program has evolved and SBA's personnel resources have diminished, CDCs, along with other types of lenders, have developed substantial SBA lending expertise and have assumed greater processing, closing, and servicing responsibilities. Some CDCs even liquidate defaulted loans. These responsibilities have increased the ability of CDCs to serve small business borrowers.

Under the Premier Certified Lenders Program (PCLP) authorized by the Congress through Public Law 103–403, approved October 22, 1994, participating CDCs have increased authority to perform origination, servicing, and liquidation functions for their 504 Loans. By statute, all PCLP CDCs are required to deposit into a reserve fund one percent of the value of all PCLP loans that they fund. Cash from these reserve funds is then available to reimburse SBA for 10 percent of any loss incurred by SBA in connection with any individual PCLP loan. The reserve also creates a financial incentive for PCLP CDCs to originate high-quality loans and to service and liquidate their loans in a prudent manner. PCLP authority is limited to those CDCs that demonstrate on an on-going basis sound and effective loan processing, servicing, and liquidation practices.

Accomplishments

As a result of the CDC Program, long-term, fixed-asset financing by SBA has grown dramatically since its inception. Almost 5,500 504 loans for an approximate total of $2.47 billion were approved in FY 2002. Over the life of the program, more than $15 billion has been funded. Combined with the required private sector financing this represents $42 billion in funding for growing small businesses. This tremendous growth is largely attributable to the solid program structure, the hard work of the CDCs, and the ability of the program to provide financing appropriate for the economic times. Overall, more than 39,000 loans have been approved resulting in the creation or retention of over 1,000,000 jobs since 1980.

Policy Considerations

Since the CDC program was initially authorized, both the CDC industry and the economic environment in which it operates have changed significantly. As a result, it is vitally important that the SBA and those interested in the 504 Program work together to re-examine existing program policies and to consider new or revised policies to assure the program's continuing vitality and compliance with its statutory purpose, to foster economic development and create or preserve jobs.

For example, a CDC that has managed to accumulate substantial cash reserves from its fee income has requested that SBA permit it to establish a subsidiary to make 7(a) Guaranty loans. This subsidiary would be initially financed by the CDC, managed by the CDC, and owned 100 percent by the CDC to make 7(a) loans. Other CDCs wishing to expand or new CDCs that wish to establish themselves where existing, active CDCs operate are finding it increasingly difficult to meet the membership requirements and have asked for waivers of the membership requirements. While SBA may have the legal discretion to grant these requests, it is not clear whether or how these changes would serve the broader purpose of the statutory authorization. It

is in this context that SBA seeks public input on these and other issues.

In addition, SBA continues to be concerned that a large proportion of the counties in the country are not receiving 504 financing even though there are active CDCs that include those counties in their areas of operations. For example, of the 67 counties in Alabama, 31 did not receive any 504 Loan approvals for the 24 month-period between November 1, 1999 and October 31, 2001. During that same time period, 59 of the 75 counties in Arkansas did not. Nationwide, more than 64 percent of the counties did not receive one 504 Loan approval per 100,000 population per year averaged over a two-year period. Most of these counties are included in one or more CDC's area of operations. A large proportion of these counties have small populations.

SBA needs additional information to determine the reasons why these areas are not receiving 504 financing. If there is a lack of demand for small business capital in general, or if there are other, more attractive, small business financing opportunities in these areas, a change that would permit additional CDC competition in these areas, such as a relaxation of the CDC membership requirements may not have any appreciable effect. Similarly, a new CDC loan product designed specifically for rural counties, such as a stand-alone debenture that does not require the participation of a first mortgage lender, might be warranted, but only if existing 504 loans do not meet the existing unmet demand for small business capital.

Issues raised by the noted circumstances as well as those arising through the SBA/financial services industry dialogue are among those addressed by the questions posed to the public for comment in this advance notice of proposed rulemaking. Additional questions relate to issues raised in connection with regulations published on July 11, 2000 (65 FR 42624) which permitted CDCs to apply to expand their areas of operations beyond their state of incorporation into a contiguous state beyond a local economic area.

Financial markets change over time, and the Agency wants to insure that the CDC Program is flexible enough to meet the long-term, fixed-asset needs of small businesses in all geographic locations.

Request for Comments

While SBA has posed specific questions in this ANPRM, SBA seeks input from the public on the entire 504 program. The public, including the CDCs and small businesses, are welcome to provide comment on all aspects of the program, from its regulatory structure to the ability of the program to meet its statutory goals, and to suggest amendments to the program. SBA is also willing to consider changes that may require additional statutory authorization. SBA intends to pursue feasible suggestions that further the statutory purposes of the program.

SBA would like feedback on whether the program is meeting its goals to bring economic development loan funds into local communities. The Agency also seeks to determine if there are unmet needs in business lending that the financial services industry is not serving. As the SBA is a "gap lender," the Agency is interested in hearing from both SBA borrowers and individuals who may wish to use the 504 Program in the future.

In addition, as part of SBA's review of the 504 program, SBA is evaluating its goals and performance measurements for the 504 Program, particularly in the context of the Government Performance and Results Act of 1993 (Pub. L. 103–62).

SBA invites public comments on the following questions as well as any other topic related to the 504 program. Comments may be addressed to one, all, or any combination of the following questions. Questions are grouped under the following headings for ease of review by the public.

Questions About Overall 504 Program Effectiveness

1. Does the problem which the 504 Program was created to remedy, lack of small business access to long-term fixed-rate capital, still exist? What evidence exists to demonstrate this need?

2. Is the 504 Program optimally designed to address the problem?

3. Is the 504 Program designed to make a unique contribution in addressing the problem (*i.e.*, not needlessly redundant of any other Federal, state, local or private effort)? Are there financial products in the private market that can remedy this problem?

4. Does the 504 Program collaborate and coordinate effectively with related programs that share a similar purpose?

5. How would the 504 Program demonstrate adequate progress in meeting the statutory goals of the program?

6. What long-term performance goals would be appropriate for the 504 Program? Performance goals should be specific, ambitious, focused on outcomes, and meaningfully reflect the purpose of the program. In other words, how can we demonstrate the scale of the problem and show that the 504 Program is working to remedy the problem?

7. What kind of evaluation would be most beneficial in measuring program effectiveness, both over the short term and the long term? Does the program currently gather the information necessary to make this evaluation?

8. Does the performance of this program compare favorably to other programs with similar purposes, if any, and goals?

Questions to Current and Potential Small Business Borrowers

9. Because 64% of all counties nationally did not receive any 504 funding averaged over a 2-year period, are the CDCs meeting all of the public demand for capital in both rural and urban areas?

10. Would "special programs" in rural areas attract the needed capital that does not currently exist in the market today?

11. Is the process for receiving a 504 Loan reasonable compared to other business lending? Substantive comments/recommendations are encouraged to provide the broadest benefit to the Agency.

12. Does the cost, time and requirements of receiving a 504 Loan make the program unattractive compared to the 7(a) program?

13. Is the 504 Program fulfilling its mission to bring fixed-rate financing to small business? If not, what steps can be taken to further the mission of the program?

14. Many of the stated uses for 504 funding are similar to requests for funding for 7(a) loans. Are the programs redundant, are there additional changes that are required to the 504 Program to fill the lending gap to small business borrowers?

CDC Organizational Structure

15. Should the CDC membership requirements be changed? If so, how should they be changed and still meet the test that the membership represents the economic development interests of the CDC's area of operations? For example, should a CDC be permitted to only have financial institutions as members? Should there be fewer members than 25?

16. Should SBA permit for-profit CDCs again? If so,why? If not, why not? Should the existing, for-profit CDCs be required to become non-profit CDCs and thus meet the regulations governing all other CDCs? If so, by what period of time?

17. Should SBA establish requirements to assure that a CDC remains viable? For example, should

SBA establish a minimum cash reserve requirement? If so, at what level?

18. What modifications to the regulations governing PCLP CDCs should be considered to increase participation by a larger number of CDCs?

Increasing Geographic Coverage by the 504 Program

19. If a CDC has an existing area of operations in which it is not meeting the "adequately served" benchmark of one 504 Loan per 100,000 population per year averaged over a 2-year period, should it be permitted to expand its area of operations? Should it be required to shrink its area of operations?

20. Should this same CDC have to shrink its area of operations by those counties in which it has not made a 504 Loan? If so, when? What would be the period of time that would be reviewed?

21. Even if a county is "adequately served," should a new CDC or an existing CDC be permitted to apply to include that county in its area of operations if there is only one CDC currently including that county in its area of operations?

22. Depending on when a statewide CDC was approved and depending on whether other CDCs have been decertified or have been converted to Associate Development Companies, a statewide CDC may or may not include the entire state in its area of operations. Should all statewide CDCs be permitted to include the entire state in their area of operations?

23. Should the definition of "adequately served" change to something other than one 504 Loan per 100,000 population per year averaged over twenty-four months? If so, what would be a better benchmark?

24. When the Section 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations "formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area." (Legislative History, Pub. L. 100–590, p. 22) Should SBA eliminate the requirement that a CDC have a specific area of operations? If so, how would the purpose of economic development be defined and monitored for each CDC?

25. Would permitting applications for a multi-state CDC where the state is not contiguous to the CDC's state of incorporation provide greater access and a wider range of choices for borrowers?

26. Should CDCs be required to adequately serve certain areas (*e.g.* rural areas, enterprise zones) as a prerequisite to serving other areas? If so, what would be the requirement for "adequately served" in this case?

27. Should SBA relax its standard of two CDC loan approvals per year for those CDCs that operate in a rural area?

28. How can SBA best assure that small businesses in rural areas, where lack of population density makes lending more difficult and more expensive, have appropriate access to the 504 Program?

29. Should SBA promulgate regulations that recognize that operational difference between CDCs that, because of local government affiliation or support, are limited to serving specified areas, and those CDCs that do not have such constraints.

30. In order to encourage a variety of thoughtful comments, the following are potential scenarios presented to encourage commenters to consider the ramifications of various approaches to ensuring equal access by all eligible borrowers, regardless of their geographic location. These are not meant to address every issue that may be relevant but are designed to illuminate the various approaches that could be applied to encourage complete coverage.

Scenario 1: Make all CDCs statewide CDCs with no restrictions.

Discussion: This would eliminate the need for SBA to determine if a county was considered adequately served. The number of CDCs would be controlled by local economic development professionals. If local economic development professionals considered an area to be adequately served, they would not propose the addition of more CDCs. This should also reduce the problem that some new CDCs now have with finding government representatives for the board of directors. There should be an adequate number of individuals available to serve on a CDC board when the geographic region is the whole state. The benefits to this approach are (1) a CDC would know that any county in a state would be open and (2) SBA staff would not have to process requests for expansion within a state. A potential downside is the possibility that CDCs may not adequately serve rural areas if access to the more populous areas is not restricted. Conversely, it is also possible that competition in the urban areas would encourage CDCs to do a better job seeking deals in rural areas.

Scenario 2: Redefine "adequately served" to 1 loan for every 10,000 in population. For rural counties, do not apply the prohibition for "adequately served". Allow any statewide CDC to market and do projects throughout the state and not just in the counties where there is no CDC as well as those counties where there is a local CDC and the statewide CDC was approved to overlap with the local CDC. Also the statewide CDC's loan activity would not be included in the "adequately served" calculation. This would permit local CDCs to expand into counties that the statewide CDC is also in. All existing CDCs would have 1 year to meet the new definition of "adequately served". After 1 year, any county that was not adequately served would be available to other new or expanding CDCs.

Discussion: The current definition of "adequately served" only requires that a CDC make 2 loans in a county over a two year period per 100,000 population. By only requiring 2 loans in a 2-year period this standard has the effect of limiting access to the program in over 83% of all counties. Raising the standard has the benefit of continuity of process. The same procedures now used to determine if a county is adequately served could be used for new determinations. The 1 loan per 10,000 population standard is slightly higher than what the portfolio averages now (30,000 loans divided into 282,000,000 Americans).

Scenario 3: Determination of an appropriate level of coverage is based on a combination of total population and population density. This scenario is designed to encourage more access in areas capable of supporting multiple CDCs while providing shelter from "cherry picking" in rural, more difficult to serve areas. Areas that meet the following criteria will be considered sheltered exceptions:

1. County population is less than 125,000; or

2. County population is more than 125,000 but less than 500,000, and the population density of the county is less than the population density of the entire state. Neither of these criteria would apply in any state where the population density is greater than 600 per square mile.

CDCs that serve a county (or portion of a county) meeting the sheltered criteria will have "right of first refusal" on a loan in that county. The CDC must act to the satisfaction of the borrower within 30 days or the borrower may opt to use the services of another CDC willing to consider the loan, even if that CDC does not serve the sheltered county. New CDCs can be approved in sheltered areas where there is no coverage, or where an existing CDC poses no objection. As an exception to policy, SBA may declare as sheltered, a portion of a county that does not meet

the criteria, if the geographic distance from a heavily populated portion of the county is sufficient to support a contention that the area should qualify as sheltered.

For areas not meeting the sheltered criteria, any CDC who can service a loan would be allowed to make a loan. All existing CDCs would be grandfathered into their current areas of operations. New CDCs (and expansions of existing CDCs) could occur so long as they met the representation requirements.

Any borrower in an area that does not have CDC coverage can be served by any CDC that has the capacity to service the loan. Generally, we should assume that anything less than 75 miles from the CDC's office is acceptable. In western states, the DD may make the call if there is a concern.

Discussion: This approach assumes that CDCs serving rural areas should be provided some assistance in ensuring a sufficient level of 504 activity to sustain their operations but does not penalize a potential borrower if the CDC cannot effectively handle the loan request. From an administrative standpoint, the "adequately served" decision is much easier, because it is based on population and population density statistics that can be made readily available to the public by putting U.S. Census data on SBA's Web site.

504 Loan and Debenture Structure

31. Presently only 10 and 20-year fixed-rate debentures are offered. Would 504 Program economic development objectives be better served if SBA made changes to the terms of debentures offered?

32. What would the costs and benefits to borrowers, CDCs, private sector lenders, and any other party be if SBA provided a debenture product that amortizes monthly rather than semi-annually?

33. Are there benefits to allowing CDCs to jointly participate in a 504 Loan project?

34. Would a stand-alone debenture (no third-party lender requirement) for projects located in rural counties make 504 financing more attractive in these under-represented counties? If so, should there be a dollar limit on the project?

Performance Requirements

35. SBA has developed a system that enables SBA and the CDC to track a CDC's 504 Loan portfolio performance as measured against SBA-established benchmarks as well as the CDC's peer group. In order to insure the quality of the 504 Loan portfolio as well as the accessibility of the program that could be severely jeopardized if defaults increase and/or recoveries decrease, resulting in an increase in future borrowers' fees to maintain the program at its zero subsidy, should SBA establish 504 Loan portfolio performance requirements by CDC as a regulation? If so, since CDCs with large portfolios have a proportionately greater effect on the overall portfolio performance, but CDCs' with small portfolios are disproportionately affected by the failure of 1 loan, should there be a minimum portfolio size under which the regulation takes affect? If so, what should the size be?

36. Should SBA require CDCs to have a financial stake in the performance of all of their 504 Loans, not just in the performance of any loan processed under PCLP authority? If so, what should be the requirement?

Operational/Logistical Issues

37. What regulatory impediments are there to processing or closing 504 Loans?

38. If a 7(a) lender closes and disburses a loan that SBA subsequently determines to be ineligible, SBA can deny liability under its regulations. If a CDC closes and disburses a 504 Loan that SBA subsequently determines to be ineligible, what financial or other penalty should be imposed on the CDC?

Definition of Economic Development

39. Current regulations require a CDC to provide evidence to SBA that it has created at least one job per $35,000 of 504 debentures that it has issued. At the two-year anniversary of the small business's receipt of the loan proceeds, the CDC is required to document how many jobs were actually created. Should SBA require CDCs to provide evidence of other economic development in their Areas of Operations in addition to creating jobs? If so, what other evidence of economic development should be required, and what quantitative measures should be used?

40. Should SBA develop a list of acceptable "economic development activities" in which SBA permits a CDC to invest its resources? If yes, what activities should be included? What activities should be excluded?

Participation in Other Programs

41. Should SBA permit a CDC to contribute to the financial support of a 7(a) lender? Is this economic development as intended by Congress when it created the development company loan program?

42. Should SBA permit a CDC to establish an affiliate relationship with a 7(a) lender through a management contract? Are there any benefits or drawbacks for borrowers?

43. Should SBA permit a CDC to establish or acquire a 7(a) lender subsidiary? Is this economic development as intended by Congress? What are the benefits and drawbacks for borrowers?

44. SBA's regulations prohibit a financial institution, among others, from controlling a CDC. (§ 120.824) Should SBA permit a 7(a) lender to establish a CDC affiliate or subsidiary controlled by the 7(a) lender?

45. Should SBA permit a CDC to financially contribute to an SBIC? If so, under what limitations?

46. Should SBA permit a CDC to establish an affiliate relationship with an SBIC through a management contract?

47. Should SBA permit a CDC to establish an SBIC subsidiary? If so, under what limitations?

48. Should SBA permit a separate corporation to have control through common management of the corporation, a CDC, and other corporations such as a 7(a) lender, an SBIC and so on? If so, under what limitations?

Comments on any other aspect of the CDC Program are also welcome. SBA reminds commenters that all submissions by commenters are available to the public upon request.

Dated: December 2, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30905 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims; Notice of Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its standards concerning indemnity claims as set forth in the *Domestic Mail Manual* (DMM) S010, Indemnity Claims; and related provisions of S913, Insured Mail, and S920, Collect on Delivery (COD) Mail. Other than the proposed changes concerning time periods for filing claims and retention periods for undelivered Insured Mail, the changes clarify existing DMM provisions or codify, in the DMM, policies not currently set forth in that manual.

DATES: Comments must be received on or before 30 days from date of publication.

ADDRESSES: Written comments should be mailed or delivered to the manager, Revenue and Field Accounting, 475 L'Enfant Plaza SW, Room 8831, Washington, DC 20260–5242. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gilbert LeMarier, 202–268–3333.

SUPPLEMENTARY INFORMATION: The proposed changes fall into several categories. Each is addressed separately below.

I. Claim Filing Time Limits

The Postal Service is redesigning the claims system to ensure a more timely response to claims filed by our customers. The Customer Claims Response System (CCRS) will provide an interactive means, utilizing Web technology, to capture claim information from designated field units and to expedite claim adjudication. The product tracking system will be utilized to obtain delivery information.

In conjunction with the redesign of the claim system, time limits for filing a claim will be revised. The current policy that a customer must file a claim immediately when the contents of an article are damaged or missing will now have a clearly stated time limit of no later than 45 days from the mailing date. Also, for a lost article, a customer would be able to file sooner for certain special service products. Insured and bulk insured service customers would be able to file a claim 21 days from the mailing date versus the current 30-day requirement. Customers of COD mail, Express Mail COD, and registered COD special services would be able to file a claim 45 days from the mailing date versus the current 60-day requirement.

For Insured Mail, Registered Mail, and COD services, the Postal Service proposes that the maximum time limit for filing a claim be reduced to no later than 180 days from the mailing date. These proposed changes will enhance the efficient and timely processing of claims and reduce the retention period of undeliverable, accountable mail.

II. Retention Periods

The Postal Service also proposes to reduce the retention of undelivered Insured Mail items. Currently, undeliverable mail is forwarded to mail recovery centers (MRCs). Under current procedures, information about undeliverable accountable mail items (Insured Mail, Registered Mail, and COD mail) is logged into a national claims database and the accountable article is held for 1 year from the date of receipt, the maximum time limit allowed for filing a claim from the mailing date. The Postal Service proposes that retention periods for accountable mail be shortened to 180 days from the date of receipt to match the new proposed maximum time limit allowed for filing a claim. This also would relieve capacity constraints on MRCs.

III. Documentation in Support of Claims

Under current mailing standards, only the sender may file a claim for the complete loss of Registered Mail, Insured Mail, COD, or Express Mail articles. The Postal Service proposes that either the sender or addressee, whoever is in possession of the mailing receipt, may now file a claim for the complete loss of a Registered Mail, numbered Insured Mail, COD, or Express Mail article. Only the sender would be allowed to file a claim for the complete loss of an unnumbered, insured article.

As evidence of value when a sales receipt or invoice is not available, the acceptance of a customer's statement with sufficient detail to determine whether the value claimed is accurate would be accepted only for items valued up to $100. Other acceptable evidence of value would be a copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid. For Internet transactions conducted through a Web-based payment network, acceptable evidence of value is a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction. description of item purchased, and an indication the status of the transaction is *completed*.

As is the case with current policy, customer statements, receipts, or other evidence of value supplied by the customer will not necessarily be determinative of the value of the lost or damaged article, particularly if other information indicates the actual value at the time of mailing is different.

IV. Damage

To file a claim, the addressee must present the article, packaging, and mailing container to the Postal Service for inspection. If the sender, in conjunction with the CCRS, files the claim and the damaged article is in the custody of the addressee, the sender's Post Office or designated site will enter the claim data into the CCRS. The CCRS will generate a letter to the addressee instructing that the article, packaging, and container be presented to the Postal Service for inspection.

V. Additional Grounds for Denial of Claims

The Postal Service proposes that indemnity will not be paid for collect on delivery (COD), Insured Mail, Registered Mail, or for Express Mail service in the following situations:

- Mailer refusing to accept delivery of the mailpiece on return.
- Mail not bearing the complete names and addresses of the sender and addressee, or both the recipient's address and return address, and therefore is undeliverable.
- Event tickets received after the event.
- Software installed onto computers that have been lost or damaged.
- A personal check remitted to the mailer for a COD article and not honored by the financial institution upon which it is drawn.
- Damaged articles not claimed within the prescribed time limits set forth in *Postal Operations Manual* (POM) 147.3.
- Personal time used to make handmade, hobby, or craft items.

VI. Time Limit To Appeal to the Consumer Advocate

The Postal Service proposes to clarify the time limit in which a customer may forward an appeal to the Consumer Advocate, Headquarters. If the manager of Claims Appeals at the St. Louis Accounting Service Center (ASC) sustains a denial of a claim, any further appeal must be filed with the Consumer Advocate, within 60 days from the date of that decision.

VII. Valid Mailing Receipt

The Postal Service proposes to clarify that the appropriate mailing receipt must be postmarked in order to be acceptable evidence of insurance.

VIII. COD Changes

The Postal Service proposes to clarify that the mailer of a collect on delivery (COD) article may not stipulate "CASH ONLY" and that the recipient has the option to pay the charges by cash or personal check.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following revisions of the *Domestic Mail Manual* (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

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

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

A claim may be filed by:

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

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

[*Revise new item b to read as follows:*]

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

* * * * *

2.2 When to File

[Revise 2.2 to read as follows:]

A customer must file a claim no later than 45 days from the mailing date when the contents of an article are damaged or missing from the mailing container. For a lost article, a customer must file a claim within the time limits in the chart below.

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

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

a. After 45 days if article sent First-Class Mail, space available mail (SAM), or parcel airlift (PAL) services.

b. After 45 days if article sent COD.

c. After 75 days if article sent by surface.

* * * * *

2.5 Evidence of Insurance

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

[Revise item a to read as follows:]

a. The original postmarked mailing receipt issued at the time of mailing (reproduced copies are not acceptable).

* * * * *

[Revise item c to read as follows:]

c. The original sales receipt from an automated retail terminal listing the mailing receipt number and insurance amount, only if the original mailing receipt is not available (reproduced copies are not acceptable).

2.6 Evidence of Value

The customer must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. (Other evidence may be requested to help determine an accurate value.) Examples of acceptable evidence are:

* * * * *

[Revise item b to read as follows:]

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

* * * * *

[Add new item g to read as follows:]

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

[Add new item h to read as follows:]

h. For Internet transactions conducted through a Web-based payment network, a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and assurance that the transaction status is completed.

2.7 Missing Contents

[Revise 2.7 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must present the container and packaging to the Postal Service when a claim is filed. Failure to do so results in the denial of the claim.

2.8 Damage

[Revise 2.8 to read as follows:]

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

2.9 Proof of Loss

[Revise introductory text and item a to read as follows:]

To file a claim, the sender must provide proof of loss for unnumbered, insured mail. Proof of loss is not required for registered mail, numbered insured, COD, or Express Mail claims. Any one of these documents is acceptable:

a. A letter or statement from the addressee, dated at least 21 days after the date that the unnumbered insured article was mailed, reporting that the addressee did not receive the article. The statement or a copy of it must be attached to the claim.

* * * * *

[Delete item c.]

2.10 Duplicate Claim

[Revise 2.10 to read as follows.]

A customer must file any duplicate claim for any mail type or service within the following time limits:

No sooner than 30 days and no later than 60 days from the date the original claim was filed.

[Delete the table.]

* * * * *

2.14 Nonpayable Claims

[Revise introductory text to read as follows:]

Indemnity is not paid for collect on delivery (COD), insured mail, registered mail, or Express Mail services in these situations unless otherwise stated:

* * * * *

[Revise item r to read as follows:]

r. Negotiable items (defined as instruments that can be converted to cash without resort to forgery), currency, or bullion except as provided in S911.2.0 for registered mail items or S010.2.12.c for Express Mail items.

* * * * *

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

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

ad. Mail not bearing the complete names and addresses of the sender and addressee, or not deliverable to either the addressee or sender.

ae. Event tickets (*e.g.*, nonrefundable tickets for concert, theater, sport, or similar events) received after the event and, for insurance purposes, insured for loss, not for delay or receipt after the event for which they were purchased.

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

ag. Personal check remitted to the mailer for a COD article and not honored or otherwise payable by the financial institution upon which it is drawn. If the personal check is lost in transit, it is the mailer's responsibility to obtain a replacement check from the addressee. Indemnity to the mailer is limited to stop payment charges incurred by the addressee for the issuance of a replacement check, if the mailer establishes that the addressee incurred the charge and was reimbursed by the mailer for this amount.

ah. Damaged articles not claimed within the prescribed time limits set forth in *Postal Operations Manual* 147.3.

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

* * * * *

3.0 PAYMENT

* * * * *

3.3 Dual Claim

[Revise 3.3 to read as follows:]

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

* * * * *

4.0 ADJUDICATION

* * * * *

4.2 Appeal

[Revise 4.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. Except for an unnumbered, insured article, the customer must send the appeal directly to Claims Appeals (see G043 for address). For an unnumbered, insured article, the customer must send the appeal to the post office where the claim was filed. That post office forwards the appeal to the manager of Claims Appeal at the St. Louis ASC.

4.3 Final USPS Decision

[Revise 4.3 to read as follows:]

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

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

[Revise 2.7 to read as follows:]

2.7 Receipt

For each insured article mailed, the mailer receives the appropriate postmarked receipt:

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

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

c. Form 3877 when multiple accountable mail articles are mailed at one time.

* * * * *

S920 Convenience

* * * * *

S921 Collect on Delivery (COD) Mail

* * * * *

3.0 MAILING

* * * * *

3.4 Indelible Ink, Mailer Errors

[Revise 3.4 to read as follows:]

The particulars required on the form must be filled in by hand with ink, typewritten, or computer printed. The Postal Service is not responsible for errors that a mailer makes in stating charges to be collected. The mailer can not stipulate "CASH ONLY". The recipient has the option to pay the charges by cash or personal check.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30935 Filed 12–5–02; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 021113274–2274–01; I.D. 031501A]

RIN 0648–AO79

Atlantic Highly Migratory Species; Exempted Fishing Activities

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 in accordance with framework procedures for adjusting the management measures of the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), and Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP). This proposed rule would modify existing regulations for Atlantic highly migratory species (HMS) exempted fishing activities. The intent of the changes is to improve monitoring of exempted fishing activities for Atlantic HMS. NMFS will hold a public hearing to receive comments from fishing participants and other members of the public regarding the proposed exempted fishing specifications.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on January 6, 2003.

The public hearing date is December 16, 2002, 7 p.m.—9 p.m.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to the Highly Migratory Species Management Division (F/SF1), 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments will not be accepted if submitted via e-mail or the internet.

The public hearing location is: Sea World Adventure Park, Ports of Call

Building, 7007 Sea World Drive, Orlando, Florida, 32821.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly at 301–713–2347, fax 301–713–1917, e-mail *Sari.Kiraly@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under 50 CFR 635.32, and consistent with 50 CFR 600.745, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an Exempted Fishing Permit (EFP) or a Scientific Research Permit (SRP) issued by NMFS in accordance with criteria and procedures specified in those sections. As necessary, an EFP or SRP would exempt the named party(ies) from otherwise applicable regulations under 50 CFR part 635. Such exemptions could address fishery closures, possession of prohibited species, commercial permitting requirements, and retention and minimum size limits.

This proposed action was developed in response to ongoing concerns related to past EFPs for the purpose of capturing regulated HMS, particularly sharks collected for public display, and is intended to strengthen the existing regulations that govern such EFP related activities. The proposed rule is in accordance with framework procedures for adjusting management measures provided in the Final HMS FMP, and Amendment 1 to the Billfish FMP.

Exempted Fishing Operations

With respect to exempted fishing activities, NMFS proposes the following new requirements:

(1) Collectors of HMS for display purposes would be required to notify the local NMFS Office for Law Enforcement 72 hours prior to departing on a collection trip in federal or state waters as to collection plans and location, and number of animals to be collected. Also, at the end of each collection trip, upon return to port the collector would be required to call the local NMFS Office for Law Enforcement to report the conclusion of the trip and whether any regulated HMS were collected. In addition, in cases of HMS being shipped to other locations, the collector would be required to notify the local NMFS Office for Law Enforcement 48 hours prior to shipment.

(2) In lieu of the conventional dart tags currently supplied to collectors by NMFS, all live HMS collected for the purpose of public display would be required to have microchip Passive Integrated Transponder (PIT) tags, which will be supplied by NMFS, implanted by the collector. The use of PIT tags is intended to eliminate problems that frequently occur following implantation of the conventional dart tags. Collectors would not be required to obtain PIT tag readers, but are advised to do so in order to verify that the PIT tag is properly implanted and can be read, and also to have available should law enforcement authorities other than NMFS Enforcement board the fishing vessel. If a NMFS law enforcement officer is unable to detect with the NMFS reader a PIT tag in a HMS collected for display, the collection will be deemed unauthorized.

(3) To minimize mortality associated with the live capture of HMS, permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, would be specified on a case-by-case basis. If such measures are not effective in limiting mortalities, other restrictions, such as allowing the use of only certain types of gear for the live capture of HMS for display, could be instituted to minimize the possibility of dead discards.

(4) NMFS would reserve the right to place on-board an authorized collection vessel a fisheries observer to monitor activities governed by an EFP.

(5) The proposed rule also modifies EFP requirements for swordfish offloading. For the directed swordfish fishery, if vessel monitoring systems (VMS) are installed on vessels, separate EFPs to allow delayed offloading would no longer be required.

Reporting Requirements

NMFS proposes to enhance data collection and reporting by requiring the following:

(1) To reinforce the importance of the year-end report to NMFS concerning the activities conducted under the EFP, in addition to the information currently required for submission, all applications for permit renewals would also be required to include the year-end report from the previous year in order to be considered complete. Renewal applications would not be deemed complete until the year-end report containing all the specified information, is submitted.

(2) In addition to reporting the retention of live HMS, all dead HMS caught and discarded under the permit would have to be reported - these dead discards will be counted against appropriate annual quotas. Additionally, any HMS collected under state-issued permits by persons issued federal EFPs would have to be reported to NMFS within 5 days of collection. Reporting of HMS collected under state permits will provide important information as to the actual numbers of animals that are being removed from the stocks. If no HMS are collected in either federal or state waters in any given month, a "no-catch" report would have to be submitted to NMFS within 5 days of the last day of that month.

(3) Several prohibitions are proposed to be added or modified to address a) submission of false information on permit applications or activity reports, and b) violations of any of the terms and conditions of the EFP. These prohibitions are needed to facilitate enforcement of EFP application and reporting requirements. Essentially, they extend the permitting, record-keeping, and reporting requirements otherwise applicable to vessels and dealers to those persons issued EFPs.

Request for Comments

In addition to the changes proposed in this proposed rule, comments are requested on the below-listed potential regulatory requirements. These measures are not being proposed at this time. If, after receiving comments, NMFS decides to issue regulations to implement any of these provisions, NMFS will publish a proposed rule.

(1) To qualify for an EFP for the live collection of HMS for public display purposes, the applicant would be required to demonstrate that holding facilities adequate for animal husbandry are maintained. NMFS will consider accreditation in the American Zoo and Aquarium Association (AZA), or equivalent standards, as meeting these requirements.

(2) Based on available information on disease or mortalities while in captivity, NMFS could limit the issuance of EFPs for the collection of HMS species that are not likely to survive well in captivity, until such time that the best available new information indicates otherwise. This measure could potentially reduce mortality of HMS held in captivity.

(3) EFPs for the purpose of collecting live animals for public display could be issued only to aquariums and other display facilities that meet the AZA standards for such facilities - third party collectors would no longer be issued EFPs, but would be allowed to collect HMS as a third party contractor to the authorized institution.

(4) Public display facilities, including aquariums that are not otherwise authorized by a collection permit, would be required to obtain from NMFS a display permit in order to maintain HMS in captivity. To qualify for this

permit, applicants would need to demonstrate the adequacy of the facility for animal husbandry. NMFS would consider accreditation in the AZA, or equivalent standards, as meeting these requirements.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*

For the purposes of NOAA Administrative Order (NAO) 216–6, the AA has preliminarily determined that this action would not have a significant effect, individually or cumulatively, on the human environment, that it has been sufficiently analyzed in a prior FMP, and that it involves only minor technical additions, corrections or changes to the regulations. Accordingly, under sections 5.05 and 6.03a3(b) of NAO 216–6, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains a new collection-of-information requirement subject to review and approval by OMB under the PRA. The requirement for exempted fishing activity reporting has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes per notification phone call at the beginning and completion of a collection trip and upon shipment of any animals. The estimated time to prepare a catch report required by an EFP issued for display collection is 5 minutes, and to prepare a "no-catch" report the estimated time is 2 minutes. The estimated application preparation and year-end report preparation times for display EFPs are 30 minutes each. Application of a PIT tag to a HMS captured for display is estimated to take 2 minutes.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency; 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 on these or any other aspects of the collection of information to NMFS and OMB (*see* **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel of Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows. Most of the entities that would be affected by this proposed rule would be considered small entities. The cost to EFP applicants is minimal, estimated at $3.75 per applicant for the letter, information card, and telephone calls needed to apply, report, and notify. The cost of PIT tags will be incurred by NMFS, which will supply the tags to each permittee. If NMFS decided to select a vessel governed by an EFP for observer coverage, pursuant to 50 CFR 645.7, there would be no significant economic impact. NMFS would provide the observer, and the vessel operator would only be required to provide accommodations and food for the observer equivalent to those provided to the crew. Thus, there would be no significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis was not prepared for this proposed rule.

The proposed action would not significantly change the operations of any HMS fishery and is not expected to increase threats to endangered or threatened species listed under the Endangered Species Act. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of sea turtle species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative specified in the BiOp in a final rule July 9, 2002 (67 FR 45393). The measures proposed would not have any additional impact on sea turtles as these actions would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible and irretrievable commitment are expected from this proposed action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

It is not anticipated that this proposed action would have any impacts on essential fish habitat and, therefore, no consultation is required.

The AA has determined that this action would have no impacts on the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management plans under the Coastal Zone Management Act. Accordingly, NMFS has submitted consistency determinations to those states with a request for concurrence.

List of Subjects in 50 CFR Part 635

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

Dated: December 2, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.28, paragraph (c)(1)(i)(A) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) No more than 15 swordfish per trip may be possessed in or from the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel using or having on board a longline. However, Atlantic swordfish legally taken prior to the effective date of the closure may be possessed in the Atlantic Ocean north of 5° N. lat. or landed in an Atlantic coastal state on a vessel with a longline on board, provided the harvesting vessel does no fishing after the closure in the Atlantic Ocean north of 5° N. lat., and reports positions with a vessel monitoring system, as specified in § 635.69. NMFS may adjust the incidental catch retention limit by filing with the Office of the **Federal Register** for publication notification of the change at least 14 days before the effective date. Changes in the incidental catch limits will be based upon the length of the directed fishery closure and the estimated rate of

catch by vessels fishing under the incidental catch quota.

* * * * *

3. In § 635.32, paragraphs (c)(1) and (c)(4) are revised, and paragraphs (c)(3)(i) through (c)(3)(iv) are added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(c) *Exempted fishing permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, other than scientific research conducted from a scientific research vessel, NMFS may issue exempted fishing permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing activities and to solicit public comment on anticipated exempted fishing requests. Applications for permit renewals are required to include the year-end report from the previous year in order to be considered complete. Renewal applications will be deemed incomplete unless a complete package, including the year-end report containing all the specified information is submitted.

* * * * *

(3) * * *

(i) Collectors of HMS for display purposes must notify the local NMFS Office for Law Enforcement 72 hours, excluding weekends and holidays, prior to departing on a collection trip in federal or state waters as to collection plans and location, and the number of animals to be collected. Also, at the end of each collection trip, upon return to port the collector must call the local NMFS Office for Law Enforcement to report the conclusion of the trip and whether any regulated HMS were collected. In addition, in the case of HMS being shipped to other locations, the collector must notify the local NMFS Office for Law Enforcement 48 hours prior to shipment.

(ii) All live HMS collected for the purpose of public display are required to have microchip Passive Integrated Transponder (PIT) tags, which will be supplied by NMFS, implanted by the collector. Collectors are not required to obtain PIT tag readers, but are advised to do so in order to verify that the PIT tag is properly implanted and can be read. If a NMFS law enforcement officer is unable to detect a PIT tag in a HMS collected for display with the NMFS reader, the collection will be deemed unauthorized.

(iii) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, will be specified on a case-by-case basis. If such measures are not effective in limiting mortalities, other restrictions, such as allowing the use of only certain types of gear for the live capture of HMS for display, may be instituted to minimize the possibility of dead discards.

(iv) NMFS reserves the right to place on-board an authorized collection vessel a fisheries observer to monitor activities governed by an EFP.

(4) Written reports on fishing activities and disposition of catch for each fish collected under the permit must be submitted to NMFS, at an address designated by NMFS, within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks in the EFP. In addition, all dead HMS caught and discarded under the permit must be reported. Also, any HMS collected under state-issued permits by persons issued federal EFPs must be reported to NMFS within 5 days of collection. If no HMS are collected in either federal or state waters in any given month, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

4. In § 635.71, paragraphs (a)(6) and (a)(26) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 635.5 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

* * * * *

(26) Violate the terms and conditions or any provision of a permit issued under § 635.4, or an exempted fishing permit or scientific research permit issued under the authority of § 635.32.

* * * * *

[FR Doc. 02–30874 Filed 12–3–02; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 235
Friday, December 6, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of the information collection and supporting documents may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 412–.
Form Number: N/A.
Title: PVO Classification Form.
Type of Submission: New.
Purpose: The U.S. Agency for International Development (USAID) requires all private voluntary organizations (PVOs) that wish to be eligible to compete for most forms of foreign economic assistance administered by USAID to register with the Agency. Registration provides a resource for USAID officials to access financial and program information on PVOs. The PVO Registry is a central clearinghouse for information on PVOs working in countries where elsewhere the U.S. Government would not have knowledge of the activities. To confirm the data is collected in a formalized and consistent manner, USAID has developed the Classification Form's list of sectors and countries that will show where qualified and interested PVOs registered with USAID are working.
Annual Reporting Burden:
Respondents: 450.
Total annual responses: 450.
Total annual hours requested: 150 hours.

Dated: November 25, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–30894 Filed 12–5–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice to amend Privacy Act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to amend the Privacy Act system of records FCIC–7, entitled Accounts Receivable. The system of records is maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The accounts receivable system of records is being revised to reflect changes in the administration and management of the Federal crop insurance program and to reflect more completely the types of information collected and maintained in this system of records.

EFFECTIVE DATE: This notice will be effective without further notice on January 6, 2003, unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Chief, Fiscal Operations Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, MO 64133–4676, telephone (816) 926–7033.

SUPPLEMENTARY INFORMATION: RMA is responsible for the administration of FCIC programs that affect agricultural producers in the United States. Programs are administered through the Washington D.C. Headquarters Office, Kansas City Office, ten regional offices and six compliance offices. At all of the above locations, RMA collects information about individuals and other legal entities; and retains, utilizes, and distributes information from the Privacy Act Systems of Records.

Information contained in the system will include name, address, tax identification numbers, and information relating to debt identification, such as policy number and basis for establishing debt. Debtors identified are indebted to FCIC or private insurance companies reinsured by FCIC. Information captured will be used to facilitate collection and tracking of delinquent debtors until such time as debts are satisfied. Revisions to the existing system of records are being made in the following areas:

The system location has been revised to reflect government reorganization and downsizing. In addition to the Kansas City Office, the system is now located in regional offices, and compliance offices of the Risk Management Agency. Addresses for these offices are now available from the Deputy Administrator, Insurance Services, Risk Management Agency, Room 6709, Mail Stop 0805, 1400 Independence Avenue, SW., Washington, DC 20250–0805. All references to addresses have been revised to reflect these changes. Categories of individuals have been expanded to include other legal entities. Categories of records have been revised and expanded to reflect more completely the types of information collected and maintained. This information includes individual identifying information, indebtedness information, and collection action by FCIC.

The current routine uses are revised as follows: Routine use number (1) has been revised to include agencies that regulate. Routine use number (2) has been revised to permit disclosure to any judicial or administrative tribunal if the record sought is relevant. Routine uses number (3) and number (5) have been revised to update the authority for reporting debts to credit reporting and collection agencies. Routine use number (7) has been deleted. Routine use number (8) has been combined with

routine use number (3). Routine use number (9) has been renumbered as use number (7) and revised to refer to those programs conducting computer matching.

New routine uses have been added as follows: A new routine use number (8) permits referral of delinquent debts to the Department of Treasury, Financial Management Service, through participation in the Treasury Offset Program, and to other Federal agencies for administrative offset of eligible Federal payments, and for cross-servicing of debtor accounts. A new routine use number (9) allows delinquent debt to be disclosed to employers for wage garnishment. New routine use (10) permits information to be disclosed to private insurance companies reinsured by FCIC for tracking of delinquent debtors. New routine use number (11) permits information to be disclosed for research and analysis to identify potential areas of fraud, waste or abuse. A new routine use number (12) permits information to be disclosed for use in the administration, analysis, and evaluation of the Federal crop insurance program.

In compliance with Federal regulations, retention and disposal of records has been revised to include shredding of records supplied by other Federal agencies.

The source of information in these records has been expanded to include identification of delinquent debtors and debts certified to FCIC from private insurance companies reinsured by FCIC.

In conformance with 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, the Department of Agriculture sent a report describing the proposed changes to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform, United States House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on November 27, 2002.

Signed at Washington, DC, on November 27, 2002.

Ann M. Veneman,

Secretary of Agriculture.

USDA/FCIC–7

SYSTEM NAME:

Accounts Receivable.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional and compliance offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0805, Room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on any individual or other legal entity that is indebted to the Federal Crop Insurance Corporation (FCIC) or a private insurance company.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of standardized records containing identifying information on individuals or other legal entities such as the name of individuals legally responsible for the debt, address, tax identification number (social security number or employer identification number); information relating to debt identification, such as policy number; codes identifying the type of debt and the basis for establishing the debt; date the debt arose; principal debt amount; interest rate and date interest accrues on the debt; information related to changes in debt amount and debt status; and brief remarks that identify or clarify actions being taken by FCIC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate or administrative tribunal or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosures may be made from this system with respect to debts to a credit reporting agency in accordance with 31 U.S.C. 3701, 3711(f), 3720B, 4 CFR 102.3, 4 CFR 3.35 and 7 CFR part 400, subpart K in order to assist in collecting delinquent debts.

(4) Referral of past due legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made in accordance with 31 U.S.C. 3720 A, and 26 CFR 301.6402–6T.

(5) Referral to a collection agency, when FCIC determines such referral is appropriate for collecting the debtor's account in accordance with 31 U.S.C. 3711, 3718; 7 CFR part 400, subpart K; 7 CFR 3.36.

(6) Disclosure may be made to a congressional office from the record of an individual in response to any inquiry from the congressional office made at the request of that individual.

(7) Referral of information regarding indebtedness to the Department of Defense, and the United States Postal Service, for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FCIC in order to collect debts in accordance with the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, administrative or salary offset procedures, or through the use of collection agencies.

(8) Referral of delinquent debts to the Department of Treasury, Financial Management Service, and other Federal agencies for administrative offset of eligible Federal payments and for cross-servicing of debtor accounts in accordance with 31 U.S.C. 3716; 7 CFR part 3, subpart B.

(9) Referral of delinquent debts to the debtor's employer for wage garnishment in accordance with 31 U.S.C. 3720D.

(10) Disclosure may be made to private insurance companies delivering the FCIC program as authorized by the Federal Crop Insurance Act.

(11) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(12) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts, microfiche, and in the file folders at the Kansas City Office.

RETRIEVABILITY:

Records may be indexed and retrieved by name of individual, tax identification number (including social security number), or contract number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. File folders and other hard copy records are stored in locked file cabinets. The electronic records are controlled by password protection and the computer network is protected by means of a firewall.

RETENTION AND DISPOSAL:

Records are maintained until the indebtedness is paid. Unless shredding is required by Federal regulations, paper records are delivered to custodial services for disposal as waste paper. Electronic records may be erased after the debt is settled and upon the expiration of the records retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:

Fiscal Operations Branch, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–7033.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name and address; tax identification number (including social security number); State(s) and county(ties) where such individual farms; and individual crop insurance policy number(s), if known. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system, that pertains to such individual, by submitting a written request to the Privacy Act Officer, Risk Management Agency, Program Support Staff, Room 6620-SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked, Privacy Act Request. A request for information should contain: name, address, ZIP code, tax identification number (including social security number), name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the insurance company, individual debtor or from other Federal agencies.

[FR Doc. 02–30742 Filed 12–5–02; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Twin Creek Timber Sale; Caribou-Targhee National Forest, Bear Lake County, ID

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, and regenerate new stands of trees in upper Georgetown Canyon of the Caribou National Forest in Bear Lake County, Idaho. The proposed project is located in T. 10 S., R. 44, Sections 1, 12, 13, 24 and T. 10 S., R. 44 E. sections 6 and 7, Boise Meridian. Implementing a regeneration cut to lodgepole pine stands will provide an Allowable Sale Q of sawlogs to industry and help meet the desired future condition for function, structure, and composition to lodgepole pine stands on suitable timberlands in the Georgetown Watershed.

The Montpelier Ranger District of the Caribou National Forest proposes to harvest an estimated 2,500,000 million board feet of commercial timber on approximately 329 acres. All 329 acres would receive group seed tree cut. All units considered for cutting are mature lodgepole pine. An estimated 7.0 miles of road would need to be reconstructed, 1.9 miles would need to be constructed, 1.0 mile of existing road would be opened and 1.0 mile would be closed. Some road construction would occur on private ground. Approximately 54 acres would be harvested in the Dry Ridge Inventoried Roadless Area, #04164. All merchantable timber would be yarded using tractors. Natural regeneration is planned for in all the proposed cutting units. Logging slash will be available for firewood to the public. The remaining logging slash will then be burned. Ten to fifteen tons per acres of large woody debris will be left in each cutting unit for nutrient recycling.

The issues identified during scoping and the analysis process will determine alternatives to the proposed action. The no action alternative will be analyzed.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received within 30 days of the date of publication of this Notice in the **Federal Register**. No scoping meetings are planned at this time. Information received will be used in preparation of the draft EIS and final EIS.

ADDRESSES: Send written comments to Caribou-Targhee National Forest, Montpelier Ranger District, 322 North 4th Street, Montpelier, Idaho 83254.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Eric Mattson, Caribou-Targhee National Forest, Montpelier Ranger District, 322 N. 4th Street, Montpelier, Idaho 83254 (Telephone: (208) 847–0375).

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State and local agencies, as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

The decision to be made is: The Forest Service needs to decide whether

to continue the present course of action (the no action alternative) or to implement the proposed action with applicable mitigation measures, or to implement an alternative to the proposed action with its applicable mitigation measures.

The tentative date for filing the Draft EIS is 15 February 2003. The tentative date for filing the final EIS is 15 April 2003. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give viewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978). Also, environmental objections that could be raised at the draft impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to the in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under the FOIA, confidentially may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentially, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: November 20, 2002.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 02–30912 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Idaho Panhandle National Forests, Bonner County, Idaho and Pend Oreille County, Washington; Chips Ahoy Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Priest Lake Ranger District on the Idaho Panhandle National Forests will prepare an environmental impact statement (EIS) on a proposal to treat forest vegetation over approximately 980 acres. The treatments are being proposed to restore forest communities to a more historical composition and structure and re-introduce fire into these ecosystems. Treatments include 780 acres of regeneration harvest and 200 acres of commercial thinning.

DATES: Comments concerning the scope of the analysis must be received within 30 days from the date of this notice in the **Federal Register** and during the draft EIS period. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected June 2003.

ADDRESSES: Send written comments to Chips Ahoy Project, Attn: Steve Johnson, Forest Supervisor's Office, 3815 Shreiber Way, Coeur d'Alene, ID 83815.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Project Leader, Idaho Panhandle Supervisor's Office at the above address, by calling (208) 765–7224, or *ssjohnson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The project area is located within Bonner County, Idaho, and Pend Oreille County, Washington. The project area is located approximately twenty miles north of the community of Priest River, Idaho. A past bark beetle outbreak, in combination with root diseases, other insects and diseases and winter storm damage has left many of these stands poorly stocked.

Purpose and Need for Action

The purpose and need for this action is to restore dry forest communities to a more natural composition and structure and re-introduce fire into these ecosystems and increase the amount of wet forest communities that are dominated by western white pine and western larch trees.

Proposed Action

The proposed action is separated into three categories, vegetative treatments, fuel treatments and road treatments. The proposal is to treat forest vegetation over approximately 980 acres within the project area. Different types of treatments would be used depending upon the existing condition of the forest stands. These treatments include regeneration treatments on 780 acres and commercial thinning on the remaining 200 acres. After the tree cutting operations are complete, approximately 930 acres, or 95 percent of the vegetative treatment areas would be underburned to reduce the fuels, prepare the sites for reforestation, and to re-introduce fire onto these sites as a natural process. The remaining 5 percent of the vegetative treatment would not be burned. In order to access some of the proposed vegetative treatment areas, approximately 2.5 miles of temporary road would be constructed. These temporary roads would be recontoured following their use. Resource protection measures will be included to protect resources such as

snags, soils, heritage resources, water quality and wildlife.

Responsible Official

Ranotta K. McNair, Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83815.

Nature of Decision To Be Made

The Forest Supervisor of the Idaho Panhandle National Forests will decide whether or not to implement this project, and if so, in what manner.

Scoping Process

The agency invites written comments and suggestions on the scope of the analysis. In addition to this notice, a proposed action letter will be sent to interested government officials, agencies, groups, and individuals on the Chips Ahoy mailing list. No public meetings are currently planned.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Specific written comments on the proposed action will be most helpful.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 25, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–30380 Filed 12–05–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Frenchtown Face Ecosystem Restoration Project; Ninemile Range District, Lolo National Forest, Missoula County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the effects of timber harvest, prescribed burning, road management changes, weed spraying, and stream channel restoration in a 44,000 acre project area approximately 25 miles northwest of Missoula, Montana.

DATES: Comments concerning the scope of the analysis should be received in writing no later than 30 days following publication of this notice.

ADDRESSES: Send written comments to: Deborah L. R. Austin, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, MT 59804.

FOR FURTHER INFORMATION CONTACT: Brian Riggers, EIS Team Leader, Building 24, Fort Missoula, Montana 59804, (406) 329–3793, or e-mail *briggers@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The Lolo National Forest proposes to harvest trees on approximately 4,300 acres of low elevation benchlands within the project area. Most of these acres would be underburned following harvest, and an additional 6,500 acres of prescribed burning to reduce fuel levels would occur in areas not harvested (a total of about 10,400 acres of burning overall). Approximately 79 miles of road management changes are proposed. Most (48 miles) of these involve removing drainage structures and restoring vegetation on previously closed roads, but approximately 31 additional mile of low use or grown in roads would also be formally closed. Finally, weeds would be treated within about 6,000 acres where they currently occur. Approximately 1,200 acres would be aerially sprayed.

Lands affected are within the Mill, Roman, Houle, Sixmile, and lower Ninemile Creek (including Butler, Kennedy, and McCormick Creeks) watersheds. The project area is bounded by the Clark Fork River and Ninemile Creek to the southwest, and the Ninemile/Flathead Reservation divide to the northeast.

The purpose of the proposal is to carry out the goals and direction stated in the Lolo National Forest Plan using ecosystem management principles. The objectives are to:

(1) Reduce the potential for high severity fires within the low elevation ponderosa pine and Douglas-fir forests, while also improving fire protection on private property with all ownerships.

(2) Maintain/improve forest health and reduce the risk of damage from insects and disease while maintaining a natural appearing landscape.

(3) Reduce the expansion of new or less extensive weed species, and control exsisting weeds, under a comprehensive block planning effort.

(4) Reduce roads while maintaining reasonable access for recreation, but limiting further recreational development.

(5) Maintain/improve water quality and fish habitat throughout the landscape.

(6) Maintain/improve wildlife security and habitat.

(7) Protect and interpret historic sites.

Public involvement was conducted in 2002 through public meetings, letters,

and phone conversations. Values and desires that people have for the management of this landscape were identified. these were used to collaboratively develop purpose and need statements, which this proposed action is based upon. Issues and comments identified during this earlier scoping that were not specific components of the proposed action will be carried forward and addressed through alternative development. During this process the Forest Service is seeking written comment, particularly addressing possible issues or alternatives. A scoping document has been prepared and mailed to parties known to be interested in the proposed action.

The effects of the proposed action on vegetation, fire, wildlife, fisheries, recreation, historic interpretation, and the scenic character of the landscape have been identified as preliminary key issues. These issues will be used to develop a range of alternatives (including a no action alternative where none of the activities in the proposed action would be implemented) and assess environmental consequences.

Public participation is an important part of the development and analysis of this project. In addition to the initial collaboration, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed action. There will be additional public meetings throughout this process. If you are interested in obtaining dates or information on these, please contact Brian Riggers at the location listed above.

The Federal Forest Service is the lead agency for preparing this EIS. They will consult with the United States Fish and Wildlife Service. The responsible official who will make the decision is Deborah L. R. Austin, Forest Supervisor. She will make a decision between alternatives after considering comments, responses, environmental consequences, applicable laws, regulations, and policies. The decision and rational will be documented in a Record of Decision.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 2003. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability. It is very important that those interested in management of the Frenchtown Face project area participate at that time. Completion of the final EIS is scheduled for July 2003.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS (Final Environmental Impact Statement) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 15, 2002.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 02–30879 Filed 12–5–02; 8:45 am]

BILLING CODE 32110–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, December 12, 2002, in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on December 12th begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC member/subcommittee reports, Paul Chappell proposal example presentation, NEPA Overview with Questions and Answers, Proxy votes and absent voting members/Quorum, Overhead Discussion and Decision. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–30892 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Aging Flood Control Dams in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of record of decision.

SUMMARY: M. Darrel Dominick, responsible Federal official for projects administered under the provisions of Section 14 of Public Law 83–566 (enacted by Section 313 of Public Law 106–472, otherwise known as "The Small Watershed Rehabilitation Amendments of 2000") in the State of Oklahoma, is hereby providing notification that a record of decision to proceed with the installation of the Rehabilitation of Aging Flood Control Dams in Oklahoma is available. Single copies of this record of decision may be obtained from M. Darrel Dominick at the address shown below.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, State Office, 100 USDA Suite 206, Stillwater, Oklahoma, 74074–2655, telephone (405) 742–1227.

Dated: November 22, 2002.

M. Darrel Dominick,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

[FR Doc. 02–30910 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for "Self-Help Technical Assistance Grants" (Rural Development Instruction 1944–I).

DATES: Comments on this notice must be received by February 4, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Daryl L. Cooper, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, Stop 0783, 1400 Independence Ave., SW., Washington DC 20250–0783, Telephone (202) 720–1366.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1944–I, Self-Help Technical Assistance Grants.

OMB Number: 0575–0043.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of currently approved information collection.

Abstract: This subpart set forth the policies and procedures and delegates authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under section 523 of the Housing Act of 1949 loan program under 42 U.S.C 1472. This financial assistance may pay part of all of the cost of developing, administering or coordinating program of technical and supervisory assistance to aid very low- and low-income families in carrying out self-help housing efforts in rural areas. The primary purpose is to locate and work with families that otherwise do not qualify as homeowners, are below the 50 percent of median incomes, and living in substandard housing. RHS will be collecting information from non-profit organizations to enter into grant agreements. These non-profit organizations will give technical and supervisory assistance, and in doing so, they must develop a final application for section 523 grant funds. This application includes Agency forms that contain essential information for making a determination of eligibility.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Public or private nonprofit organizations, State, Local or Tribal Governments.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 50.56.

Estimated Number of Responses: 160.

Estimated Total Annual Burden on Respondents: 4,933.05.

Copies of this information collection can be obtained from Jean Mosely, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0041.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosely, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 27, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–30920 Filed 12–5–02; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 5, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in

connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Fluid Element Filter. 2940–00–832–6054.
NPA: Gaston Skills, Inc., Gastonia, North Carolina.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Rochester Midland Envirocare Products, 7930–00–NIB–0253, Carpet & Upholstery Cleaner, 7930–00–NIB–0254, Food Service Cleaner, 7930–00–NIB–0255, Glass Cleaner, 7930–00–NIB–0256, Hand Soap, 7930–00–NIB–0257, LiquiBac, 7930–00–NIB–0258, Low Foam All Purpose Cleaner, 7930–00–NIB–0259, Neutral Disinfectant, 7930–00–NIB–0260, Tough Job, 7930–00–NIB–0261, Washroom & Fixture Cleaner.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Administrative Services, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, Harpers Ferry, West Virginia.
Service Type/Location: Custodial Service, James M. Hanley Federal Building and U.S. Courthouse, Syracuse, New York.
NPA: Oswego Industries, Inc., Fulton, New York.
Contract Activity: GSA/PBS Upstate New York Service Center , Syracuse, New York.
Service Type/Location: Custodial Service, Walter Reed Army Medical Center, Main Section, Washington, DC, Forest Glen Section, Montgomery County, Maryland, Buildings 1, 5, 11, 52, 53, 92, 121, 154, 156, 163, 169, 178, 500, 501, 508, 511, 512, 601, 602, 604, 605.
NPA: Mt. Vernon-Lee Enterprises, Inc., Newington, Virginia,
Contract Activity: MEDCOM Contracting Center–NA, Washington, DC.
Service Type/Location: Facilities Maintenance, Mississippi ANG CRTC/LGC, Gulfport, Mississippi.
NPA: Mississippi Goodworks, Inc., Gulfport, Mississippi.
Contract Activity: ANG CRTC/LGC, Gulfport, Mississippi.
Service Type/Location: Janitorial/Custodial, National Park Service, C&O Canal National Historical Park Visitor Center, Cumberland, Maryland.
NPA: Hagerstown Goodwill Industries, Inc., Hagerstown, Maryland.
Contract Activity: National Park Service, C&O Canal NHP, Hagerstown, Maryland.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–30908 Filed 12–5–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: January 5, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 10, September 20, October 4, October 11, and October 18, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 31765, 59249, 62224, 63376, and 64351) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Award Certificate Binder, 7510–01–390–0712.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Plate, Paper, 7350–01–263–6700, 7350–01–263–6701.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Contract Activity: GSA, General Products Center, Fort Worth, Texas.

Services

Service Type/Location: Base Supply Center, U.S. Army Signal Center, Fort Gordon, Georgia.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: U.S. Army Signal Center, Fort Gordon, Georgia.
Service Type/Location: Cleaning Services, Laguna Atascosa NWR, Rio Hondo, Texas.
NPA: Training, Rehabilitation & Development Institute, Inc., San Antonio, Texas.
Contract Activity: Department of Interior, New Mexico.
Service Type/Location: Grounds Maintenance, Army Research Laboratory (ARL), Adelphi, Maryland.
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland.
Contract Activity: U.S. Army Robert Morris Acquisition Center (ARL), Adelphi, Maryland.

Service Type/Location: Recycling Service, Cape Cod National Seashore, Wellfleet, Massachusetts.

NPA: Nauset, Inc., Hyannis, Massachusetts.

Contract Activity: National Park Service, Wellfleet, Massachusetts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Cleaner, Water Soluble, 6840–01–367–2912, 7930–01–367–2910, 7930–01–367–2959, 7930–01–367–2961, 7930–01–367–2963.

NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.

Contract Activity: GSA, General Products Center, Fort Worth, Texas.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–30909 Filed 12–5–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–2002]

Foreign-Trade Zone 50—Long Beach, CA, Application for Subzone, Ricoh Electronics, Inc. (Copiers, Printers, Thermal Paper and Related Products), Orange County, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the copier, printer, thermal paper and related products manufacturing plant of Ricoh Electronics, Inc., at sites in the Orange County, California, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 19, 2002.

Ricoh's California facilities consist of five sites in the Orange County, California, area: *Site 1* (3 buildings/212,700 sq. ft. on 15 acres with a possible expansion of an additional building of 100,000 sq. ft.) is located at 2320, 2310, and 2300 Redhill Avenue, Santa Ana; *Site 2* (1 building/100,000 sq. ft. on 4.5 acres) is located at 17482 Pullman Street, Irvine; *Site 3* (1 building/107,370 sq. ft. on 5.1 acres) is located at 1062 McGaw Street, Irvine; *Site 4* (1 building/ 57,131 sq. ft. on 3.4 acres) is located at 2660 Barranca Parkway, Irvine; and, *Site 5* (2 buildings/318,458 sq. ft. on 15 acres) is located at 1100 Valencia Avenue & 1101 Bell Avenue in Tustin, California.

The facilities (800 employees) are requesting subzone status to produce digital copiers and remanufactured copiers (HTSUS 9009.12.0000—duty rate 3.7%), laser and multi-function printers (HTSUS 8471.60.5100 and 8472.90.8000—duty free), copier and printer peripherals, such as sorters, large capacity trays (HTSUS 8473.30.3000 and 8473.40.6000—duty free), and storage cabinets (HTSUS 9403.10.0040—duty free); printed circuit boards (HTSUS 8473.30.5000 and 8473.40.8000—duty free), secure fax machines (HTSUS 8517.21.0000—duty free), electronic data storage units (HTSUS 8471.70.9000 duty free), thermal label paper (HTSUS 4811.41.1000—duty rate 1.2% and HTSUS 4811.50.2050—duty free); tag paper (HTSUS 4811.90.8000—duty rate of 0.4%), thermal transfer ribbon (HTSUS 9612.10.9030—duty rate of 8.1%), TC film (HTSUS 3920.62.0000—duty rate 4.2%), toner cartridges (HTSUS 8473.30.5000, 8473.40.8000, 8517.90.0400, and 9009.99.4000—duty free), toner and developer (HTSUS 3707.90.3290—duty rate 6.5%), and remanufactured toner cartridges. The company may add other similar Ricoh products to its product line in the future.

Foreign-sourced materials will account for some 40 percent of finished product value, and include items from the following general categories: vegetable waxes; quartz; mineral oils; carbon; inorganic acids and oxygen compounds of nonmetals; aluminum oxide; iron oxides; titanium oxides; sulfates; carbonates; silicates; oxometallic or peroxometallic acids; acyclic alcohols; phenols; ethers; saturated acyclic monocarboxylic acids; polycarboxylic acids; amine function compounds; diazo-, azo-or azoxy-compounds; organic derivatives of hydrazine; organo-sulfur compounds; heterocyclic compounds; other organic compounds; paints and varnishes; surface-active agents; artificial waxes and prepared waxes; prepared glues and other prepared adhesives; photographic film; photographic paper, paperboard; chemical preparations for photographic uses; finishing agents; rubber accelerators; organic composite solvents and thinners; prepared binders for foundry molds; polymers of ethylene/propylene/styrene/vinyl chloride/vinyl acetate and acrylic; epoxide resins; polyamides in primary forms; amino-resins; silicones; cellulose; tubes, pipes and hoses; self-adhesive plates; sheets, film, foil, tape; other articles of plastics; other articles of unvulcanized rubber; conveyor or transmission belts; wood packing cases and boxes, uncoated paper and paperboard; paper cartons and boxes, cellulose wadding or fibers; bobbins, spools, cops and similar supports of paper pulp; cleaning seals for cartridge assembly; fabricated asbestos fibers; glass spheres; metal fasteners; copper springs; aluminum foil; aluminum tube or pipe fittings; tungsten; base metal mountings; metal office fasteners; air or vacuum pumps, air or other gas compressors and fans; centrifuges; automatic data processing machines; other office machines and parts and accessories; molds for metal foundry; taps, cocks, valves; ball or roller bearings; transmission shafts and cranks; gaskets and similar joints of metal sheeting; electric motors and generators; electrical transformers, static converters and inductors; electromagnets, permanent magnets; primary cells and primary batteries; industrial or laboratory electric furnaces and ovens; electric instantaneous or storage water heaters, electric space heating apparatus, electrothermic hairdressing apparatus; electrical apparatus for line telephony or telegraphy, videophones; electrical capacitors; electrical resistors; printed circuits; electrical apparatus for switching or protecting electrical circuits; electrical filament or discharge lamps; diodes, transistors, photosensitive semiconductor devices;

electronic integrated circuits and microassemblies; insulated wire and cable; insulating fittings for electrical machines; waste and scrap of primary cells and batteries; mirrors; lenses; photographic cameras; photocopying apparatus; instruments and appliances used in dental, medical, veterinary and surgical sciences; measuring instruments; counters, automatic regulating or controlling instruments or apparatus; contact static eliminator brush for copiers; and typewriter ribbons.

Zone procedures would exempt Ricoh from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, with some up to 8.1%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 12.5 percent, weighted average 4.3%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One World Trade Center, Suite 1670, Long Beach, California.

Dated: November 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30871 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2002]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Ricoh Electronics, Inc. (Toner Cartridges, Related Toner Products and Thermal Paper Products), Lawrenceville, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting special-purpose subzone status for the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc. (Ricoh Electronics) in Lawrenceville, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 19, 2002.

Ricoh Electronics' plant (73.13 acres/351,058 square feet, with a possible expansion of one additional building and expansion to existing buildings totaling 486,000 square feet) is located at 1125 Hurricane Shoals Road in Lawrenceville, Georgia.

The facility (340 employees) is requesting subzone status to produce thermal label paper (HTSUS 4811.41.1000—duty rate 1.2% and 4811.51.2050—duty free), tag paper (HTSUS 4811.90.8000—duty rate .4%), TC film (HTSUS 3920.62.0000—duty rate 4.2%), thermal transfer ribbon (HTSUS 9612.10.9030—duty rate 8.1%), toner cartridges (HTSUS 8473.30.5000, 8473.40.8000, 8517.90.0400, and 9009.99.4000—duty free), toner and developer (HTSUS 3707.90.3290—duty rate 6.5%), and remanufactured toner cartridges. The company may add other Ricoh products such as highly advanced digital copiers, laser and multi-function printers, copier and printer peripherals (such as sorters, large capacity trays, and copier stands), printed circuit boards, secure fax machines, eCabinets (electronic data storage units), and other products to their manufacturing line in the future. Foreign-sourced materials will account for some 40 percent of finished product value, and include items from the following general categories: Vegetable waxes; quartz; mineral oils; carbon; inorganic acids and oxygen compounds of nonmetals; aluminum oxide; iron oxides; titanium oxides; sulfates; carbonates; silicates; oxometallic or peroxometallic acids; acyclic alcohols; phenols; ethers; saturated acyclic monocarboxylic acids; polycarboxilic acids; amine function compounds; diazo-, azo- or azoxy-compounds; organic derivatives of hydrazine; organo-sulfur compounds; heterocyclic compounds; other organic compounds; paints and varnishes; surface-active agents; artificial waxes and prepared waxes; prepared glues and other prepared adhesives; photographic film: photographic paper, paperboard; chemical preparations for photographic uses; finishing agents; rubber accelerators; organic composite solvents and thinners; prepared binders for foundry molds; polymers of ethylene/propylene/styrene/vinyl chloride/vinyl acetate and acrylic; epoxide resins; polyamides in primary forms; amino-resins; silicones; cellulose; tubes, pipes and hoses; self-adhesive plates; sheets, film, foil, tape; other articles of plastics; other articles of unvulcanized rubber; conveyor or transmission belts; wood packing cases and boxes, uncoated paper and paperboard; paper cartons and boxes, cellulose wadding or fibers; bobbins, spools, cops and similar supports of paper pulp; cleaning seals for cartridge assembly; fabricated asbestos fibers; glass spheres; metal fasteners; copper springs; aluminum foil; aluminum tube or pipe fittings; tungsten; base metal mountings; metal office fasteners; air or vacuum pumps, air or other gas compressors and fans; centrifuges; automatic data processing machines; other office machines and parts and accessories; molds for metal foundry; taps, cocks, valves; ball or roller bearings; transmission shafts and cranks; gaskets and similar joints of metal sheeting; electric motors and generators; electrical transformers, static converters and inductors; electromagnets, permanent magnets; primary cells and primary batteries; industrial or laboratory electric furnaces and ovens; electric instantaneous or storage water heaters, electric space heating apparatus, electrothermic hairdressing apparatus; electrical apparatus for line telephony or telegraphy, videophones; electrical capacitors; electrical resistors; printed circuits; electrical apparatus for switching or protecting electrical circuits; electrical filament or discharge lamps; diodes, transistors, photosensitive semiconductor devices; electronic integrated circuits and microassemblies; insulated wire and

cable; insulating fittings for electrical machines; waste and scrap of primary cells and batteries; mirrors; lenses; photographic cameras; photocopying apparatus; instruments and appliances used in dental, medical, veterinary and surgical sciences; measuring instruments; counters, automatic regulating or controlling instruments or apparatus; contact static eliminator brush for copiers; and typewriter ribbons.

Zone procedures would exempt Ricoh Electronics from Customs duty payments on foreign materials used in production for export. Some 25 percent of the toner products are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (primarily duty-free, with some up to 8.1%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 12.5 percent, weighted average 4.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or
2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board. U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Export Assistance Center, Marquis Two Tower, Suite 200, 285 Peachtree Center Avenue, NE., Atlanta, Georgia 30303–1229.

Dated: November 21, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30872 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54–2002]

Foreign-Trade Zone 202—Los Angeles, CA Area; Application for Expansion and Reorganization

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to expand and reorganize its zone in the Los Angeles, California area, within and adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 21, 2002.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, July 22, 1994) and expanded on August 26, 1996 (Board Order 842, 61 FR 46763, September 5, 1996) and July 9, 1999 (Board Order 1043, 64 FR 38887, July 20, 1999). The zone project currently consists of 15 sites (4,514) at port facilities, industrial parks and warehouse facilities in Los Angeles County.

The applicant is now requesting authority to expand and reorganize the general-purpose zone to include on a permanent basis Temporary Sites 12, 13 and 14, to restore 44 acres deleted from Site 9, to permanently delete 78 acres from Site 3, and, to include seven new sites in Los Angeles and the adjacent "Inland Empire" area.

The sites to be made permanent are as follows: *Site 12* (8 acres)—1981 East 213th Street, Carson; *Site 13* (19 acres)—1501 E. Victoria Street, Carson; and, *Site 14* (88 acres)—adjacent to Site 1, at 300, 301, 400, and 401 Westmont Street, San Pedro. *Site 9*, which is located at the Harbor Gateway Center, will be restored to its original 128 acres. *Site 3*, at the International Trade & Technology Center, will be decreased by 78 acres (new total—564 acres). The proposed new sites would include: *Proposed Site 16* (163 acres)—Artesia Corridor Commerce Park (owned by AMB Properties Corp.), northbound side of the intersection of S. Wilmington Avenue and Highway 91 (the Redondo Beach Freeway), Compton: *Proposed Site 17* (9 acres, 2 parcels)—Tri-Modal's Lucerne facility (7 acres—owned by Tri-Modal Distribution Services, Inc.), 22560 Lucerne Street, Carson, and Tri-Modal's Watson Center facility (2 acres), 1411 Watson Center Road, Carson; *Proposed Site 18* (13 acres)—Tri-Modal's Carson facility (owned by Tri-Modal Distribution Services, Inc.), 2011 East Carson Street, Carson; *Proposed Site 19* (71 acres)—Chino South Business Park (owned by the Carson Companies), bounded by Kimball Avenue, Euclid Avenue, Cypress Avenue and Bickmore Avenue, Chino; *Proposed Site 20* (531 acres)—Park Mira Loma West (owned by Industrial Developments International), located on the southeast side of the intersection of Highway 60 (the Pamona Freeway) and Interstate 15 (the Ontario Freeway), Mira Loma: *Proposed Site 21* (156 acres)—Pattillo Properties Redlands Commerce Center (owned by Robert Pattillo Properties), bounded by California Street on the east and San Bernardino Avenue on the south, Redlands; and, *Proposed Site 22* (227 acres)—Bixby Land Company Redlands Business Center (owned by Bixby Land Company), bounded by San Bernardino Avenue, California Street, Mountain View and West Lugonia Avenues, Redlands. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or
2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is February 4, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 19, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at

address number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 350 S. Figueroa Street, Suite 509, Los Angeles, California 90071.

Dated: November 26, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–30873 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges from India: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 28, 2002, the Coalition Against Indian Flanges ("petitioners") requested an administrative review of Bhansali Ferromet Pvt. Ltd., Echjay Forgings Limited, Isibars, Limited ("Isibars"), Panchmahal Steel, Ltd., Patheja Forgings and Auto Parts, Ltd., and Viraj Forgings, Ltd. The Department initiated the review on March 27, 2002 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002)). On November 1, 2002, the Department circulated among interested parties an issues and decision memorandum for the intent to rescind the administrative review for Isibars. *See Memorandum for the File From Michael Ferrier Through Richard Weible: Issues and Decision Memorandum for the Intent to Rescind the Antidumping Duty Administrative Review of Certain Forged Stainless Steel Flanges from India for Isibars, Limited ("Isibars")* (November 1, 2002) *("Isibars Memo")* (public document, on file in the Department's Central Records Unit in Room B–099). We invited interested parties to comment on the Department's intent to rescind the review with respect to Isibars and did not receive any comments. Therefore, we are rescinding this administrative review with respect to Isibars.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1394.

The Applicable Statute

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Scope of the Review

The products under review are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of stainless steel flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Background

On February 28, 2002, petitioners requested an administrative review of the six companies, including Isibars. The period of review is February 01, 2001 through January 31, 2002. On April 20, 2002, the Department issued the antidumping questionnaire. On May 28, 2002, Isibars submitted its section A response to the Department's questionnaire. On June 4, 2002 the Department issued its section A supplemental questionnaire. On July 3, 2002, Isibars submitted its response to the section A supplemental questionnaire. On August 12, 2002, Isibars submitted revised versions of its sections A and C responses to the Department's original antidumping questionnaire. On August 15, 2002, the respondent submitted section D of the Department's questionnaire. On September 10, 2002, and September 17, 2002, the Department issued sections C and D supplemental questionnaires, respectively. On September 24, 2002, Isibars submitted its response to the Department's supplemental C questionnaire. On October 8, 2002, Isibars submitted its supplemental section D response. On November 1, 2002, the Department issued an issues and decision memorandum stating our intent to rescind the administrative review for Isibars. The Department circulated this memorandum among interested parties and received no comments.

Rescission, in Part, of Antidumping Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period of review, there were no entries, exports, or sales of subject merchandise. On November 1, 2002, the Department issued an issues and decision memorandum stating our intent to rescind the administrative review for Isibars in light of the information on the record that Isibars did not sell, ship, or enter the subject merchandise during the period of review ("POR").

In our memorandum, the Department noted that since Isibars only produces the billet, and does not forge the billet into a flange, Isibars is not the producer of the subject merchandise. Additionally, Isibars stated on the record of this proceeding that it did not negotiate and fix the price of the subject merchandise with the U.S. customer. We concluded that Isibars was not an exporter of the subject merchandise during the POR. U.S. Customs data confirmed that Isibars did not have any entries of forged stainless steel flanges during the POR to the United States. In our memorandum, we recommended rescinding this administrative review with respect to Isibars since there were no sales, entries, or exports of the subject merchandise by Isibars, in accordance with section 351.213 (d)(3) of the Department's regulations. For a more detailed discussion of these points, *see Isibars Memo*. Since the Department has not received any comments regarding the rescission of the administrative review for Isibars, the Department is adopting the position set forth in the *Isibars Memo* and rescinds the administrative review of the antidumping order on certain forged stainless steel flanges with respect to Isibars for the period February 1, 2001 through January 31, 2002. The

Department will issue appropriate instructions to Customs.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30869 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Freshwater Crawfish Tail Meat From the People's Republic of China.

SUMMARY: On August 2, 2002, the Department of Commerce ("the Department") published the notice of initiation of a five-year sunset review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[1] On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this antidumping duty order. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Amir R. Eftekhari or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5331 or (202) 482–3330.

[1] *Notice of Initiation of Five Year "Sunset" Review of Antidumping Duty Order on Freshwoter Crawfish Tail Meat from the People's Republic of China*, 67 FR 50420 (August 2, 2002).

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR part 351 (2002) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the investigation and order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under HTSUS subheading 0306.19.00.10 and 0306.29.00.00. The HTSUS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this proceeding is dispositive.

Background

On August 2, 2002, the Department published the notice of initiation of the five-year sunset review of the antidumping duty order on freshwater crawfish tail meat from the PRC in accordance with section 751(c) of the Act.[2] On August 16, 2002, the Department received a Notice of Intent to Participate on behalf of the Crawfish Processors Alliance ("CPA") and its members; the Louisiana Department of Agriculture and Forestry ("LDAF"); Bob Odom, Commissioner; and the Domestic Parties[3] (collectively, "the domestic interested parties") as specified in section 351.218(d)(1)(i) of the Sunset Regulations.

On September 3, 2002, the Department received a complete substantive response from the domestic interested parties, as specified in the Sunset Regulations under section 351.218(d)(3)(i).

The Department did not receive a substantive response from any respondent interested party in this proceeding. Consequently, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited (120-day) sunset review of this order.

Analysis of Comments Received

All issues raised by the domestic interested parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated November 29, 2002, which is adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the Department's main building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://ia.ita.doc.gov/frn*, under the heading "November 2002." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

[2] *Notice of Initiotion of Five Yeor "Sunset" Review of Antidumping Duty Order on Freshwoter Crowfish Toil Meat from the People's Republic of Chino*, 67 FR 50420 (August 2, 2002).

[3] The "Domestic Parties" are an ad hoc association comprising the CPA, LDAF, Commissioner Odom, and each of the individual members of the CPA listed in Exhibit A of the Petitioner's Substantive Response dated September 2, 2002. The Domestic Parties are " 'an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of {19 U.S.C. 1677(9)}[771(9)(C)(D)(E) of the Act] with respect to the domestic like product,' and are an interested party under 19 U.S.C. 1677(9) [771(9)(F) of the Act]."

Manufacturer/producers/ exporter	Weighted-average margin (percent)
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import & Export Corp	119.39
Huaiyin Foreign Trade Corp	91.50
Yancheng Foreign Trade Corp	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp	122.92
Yancheng Baolong Aquatic Foods Co., Ltd	122.92
Huaiyin Ningtai Fisheries Co., Ltd	122.92
Nantong Delu Aquatic Food Co., Ltd	122.92
PRC-wide Rate	201.63

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30870 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 29, 2002, Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. ("SICARTSA") filed a first request for panel review with the United States Section of the NAFTA Secretariat pursuant to article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Affirmative Injury Determination made by the United States International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. This determination was published in the **Federal Register**, (67 FR 66662) on November 1, 2002. The NAFTA Secretariat has assigned case number USA–CDA–2002–1904–09 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("rules"). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first request for panel review was filed with the United States Section of the NAFTA Secretariat, pursuant to article 1904 of the Agreement, on November 27, 2002, requesting panel review of the final determination described above.

The rules provide that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a complaint in accordance with rule 39 within 30 days after the filing of the first request for panel review (the deadline for filing a complaint is December 27, 2002);

(b) A party, investigating authority or interested person that does not file a complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a notice of appearance in accordance with rule 40 within 45 days after the filing of the first request for panel review (the deadline for filing a notice of appearance is January 13, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–30902 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On November 27, 2002, Ivaco Inc and Ivaco Rolling Mills Inc. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Affirmative Injury Determination made by the United States International Trade Commission, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. This determination was published in the **Federal Register**, (67 FR 66662) on November 1, 2002. The NAFTA Secretariat has assigned Case Number USA-CDA–2002–1904–09 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United

States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 27, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the First Request for Panel Review (the deadline for filing a Complaint is December 27, 2002);

(b) A Party, investigating authority or interested person that does not file a complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the First Request for Panel Review (the deadline for filing a Notice of Appearance is January 13, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–30903 Filed 12–5–02; 8:45 am]

BILLING CODE 3510–GT–P

THE COMMISSION OF FINE ARTS

2003 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded for 2003 in the amount of $7,000,000.00. All requests for information and applications for grants should be received by 31 December 2002 and addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, National Building Museum, Suite 312, 441 F Street, NW., Washington, DC 20001–2728. *Phone:* (202) 504–2200.

Deadline for receipt of grant applications is March 1, 2003.

This program provides grants for general operating support of organizations whose primary purpose is performing, exhibiting, and/or presenting the arts. To be eligible for a grant, organizations must be located in the District of Columbia, must be non-profit, non-academic institutions of demonstrated national repute, and must have annual incomes, exclusive of federal funds, in excess of one million dollars for each of the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 02–30883 Filed 12–5–02; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of September 16, 2002 (67 FR 58358), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), to announce the agency's intention to seek extension of approval of collections of information in regulations implementing two flammability standards for carpets and rugs. The regulations are codified at 16 CFR parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

Two comments were received in response to that notice. The Carpet and Rug Institute ("CRI") commented that the washing requirement in § 1630.4(ii) is not an acceptable method for cleaning carpet materials and suggested that the staff consider the AATCC Test Method 171–2000, "Carpets: Cleaning of; Hot Water Extraction Method," as a more appropriate method for consideration. CRI further commented that the testing and recordkeeping is not a significant burden for the industry when measured against the benefits of consumer protection and product liability.

Shaw Industries, Inc. suggested that § 1630.4(ii) be changed to reference the same AATCC test method and also commented on the Eli Lily Pharmaceuticals, Inc. ("Lily") discontinuation of methenamine tablets specified as the source of ignition. The CPSC staff is aware that Lily no longer produces the methenamine tablet specified as the ignition source in the standards. The staff is in the process of evaluating methenamine pills from several different manufacturers and developing draft technical amendments to the standards that will provide performance requirements for the ignition source, rather than specifying a manufacturer. The staff will also consider other relevant issues, such as laundering procedures, as appropriate during the amendment process.

After considering these comments, the staff believes it should nevertheless seek approval of the collection of information. Therefore, by publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of those collections of information without change.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Surface Flammability of Carpets and Rugs, 16 CFR Part 1630; Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR Part 1631.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours per respondent: 500 per year.

Estimated number of hours for all respondents: 60,000 per year.

Estimated cost of collection for all respondents: $1,584,000.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by January 6, 2003, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301)

504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: November 29, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–30866 Filed 12–5–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–11: Early Career Principal Investigator Program in Applied Mathematics, Collaboratory Research, Computer Science, and High-Performance Networks

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of its Early Career Principal Investigator Program. The purpose of this program is to support research in applied mathematics, collaboratory research, computer science, and networks performed by exceptionally talented scientists and engineers early in their careers. The full text of Program Notice 03–11 is available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: To permit timely consideration for award in Fiscal Year 2003, completed applications in response to this notice must be received by February 20, 2003, to be accepted for merit review and funding in Fiscal Year 2003.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Office of Advanced Scientific Computing Research, SC–31/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone: (301) 903–5800, e-mail: *sam.barish@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Program Mission

The primary mission of the Office of Advanced Scientific Computing Research, which is carried out by the Mathematical, Information, and Computational Sciences (MICS) Division, is to discover, develop, and deploy the computational and networking tools that enable researchers in the scientific disciplines to analyze, model, simulate, and predict complex physical, chemical, and biological phenomena important to DOE. To accomplish this mission, the MICS Division fosters and supports fundamental research in advanced scientific computing applied mathematics, collaboratory research, computer science, and networking—and operates supercomputers, a high performance network, and related facilities. Further descriptions of the base research portion of the MICS portfolio, which is the scope of this Notice, is provided below.

Applied Mathematical Sciences Research

The objective of the applied mathematics component of the MICS research portfolio is to support research on the underlying mathematical understanding as well as the numerical algorithms needed to enable effective description and prediction of physical, chemical, and biological systems such as fluids, materials, magnetized plasmas, or protein molecules. This includes, but is not limited to, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

In addition to the existing research topics described, MICS plans to invest in new areas of applied mathematics research to support DOE's mission. Such investments may include research in multiscale algorithms, the mathematics of feature identification in large datasets, asymptotically optimal algorithms for solving PDEs, fast multipole and related hybrid methods, and algorithms for handling complex systems with constraints. The MICS research portfolio in Applied Mathematics emphasizes investment in long-term research that will result in the next generation of computational tools for scientific discovery.

Collaboratory Research

Collaboratories link geographically dispersed researchers, data, and tools via high performance networks to enable remote access to facilities, access to large datasets, shared environments, and ease of collaboration. The objective of the collaboratory component of the MICS portfolio is to support research for developing the software infrastructure that will enable universal, ubiquitous, easy access to remote resources or that will contribute to the ease with which distributed teams work together. Enabling high performance for distributed scientific applications is an important consideration. The middleware component for collaboratories encompasses activities in

- Building the application frameworks that allow discipline scientists to express and manage the simulation, analysis, and data management aspects of overall problem solving

• Supporting construction, management, and use of widely distributed application systems
• Facilitating human collaboration through common security services, and resource and data sharing
• Providing remote access to, and operation of, scientific and engineering instrumentation systems.
• Managing and securing the computing and data infrastructure as a persistent service.

This announcement also calls for grant applications to address the fundamental issues involved in providing uniform software services that manage and provide access to heterogeneous, distributed resources, that is, high-performance middleware services that support DOE's science mission. The emphasis is on investment in long-term research that will result in the next generation of high-performance software infrastructure for scientific discovery.

Computer Science Research

The objective of the computer science component of the MICS research portfolio is to support research that results in a comprehensive, scalable, and robust high performance software infrastructure that translates the promise and potential of high peak performance to real performance improvements in DOE scientific applications. This software infrastructure must address needs for: Portability and interoperability of complex high performance scientific software packages; operating systems tools and support for the effective management of terascale and beyond systems; and effective tools for feature identification, data management, and visualization of petabyte-scale scientific data sets. The Computer Science component encompasses a multi-discipline approach with activities in:

• Program development environments and tools—Component-based, fully integrated, terascale program development and runtime tools, which scale effectively and provide maximum performance, functionality, and ease-of-use to developers and scientific end users.
• Operating system software and tools—Systems software that scales to tens of thousands of processors, supports high performance application-level communication, and provides the highest levels of performance, fault tolerance, reliability, manageability, and ease of use for system administrators, tool developers, and end users.
• Visualization and data management systems—Scalable, intuitive systems fully supportive of DOE application requirements for moving, storing, analyzing, querying, manipulating, and visualizing multi-petabytes of scientific data and objects.
• Problem Solving Environments—Unified systems focused on the needs of specific scientific applications, which enable radically improved ease-of-use of complex systems software and tools by domain application scientists.

The MICS research portfolio in Computer Science emphasizes investment in long-term research that will result in the next generation of high performance tools for scientific discovery.

High-Performance Networks Research

In the next few years, complex science experiments in DOE are expected to generate several petabytes of data that will be transferred to geographically distributed terascale computing facilities for analysis and visualization by thousands of scientists across the world. In addition, many emerging energy research problems require coordinated access to distributed resources—people, data, computers, and facilities. This emerging, distributed terascale-science environment calls for ultra-high-speed networks—networks that can deliver multi-gigabits/sec throughput to scientific applications securely. Grant applications in network research must therefore address the issues of ultra high-speed networks by focusing on:

• Ultra high-speed network protocols—radical new approaches to ultra high-speed transport protocols that will outperform existing Transmission Control Protocol (TCP) and User Designed Datagram (UDP) to efficiently harness the abundant bandwidth made possible by Dense Wave Division Multiplexing (DWDM) optical technologies. This may include transport mechanisms such as Remote Direct Memory Access (RDMA) over Lambda and OS-bypass over Lambda, that are capable of delivering and sustaining multi-Gigabits/sec (Gbs) throughput to high-end scientific applications.
• Intelligent high-speed network interfaces—to significantly improve the end-to-end performance by addressing host system congestion issues, such as dynamically programmed transport protocol off-loading, OS bypass, electro-optical middleware, and high-speed I/O.
• High-speed cyber security systems—that operate efficiently at ultra high-speed (2.5 Gbs and 10 Gbs). Such systems should be based on a sound theoretical foundation and formal techniques, and in addition could exploit Artificial Intelligence (AI) techniques, such as fuzzy logic, neural networks, and genetic algorithms to improve their effectiveness.
• Network modeling and traffic engineering—new techniques for modeling and characterization of chaotic behaviors in complex traffic patterns, dynamic behavior of protocols, cyber security systems, and congestion control mechanisms.

Grant applications addressing the above problems must go beyond the development of tools and emphasize mathematical analysis, formal specification, and rigorous techniques for validating the performance of their proposed solutions.

Background: Early Career Principal Investigator Program

This is the second year of the Early Career Principal Investigator Program. A principal goal of this program is to identify exceptionally talented applied mathematicians, collaboratory researchers, computer scientists, and high-performance networks researchers early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is restricted to applicants who meet all of the following criteria:

(1) Hold a tenure-track regular academic faculty position.
(2) Have earned a Ph.D. degree or equivalent after July 1, 1998.
(3) Are conducting research in applied mathematics, collaboratories, computer science, or high-performance networks.

Applications should be submitted through a U.S. academic institution. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities, such as part of the PI's salary, graduate and/or undergraduate students, post-doctoral researchers, equipment and facilities, and travel. However, no salary support will be provided for other faculty members or senior personnel.

Applicants who have submitted or will be submitting similar grant applications to other programs are eligible for this notice, as long as the details of the other submission are contained in the grant application to DOE. Applicants who have an NSF CAREER award, or are applying for such an award, are eligible for this notice. Applicants do not have to be U.S. citizens, and may be non-permanent resident aliens or have an H1b visa.

Program Funding

It is anticipated that up to $2 million will be available for up to twenty (20)

awards for exceptional applications in FY 2003 to meet the needs of the program, contingent upon the availability of appropriated funds. The maximum support that can be requested under this notice is $100,000 per year for three years.

Multiple-year funding of grant awards is expected, with funding provided on an annual basis subject to the availability of funds, progress of the research, and programmatic needs. The typical duration of these grants is three years, and they will not normally be renewed after the project period has been completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to DOE or other Federal funding agencies. We expect that the awards will be announced and the projects will begin in early summer 2003.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, which are listed in descending order of importance as codified at 10 CFR 605.10(d):

(1) Scientific and/or Technical Merit of the Project;

(2) Appropriateness of the Proposed Method or Approach;

(3) Competency of Applicant's Personnel and Adequacy of Proposed Resources;

(4) Reasonableness and Appropriateness of the Proposed Budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay attention to the responsiveness of the proposed research to the challenges of the MICS base research programs in Applied Mathematics, Collaboratory Research, Computer Science, and Network Research.

It is expected that the application will include involvement of graduate and/or undergraduate students in the proposed work.

Applicants are encouraged to collaborate with DOE National Laboratory researchers. The collaborations may include one, or more, extended visits to the laboratory by the applicant each year. Such an arrangement, if proposed, must be clearly explained in the grant application. Furthermore, a letter of support from the DOE National Laboratory collaborator(s) should be included with the application. A list of the DOE National Laboratories can be found at: *http://www.sc.doe.gov/sub/lab_map/index.htm.*

Grantees under the Early Career Principal Investigator Program may apply for access to high-performance computing and network resources at several National Laboratories. Such resources include, but are not limited to, the National Energy Research Scientific Computing (NERSC) Center: *http://www.sc.doe.gov/ascr/mics/nersc/index.html*; the Advanced Computing Research Testbeds *http://www.sc.doe.gov/ascr/mics/acrt/index.html*; the Energy Sciences Network *http://www.sc.doe.gov/ascr/mics/esnet/index.html*; and the High-Performance Networking Research effort at the Oak Ridge National Laboratory; *http://www.csm.ornl.gov/net.*

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will consider the quality of the proposed plan, if any, for interacting with a DOE National Laboratory.

Please note that external peer reviewers are selected with regard to both their scientific expertise in the subject area of the grant application and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator and the submitting institution.

Submission Information

Each grant application submitted should clearly indicate on which of the four following components of the MICS research portfolio the application is focused: Applied Mathematical Sciences Research, Collaboratory Research, Computer Science Research, or High-Performance Networks Research.

The Project Description should be 20 pages or less, exclusive of the bibliography and other attachments. It must contain an abstract or project summary on a separate page with the name of the applicant, mailing address, phone, FAX and E-mail listed, and a short curriculum vita for the applicant.

To provide a consistent format for the submission, review, and solicitation of grant applications under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program, 10 CFR part 605. Access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

(The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington, DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30917 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41719 entitled "Innovative Water Management Technologies and Concepts for Coal-Fired Electric Utility Boilers" to solicit applications for cost-shared research projects directed at innovative water management technologies and concepts for coal-fired electric utility boilers. Specifically, the solicitation will provide for the development of cost-effective solutions to emerging regulations and restrictions on water use and impacts on water quality associated with the generation of electricity by coal-fired power plants. Applications will be solicited in four (4) technical areas of interest: (1) *Non-Traditional Sources of Process and Cooling Water;* (2) *Innovative Cooling Technology;* (3) *Advanced Cooling Water Intake Technology;* and (4) *Advanced Pollutant Measurement and Treatment Technology.* Applications are being sought for applied research at the bench-scale to field-scale level for time periods of one (1) to three (3) years.

The solicitation supports the overall goal of the Department of Energy/Office of Fossil Energy's Innovations for Existing Plants (IEP) Program to develop advanced technology and knowledge products that enhance the environmental performance of the existing fleet of coal-fired power plants. The solicitation is part of the path forward of the Energy-Water Management component of the IEP roadmap (*http://www.netl.doe.gov/coalpower/environment*). The goal of this research is to reduce water consumption per kWh of electricity produced by 25% by 2010, and reduce

impacts of electricity production on water quality.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about December 13, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Donna J. Jaskolka, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *jaskolka@netl.doe.gov*, Telephone Number: (412) 386–6016.

SUPPLEMENTARY INFORMATION: Electric utility boilers are the second largest user of water in the United States, ranking only slightly behind irrigation in terms of total annual water use (USGS, Circular 1200, 1998). The majority of the water used by power plants is for cooling. The steam cycle requires a large amount of water to condense the low-pressure steam from the turbine. Recent regulations proposed under section 316(b) (*http://www.epa.gov/waterscience/316b/*) of the Clean Water Act (*http://www.epa.gov/region5/water/cwa.htm*) to protect against the impingement and entrainment of aquatic organisms in cooling systems could restrict the amount of water that power plants can withdraw for cooling and/or require the installation of new intake structure technology. Retrofitting from once-through cooling systems to recirculating cooling towers can negatively impact plant efficiency due to increased turbine back pressure. Power plant operations can also be disrupted due to the colonization of Zebra mussels and other types of bio-fouling on cooling water intake grates and screens.

Water quality issues will also continue to receive attention in terms of coal power systems. Coal utilization byproducts (CUBs) such as scrubber solids and fly ash must be managed properly in order that all current and future surface and groundwater regulations are met. Concerns about the fate of mercury, arsenic, and other trace metals in CUB leachates could negatively impact the commercial use and disposal of these materials. More stringent control of air emissions under the Clean Air Act could result in cross-media transfer of pollutants from air to water. For example, pending mercury regulations could bring about the need for additional monitoring, processing, and treatment of scrubber liquors and other aqueous streams associated with air pollution control equipment. In addition, coal pile runoff and other plant-wide discharges may come under further scrutiny in response to future Clean Water Act and Safe Drinking Water Act requirements.

DOE–NETL held a workshop in July 2002 with key stakeholders from industry, government agencies, regional and state regulators, research organizations, and academia to obtain input on the need for a private-partner research effort to address these emerging issues. A summary of the workshop proceedings can be found at *http://www.netl.doe.gov/coalpower/environment*. The workshop participants identified a number of near-, mid-, and long-term research opportunities directed at reducing the impact of coal power generation on water availability and quality. In response, DOE–NETL is issuing a solicitation focused on four areas of interest related to coal-based electric utilities and water. Details concerning the solicitation are described below. This solicitation will serve to help ensure the continued availability of low-cost electricity from coal while meeting growing demands for clean water.

The objective of this solicitation is to solicit applications for cost-shared research projects directed at innovative water management technologies and concepts for coal-fired electric utility boilers. Specifically, the solicitation will provide for the development of cost-effective solutions to emerging regulations and restrictions on water use and impacts on water quality associated with the generation of electricity by coal-fired power plants. All applicants should clearly describe how the technology, if successfully developed and applied, would impact the cost of operating a coal-fired power plant in terms of impacts on COE (cost of electricity) relative to existing technology. The applicant should also provide a projection of the market penetration of the proposed technology or concept in terms of both existing and new coal-fired electric utility boilers. Applications will be solicited to address four technical topic areas:

(1) Non-Traditional Sources of Process and Cooling Water

Applications are being sought to evaluate and develop cost-effective approaches to using non-traditional (*i.e.*, not from freshwater or saline surface water supply) sources of water for cooling and other power plant needs. Examples include surface and underground mine pool water, coal-bed methane produced water, and industrial and/or municipal wastewater. The technical, cost and permitting issues associated with collecting, treating, transporting, storing, and discharging/disposing of these non-traditional waters should be considered.

(2) Innovative Cooling Technology

Applications are being sought to improve both wet and dry recirculating cooling tower systems. Innovative methods of plume abatement are desired to reduce water loss and minimize visual impacts from cooling towers. Improvements in the energy penalty associated with wet and dry cooling versus once-through cooling are also sought. Research to reduce the higher capital and operating costs associated with dry cooling versus wet cooling and the development of hybrid wet-dry systems that optimize the advantages of wet and dry cooling towers is also sought.

(3) Advanced Cooling Water Intake Technology

Future regulations to protect aquatic organisms under Section 316(b) of the Clean Water Act may impact the operation of cooling water intake structures on new and existing power plants. Applications are sought to meet performance standards for intake structures that would be required by section 316(b) regulation. Specifically, advanced intake structure technologies such as intake screen systems, passive intake systems, diversion or avoidance systems, and fish handling systems are sought. Innovative methods to control bio-fouling of intake structures, which will be more of a problem with the lower intake water velocities required to reduce fish impingement are also sought.

(4) Advanced Pollutant Measurement and Treatment Technology

Future controls on the emission of mercury and possibly other hazardous air pollutants (*e.g.* selenium, arsenic) have raised concerns about the ultimate fate of these contaminants once they are removed from the flue gas. Preventing these air pollutants from being transferred to surface or ground waters will be critical. Applications are sought for advanced technologies to detect, measure, and remove mercury, arsenic, selenium and other pollutants from the aqueous streams of coal-based power plants such as blowdown water, wet scrubber effluents, and ash pond waters. Advanced technologies are also sought for removal of chemicals used in treatment of cooling water.

It is anticipated that there will be five to seven (5–7) Financial Assistance (Cooperative Agreement) awards with

performance periods ranging from 12 to 36 months. The total estimated award value for all projects selected under this solicitation is approximately $4.8 million; this amount includes the mandatory minimum recipient cost share of 20%.

Eligibility for participation in the Program Solicitation is considered to be full and open. All interested parties may apply, except as noted herein. Applications submitted by or on behalf of (1) Another Federal agency, (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) Contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–03NT41719

(**Note:** The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost.).

Once released, the solicitation will be available for downloading from the IIPS webpage (*http://e-center.doe.gov*). At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business*. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on November 20, 2002.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 02–30916 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–13: Natural and Accelerated Bioremediation Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Natural and Accelerated Bioremediation Research (NABIR) Program. The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization of contaminants in place to reduce the risk to humans and the environment. Research should address bioremediation of uranium, technetium, plutonium, chromium or mercury. NABIR is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (groundwater and sediments). Applications should describe research projects in one or more of the following program elements: Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, Biomolecular Science and Engineering, Assessment, and Bioremediation and its Societal Implications and Concerns. Studies that integrate research from more than one NABIR element are strongly encouraged.

DATES: Researchers are strongly encouraged (but not required) to submit a preapplication for programmatic review. Preapplications will be accepted on an ongoing basis, however, early submission of preapplications is encouraged, to allow time for review for programmatic relevance. A brief preapplication should consist of one or two pages of narrative describing the research objectives and methods.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 11, 2003, to be accepted for merit review and to permit timely consideration for awards late in Fiscal Year 2003 or in early Fiscal Year 2004.

ADDRESSES: Preapplications referencing Program Notice 03–13 should be sent by E-mail to *anna.palmisano@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, Environmental Remediation Sciences Division, SC–75/Germantown Building, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–9963, E-mail: *anna.palmisano@science.doe.gov*, fax: (301) 903–8519. The full text of Program Notice 03–13 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/ grants/grants.html*.

SUPPLEMENTARY INFORMATION:

Background

For more than 50 years, the U.S. created a vast network of more than 113

facilities for research, development, testing and production of nuclear weapons. As a result of these activities, subsurface contamination has been identified at over 7,000 discrete sites across the U.S. Department of Energy complex. With the end of the Cold War threat, the DOE has shifted its emphasis to remediation, decommissioning, and decontamination of contaminated groundwater, sediments, and structures at its sites. DOE is currently responsible for remediating 1.7 trillion gallons of contaminated groundwater and 40 million cubic meters of contaminated soil. It is estimated that more than 60% of DOE facilities have groundwater contaminated with metals or radionuclides. More than 50% of all DOE facilities have soils or sediments contaminated with radionuclides and metals. While virtually all of the contaminants found at industrial sites nationwide can also be found at DOE sites, many of the metals and most of the radionuclides are unique to DOE sites. The NABIR program aims: (1) To provide the fundamental knowledge that may lead to new remediation technologies or strategies for radionuclides and metals; and (2) to advance the understanding of the key microbiological and geochemical processes that control the effectiveness of in situ immobilization as a means of long term stewardship, and how these processes impact contaminant transport.

While bioremediation of organic contaminants involves their biotransformation to benign products such as carbon dioxide, bioremediation of radionuclides and metals involves their removal from the aqueous phase to reduce risk to humans and the environment. Microorganisms can directly affect the solubility of radionuclides and metals by changing their oxidation state to a reduced form that leads to in situ immobilization. Or, microorganisms can indirectly immobilize radionuclides and metals through the reduction of inorganic ions that can, in turn, chemically reduce contaminants to less mobile forms. The long term stability of these reduced contaminants is as yet unknown.

Currently, the fundamental knowledge that would allow cost-effective deployment of in situ subsurface bioremediation of radionuclides and metals is lacking. The focus of the NABIR program is on radionuclides and metals that: (1) Pose the greatest potential risk to humans and the environment at DOE sites; and (2) are amenable to for immobilization by means of bioremediation. Thus, research is focused on the radionuclides uranium, technetium and plutonium and the metals chromium and mercury. Radioactive contaminants such as tritium and cobalt are not a focus because of their relatively short half lives, and strontium and cesium are not addressed because they are not readily amenable to biotransformation. Research is focused on subsurface sediments below the zone of root influence and includes both the vadose (unsaturated) zone and the saturated zone (both groundwater and sediments). NABIR research is oriented toward areas that have low levels of widespread contamination; it is too costly to clean up those situations with existing technologies. Uranium, technetium, and chromium can be especially mobile in the subsurface under certain conditions; they are risk-driving contaminants at some DOE sites. The effects of co-contaminants such as nitrate, complexing agents (such as EDTA) and chlorinated solvents (such as trichloroethylene and carbon tetrachloride) on the behavior of radionuclides and metals in the subsurface is also of interest to the NABIR program.

NABIR Program

The goal of the NABIR program is to provide the fundamental science that will serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites. The focus of the program is on strategies leading to long-term immobilization in place of contaminants to reduce the risk to humans and the environment. The NABIR program encompasses both intrinsic bioremediation by naturally occurring microbial communities, as well as accelerated bioremediation through the use of biostimulation (addition of inorganic or organic nutrients). The NABIR Program supports hypothesis-driven, basic research that is more fundamental in nature than demonstration projects. Research on phytoremediation will not be supported by this solicitation; a separate solicitation for a Joint Interagency Program on Phytoremediation Research can be found at: *http://www.sc.doe.gov/production/grants/Fr03–04.html.*

Naturally occurring subsurface microbes may be involved in intrinsic bioremediation of radionuclides and metals by reduction and immobilization, either directly or indirectly. However, these natural processes typically occur at fairly slow rates, and there may be a need to use biostimulation to enhance the rates. The primary focus of the NABIR program is on biostimulation strategies, due to the ubiquity of metal-reducers in nature. Immobilized radionuclides and metals are not removed from the subsurface as may occur with excavation, pump and treat, or biodegradation of organic contaminants. Immobilization is focused on containment in vadose zone and groundwater plumes. As such, it may be a strategy applied to prevent the discharge of deep or widely distributed contaminants from the vadose zone to groundwater, or from groundwater to a receiving water body (*e.g.*, the Columbia River at Hanford). *In situ* immobilization of contaminants is one approach to long term stewardship, which is the post-closure responsibility of DOE at its contaminated sites. Long term stewardship involves long-term monitoring and other maintenance activities to ensure that residual in-ground contaminants do not spread further. Therefore, an important aspect to the NABIR program is to assess factors controlling the long-term stability of the immobilized contaminants and to devise approaches (biological/chemical) to maintain their immobilization through the stewardship phase.

The NABIR program consists of four interrelated Science Elements (Biogeochemistry, Biotransformation, Community Dynamics and Microbial Ecology, and Biomolecular Science and Engineering). Innovative method development for the Science Elements is supported under the Assessment Element. The program also includes an element addressing ethical, legal and societal issues called Bioremediation and its Societal Implications and Concerns (BASIC). The NABIR program strongly encourages researchers to integrate laboratory and field research at DOE or DOE-relevant sites. More information on the NABIR program may be found at: *http://www.lbl.gov/NABIR.*

The NABIR Field Research Center (FRC) and Other Field Research Sites

The NABIR FRC provides a site for investigators to conduct field-scale research and to obtain DOE-relevant subsurface samples for laboratory-based studies of bioremediation. The FRC is located on the U.S. Department of Energy Oak Ridge Reservation in Oak Ridge, Tennessee, and it is operated by the Environmental Sciences Division of the Oak Ridge National Laboratory. The contaminated and background (uncontaminated control) areas are located in Bear Creek Valley (BCV) within the Y–12 Plant area. *See: http://www.esd.ornl.gov/nabirfrc* for more detailed information on the NABIR FRC.

The contaminated research site at the FRC is a 98-hectare plot containing

uranium, nitrate, technetium, strontium, and cadmium in groundwater, soils, and sediments. To a lesser extent, metals such as mercury, copper, zinc, and lead, and organics such as acetone, methylene chloride, tetrachloroethylene, and toluene are also present. The contaminated area includes the commingled groundwater plumes that originated from a combination of the S–3 Waste Disposal Ponds and the Bone Yard/Burn Yard. Both the background and contaminated areas are well-characterized and well-instrumented, and should be available for a duration of five to ten years. The water table resides between 0 and 3 m below the surface and is readily accessible through multilevel groundwater monitoring wells.

The initial focus of NABIR field research is on in situ biostimulation experiments to promote immobilization of uranium. Understanding natural and stimulated uranium biotransformation in the presence of high nitrate and low pH in unconsolidated residuum and fractured rock is one of the biggest challenges at the FRC at Oak Ridge, and at other DOE sites. NABIR researchers conduct controlled, field-scale hypothesis testing at the FRC. In addition, the FRC is currently providing subsurface samples for 20 laboratory-based NABIR projects. These projects span all NABIR Science Elements as well as the cross-cutting Assessment and BASIC Elements. Site characterization activities are ongoing and will result in a rich database for use by NABIR researchers. The FRC is responsible for data management, systems integration, and fundamental hydrological and geochemical modeling of the contaminated and background sites. The FRC makes these data and models accessible to all NABIR researchers.

While the FRC provides a major focus for the NABIR program, it is recognized that other sites that represent the different hydrogeological regimes found at DOE sites will also be valuable to researchers. A large fraction of the national inventory of DOE wastes resides in unconsolidated, porous media in relatively thick, vadose zones and in groundwaters low in soluble organic carbon. For this reason, NABIR investigators are encouraged to take advantage of opportunities to collect and analyze samples from arid western environments that typify the Hanford Reservation and Uranium Mill Tailings Remedial Action (UMTRA) sites. For further information on NABIR Field Research, please contact Mr. Paul Bayer *(paul.bayer@ science.doe.gov)*, the NABIR Field Activities Manager.

NABIR investigators may want to take advantage of the capabilities of the Environmental Molecular Sciences Laboratory (EMSL) at the Pacific Northwest National Laboratory *(http://www.emsl.pnl.gov)*. EMSL provides users with unique and state-of-the-art resources including facilities for high field magnetic resonance, high performance mass spectrometry, interfacial and nanoscale science, molecular science computing, and optical imaging and spectroscopy.

Current Request for Applications

Research projects that address the scientific aims of individual NABIR elements including Biogeochemistry, Biotransformation, Community Dynamics, Biomolecular Science and Engineering, as well as the cross cutting elements Assessment and BASIC are solicited in this announcement. Integrative, interdisciplinary studies that involve research from more than one element are especially encouraged. The focus is on field research, or laboratory studies that can be scaled to the field, to provide supporting information for current or future field research. The NABIR Field Research Center (FRC) provides an opportunity for researchers to work at a DOE site in collaboration with scientists from different research elements. Studies at the NABIR FRC show that microbial reduction of radionuclides and metals is affected by the presence of nitrate and low pH. Thus, research into microbial mechanisms involved in the reduction of radionuclides and metals in this type of subsurface environment is of special interest.

Biogeochemistry: The goal of this element is to understand the fundamental biogeochemical reactions that would lead to long-term immobilization of metal and radionuclide contaminants in the subsurface. The focus is on reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases. Biogeochemical reactions in subsurface environments are influenced by a wide variety of factors, including the availability of electron donors and acceptors, the nature of the microbial community, the chemical species or form of contaminant, the hydrogeology of the site, and the nature of the environmental matrix. Often several competing redox reactions make the prediction of the substrates, products, and kinetics difficult. The biogeochemical reactions are further complicated by the sorption of contaminants and reaction products to mineral surfaces, and the presence of natural organic matter and co-contaminants. The research challenge is to identify and prioritize the key biogeochemical reactions that are needed to predict the rate and extent of reactions that result in the immobilization of radionuclides and metals. New and creative scientific approaches are sought that address the following fundamental research questions:

- To *increase immobilization* of radionuclides and metals, what are the principal biogeochemical reactions that govern the concentration, chemical speciation, and distribution of metals and radionuclides between the aqueous and solid phases (with an emphasis on natural geological matrices)? What are the thermodynamic and kinetic controls on these reactions? How do factors such as co-contaminants, sorption processes, and terminal electron acceptors (*e.g.*, nitrate, iron, sulfate), influence these reactions?
- Under what conditions would the contaminants *remobilize*, and what alterations to the environment would increase the long term stability of metals and radionuclides in the subsurface?
- What influence do hydrological processes such as reactive transport, advective/dispersive transport and colloidal transport have on the biological availability, biotransformation, and movement of radionuclides and metals?

Biotransformation: The goal of this element is to understand the mechanisms of microbially mediated transformation of metals and radionuclides in subsurface environments leading to *in situ* immobilization and long term stability. Physiological studies of the biotransformation of metals and radionuclides by subsurface microorganisms will provide the knowledge base needed to understand intrinsic bioremediation and to stimulate biotransformation *in situ*.

DOE subsurface sites encompass a range of redox environments where contaminants such as uranium are present. One challenge is to understand the impact of these environments on microbial physiological processes involved in the biotransformation of radionuclides and metals to an immobilized form. Knowledge of the metabolic pathways for biotransformation of these contaminants by naturally occurring microbial communities in vadose zones, saturated zones and the waste plume is needed. A second challenge is to accelerate the rates of these physiological processes *in situ*, in complex subsurface

environments. Biotransformation of metals and radionuclides in the subsurface is poorly understood, and predictive models based on laboratory studies have not always accurately simulated the observed fate of metals and radionuclides in the field. It is important to understand the kinetics of desirable metal and radionuclide biotransformations and the physicochemical factors affecting those kinetics in the field. Research is needed to address questions such as:

- What are the primary metabolic pathways for biotransformation of radionuclides and/or metals by subsurface microorganisms at DOE sites, such as the FRC? Physiological processes studied at the laboratory scale will need to demonstrate how results will be scaled to the field.
- How can metal reduction be harnessed or accelerated to immobilize radionuclides and/or metals in the subsurface? Can *in situ* production of organic acids, chelators, or extracellular polymers affect contaminant mobility?
- What environmental controls affect microbial physiological processes involved in radionuclide and metal biotransformations leading to immobilization in vadose and saturated zones? What factors inhibit these biotransformations *in situ?*
- How can we quantify *in situ* biotransformation kinetics so that these parameters can be applied to numerical models of field scale bioremediation?

Community Dynamics and Microbial Ecology: The goal of this element is to determine the potential for natural microbial communities to immobilize radionuclides and metals. In particular, research focuses on: (1) Understanding the structure and function of microbial communities in the subsurface at DOE sites contaminated with metals and radionuclides; and (2) identifying and optimizing the in situ growth of microorganisms that transform radionuclides and metals. This research will enhance our ability to predict the effectiveness of intrinsic bioremediation and to optimize microbial community composition for in situ immobilization of these contaminants. Diverse microbial communities can be found in subsurface environments. These communities represent an untapped catalytic potential for biotransformation of radionuclides and metals. Most of these microbes, however, are as yet uncultured using current methods. One challenge is to determine if sufficient genotypic and/or phenotypic potential exists to support natural and/or accelerated (biostimulated) bioremediation. Knowledge of microbial community structure and function may ultimately provide the ability to control or stimulate subsurface communities capable of biotransformation of radionuclides and metals. A second challenge is to optimize the community structure and activity for immobilization and metals, and to determine the long term stability of bioremediative communities. Research is needed to address questions such as:

- Is there sufficient biological activity and diversity in subsurface environments to support natural and/or accelerated bioremediation of metals and radionuclides?
- What are the effects of metal and radionuclide contamination on microbial community structure and function, particularly on populations that transform radionuclides and metals? What are the effects of key physical, chemical and hydrological factors on community structure and function, as it relates to immobilization of metals and radionuclides?
- What is the role of consortial interactions in subsurface environments contaminated with radionuclides and metals? Such interactions might include competition for electron donors and acceptors, or consortial interactions in the biotransformation of metals and radionuclides.
- What is the potential importance of gene transfer in natural microbial communities at subsurface sites contaminated with radionuclides or metals?

Those studies that link structure to function of microbial communities that immobilize metals and/or radionuclides at DOE sites are especially encouraged.

Biomolecular Science and Engineering: Research in this element provides a knowledge base, at the biomolecular level, of the processes leading to the in situ immobilization of radionuclides and metals by indigenous subsurface microorganisms. The primary goal of this element is to understand the genetic, biochemical, and regulatory processes that mediate biotransformation of these specific radionuclides and metals, leading to their immobilization. Characterization of genes, gene products, and genetic regulatory networks associated with these biotransformations is key to this understanding. Detailed studies of the enzymatic mechanisms for reduction of radionuclides and/or metals are needed to increase our understanding of in situ processes and to identify gene targets for better molecular assessment of radionuclide and metal reduction. Secondary goals include: (1) Understanding molecular mechanisms of resistance of subsurface microorganisms to radionuclide and metal toxicity; (2) understanding, at a molecular level, the processes of lateral transfer between microbes of genes involved in biotransformation of these radionuclides and metals; (3) developing novel technologies to provide insights into biomolecular mechanisms of metal and radionuclide biotransformation; and (4) developing approaches to manipulate pathways and enzyme systems that mediate these biotransformations.

DOE subsurface sites encompass a wide range of environments with a diversity of microbial communities and contaminants. One of the challenges of the Biomolecular Science and Engineering Element is to select microbes for studies that are active members of subsurface microbial communities. A second challenge is to extrapolate laboratory findings on pure cultures under laboratory conditions to complex in situ environmental conditions. This extrapolation is especially critical in studying gene expression, which may be modified by changes in local cellular environments in the subsurface. A third challenge is to take advantage of genomic and other data derived from the DOE Microbial Genome Program *(http://www.ornl.gov/microbialgenomes)* on subsurface microorganisms to increase our understanding of how genes relevant to bioremediation are expressed in the environment. Research is needed to address questions such as:

- How are genes regulated in subsurface microorganisms that are responsible for biotransformation and immobilization of radionuclides and metals? How are genes regulated in these microorganisms to promote survival in the presence of potentially toxic levels of these contaminants?
- What are the effects of key environmental parameters on regulation and expression of genes involved in metal/radionuclide reduction? For example, how do pH and co-contaminants such as nitrate impact the biochemistry and gene expression and regulation of uranium and technetium reduction?
- What are the basic biomolecular mechanisms of uranium and technetium reduction and reoxidation in microorganisms, primarily those indigenous to the subsurface? How can biomolecular processes be manipulated to enhance the sustainability of immobilization of uranium, technetium or chromium? Are there novel biomolecular mechanisms that can be used to immobilize mercury or plutonium?
- What are the biomolecular mechanisms involved in lateral transfer

of metal/radionlucide reduction genes in subsurface microbial communities?

Applications should primarily focus on indigenous subsurface microorganisms that can precipitate and immobilize these radionuclides and metals. The ultimate goal of this element is to improve our ability to predict and manipulate the activities of microbes *in situ*, particularly in an *in situ* immobilization scenario.

Assessment: Assessment is a cross-cutting element with a goal to develop innovative methods to assess processes and endpoints in support of the NABIR Science Elements. Thus, assessment projects are being sought that support the Science Elements of Biogeochemistry, Biotransformation, Community Dynamics/Microbial Ecology, and Biomolecular Science and Engineering. Methods may range from molecular to field scale, but they should improve the understanding of *in situ* bioremediation processes in subsurface environments contaminated with radionuclides and metals. Priority will be given to research applications that could lead to fieldable, cost-effective, real time assessment techniques and/or instrumentation. NABIR will not fund projects that examine endpoints relating to human health risks. Research should address the development of innovative and effective methods for assessing or quantifying:

- Biogeochemical or biotransformation processes and rates, and microbial community structure and function relative to bioremediation of metals and radionuclides.
- Bioremediation end points, in particular, the concentration, speciation and stability of radionuclide and metal contaminants.

Techniques must enable NABIR science and address specific science needs of the program. The applicant should explain the potential impact and contribution to the NABIR program, as well as the relevance and potential usefulness of the innovation.

Bioremediation and its Societal Implications and Concerns (BASIC): The objective of this element is to identify and explore societal issues associated with NABIR. BASIC is designed to provide information on issues that might influence the implementation of NABIR science and to involve NABIR scientists in discussions about the societal implication of their research. The BASIC program may also provide an avenue to identify key issues and sensitivities involved in bioremediation strategies, such as immobilization of metals and radionuclides *in situ* as a means of long-term stewardship.

Major focus areas for BASIC research include (1) Identifying and prioritizing societal and regulatory issues associated with bioremediation of metals and radionuclides in subsurface environments, particularly strategies that entail immobilization in place; (2) fostering collaboration between NABIR scientists and site stakeholders and (3) enhancing the understanding and communication of NABIR research to stakeholder communities and others. Quantitative approaches and integration with other NABIR program elements are strongly encouraged. BASIC grants will not extend beyond two years beyond the award date. All grant applications should provide a plan for evaluation of progress or outcomes. Where a product (guidelines, recommendations, documents, *etc.*) is the result, dissemination plans including timelines must be discussed.

The NABIR program also encourages smaller grant applications (up to $35,000 total costs) for innovative and exploratory activities within the BASIC area. Such exploratory grants could be used to carry out pilot investigative research on an issue consistent with any of the above areas of BASIC research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. Such small grant applications must use the standard DOE application forms procedures outlined below, but should have a narrative section no more than five pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date.

Integrative Studies

This solicitation especially encourages those studies that integrate research from more than one NABIR research element through laboratory and/or field research. This interdisciplinary research should focus on achieving the primary goals of the NABIR program through collaborative studies in which the experimental design integrates two or more NABIR elements. Interdisciplinary teams may include participation from two or more research areas that might include: microbiology, geochemistry, hydrology, environmental engineering, numerical modeling or other disciplines. Partnering with specific field experiments may provide information for hypothesis testing. Such integrative studies might include, for example:

- Employing numerical modeling to integrate information from more than one element, such as Biogeochemistry, Biotransformation, and Community Dynamics and Microbial Ecology, to better predict *in situ* immobilization of metals and radionuclides.
- Studies of the effects of key physical, geochemical and hydrological parameters on the structure and function of subsurface microbial communities engaged in metal/radionuclide biotransformation and immobilization.
- Integration of new methods in the Assessment element with actual application to studies of biotransformation or biogeochemistry of radionuclide/metal reduction and precipitation.
- Linking chemical speciation of radionuclides and metals in subsurface environments to the bioavailability of those contaminants to microorganisms.
- Studies on the changes of subsurface microbial community structure and function, and the effect on net rates of biotransformation during biostimulation experiments.
- Partnership between any of the Science Elements and research in BASIC.

Additional Information for Applications

It is anticipated that up to $3 million will be available for multiple awards to be made in late Fiscal Year 2003 and early Fiscal Year 2004 in the categories described above, contingent on availability of appropriated funds. An additional sum, up to $3 million, will be available for competition by DOE National Laboratories under a separate solicitation (LAB 03–13). Applications for all elements except for BASIC may request project support up to three years, with out-year support contingent on availability of funds, progress of the research and programmatic needs. Applications for BASIC may request support for two years, or one year for exploratory activities. Annual budgets for projects are expected to range from $100,000 to $300,000 total costs. Annual budgets for integrative studies involving participants representing more than one research element may range up to $450,000. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained through the preliminary applications or through other forms of communication.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous NABIR funded research will be an important criterion for evaluation. As part of the evaluation, program policy factors also become a selection priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Federal and non-federal reviewers will be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to SC's Financial Assistance Application Guide is possible via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, for this notice, the research description must be 20 pages or less, exclusive of attachments, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). *Applicants who have had prior NABIR support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* Attachments should include short (2 pages) curriculum vitae, QA/QC plan, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages).

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5. 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

Grantees must also comply with other federal and state laws and regulations as appropriate; for example, the Toxic Substances Control Act (TSCA) as it applies to genetically modified organisms. Although compliance with NEPA is the responsibility of DOE, grantees proposing to conduct field research are expected to provide information necessary for the DOE to complete the NEPA review and documentation.

Additional information on the NABIR Program is available at the following Web site: *http://www.lbl.gov/NABIR/*. For researchers who do not have access to the world wide web, please contact Karen Carlson; Environmental Sciences Division, SC–74/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; phone: (301) 903–3338; fax: (301) 903–8519; E-mail: *karen.carlson@science.doe.gov*; for hard copies of background material mentioned in this solicitation.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605).

Issued in Washington DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30918 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–15; Ocean Carbon Sequestration Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research on Carbon Sequestration in the Oceans.

DATES: Applicants are strongly encouraged to submit a brief preapplication for programmatic review by January 31, 2003, although later preapplications will still be accepted. The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 20, 2003, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003 and early Fiscal Year 2004.

ADDRESSES: Preapplications should be sent e-mail to Dr. Anna Palmisano at *anna.palmisano@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Anna Palmisano, SC–74, Office of Biological and Environmental Research, Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, telephone: (301) 903–9963, E-mail: *anna.palmisano@science.doe.gov*, fax: (301) 903–8519. The full text of Program

Notice 03–15 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION:

Predictions of global energy use in the next century suggest a continued increase in carbon emissions and rising concentrations of carbon dioxide (CO_2) in the atmosphere unless major changes are made in the way we produce and use energy—in particular, how we manage carbon. One way to manage carbon is to use energy more efficiently to reduce our need for a major energy and carbon source—fossil fuel combustion. A second way is to increase our use of low-carbon and carbon-free fuels and technologies, such as nuclear power and renewable sources such as solar energy, wind power, and biomass fuels. The third way to manage carbon is by "carbon sequestration": The capture and long term storage of carbon either from the global energy system or directly from the atmosphere in oceanic or terrestrial ecosystems.

Any viable system for sequestering carbon must have several key characteristics. It must be effective and cost-competitive with alternative means, such as renewable energy. Unintended environmental consequences must be benign compared to alternative solutions, including no action. A carbon sequestration system must be able to be monitored quantitatively and verified, because contributions to carbon sequestration almost certainly need to be measured. Research sponsored by this program could contribute to any of these goals.

This solicitation invites applications for basic research projects on the purposeful enhancement of carbon sequestration in the oceans. Although many options exist to capture and sequester carbon dioxide, the focus of this solicitation is on fundamental research that would enable: (a) the enhancement of the absorption and retention of atmospheric carbon dioxide by ocean biota; and (b) scientifically-based analyses of the viability of using the deep ocean to store carbon dioxide that has been already separated, captured, and transported. The proposed research should be fundamental in nature, and address one or more of the technical areas of interest described below. Applications that test demonstrations of engineered technologies are not relevant to this solicitation.

Technical Areas of Interest

The ocean represents a large current sink for the sequestration of anthropogenic CO_2 emissions as well as a large potential for purposeful enhancement of the current sink. Two strategies for enhancing carbon sequestration in the ocean are the focus of the DOE Ocean Carbon Sequestration Research Program. One strategy is enhancement of the net oceanic uptake from the atmosphere by fertilization of phytoplankton with micronutrients, such as iron. A second strategy is the direct injection of a relatively pure CO_2 stream to ocean depths greater than 1000 m. Sources of CO_2 for direct injection might include power plants or other industries. This solicitation seeks applications that specifically address the long term effectiveness and potential environmental consequences of ocean sequestration by these two strategies. The program currently funds projects in a wide range of scientific disciplines including marine biology and ecology; biological, physical, and chemical oceanography; computational science and modeling; and physical chemistry and engineering. Titles and abstracts of research projects currently being funded under the DOE Ocean Carbon Sequestration Research Program may be accessed at *http://cdiac2.esd.ornl.gov/ocean.html.*

Iron Fertilization

Much has been learned about the important role of iron in photosynthesis over the past 15 years through both laboratory and field experiments on iron enrichment. Iron deficiency has been shown to limit the efficiency of photosystem II in phytoplankton. Evidence from paleoceanographic samples also links iron supply with marine primary production and carbon flux. However, critical questions remain: How does iron enrichment accelerate carbon flux in high nutrient, low chlorophyll (HNLC), low nutrient, low chlorophyll (LNLC), sub-mixed layer and coastal ecosystems? What are the time scales of remineralization of the fixed carbon? What are the long term ecological and biogeochemical consequences of fertilization on surface and midwater processes? Basic research is needed on the coupling of iron and carbon cycles in the ocean. Our understanding of the biogeochemistry of iron (its concentrations, sources, sinks and ligands) in marine systems is also insufficient to assess the viability of using iron fertilization as a strategy for enhancing carbon sequestration.

The accurate measure of carbon flux following iron fertilization is critical to the objective evaluation of this strategy for carbon sequestration. We need to understand the regulation of carbon fluxes and the role of mineral ballast in export of organic carbon from the surface to the deep ocean. The potential impact of iron fertilization on the global carbon budget, as well as verification and duration of carbon sequestration are yet unknown. The complexity of marine ecosystems necessitates careful research on unintended environmental consequences of iron fertilization. These consequences may include the potential to impact key oceanic biogeochemical cycles as well as on populations of marine organisms and their trophodynamic interactions.

Research may focus on experimental/observational studies and/or predictive modeling. Integrative studies that couple experimental observations and numerical modeling approaches are encouraged. Such studies should develop, improve, and test models that can be used to simulate and predict quantities of carbon sequestered from iron fertilization. Relevant focus areas for enhancement of the biological pump through iron fertilization may include:

1. Improving the effectiveness of ocean fertilization as a strategy for long term (decades, centuries) carbon sequestration.

- Determining to what extent increased carbon fixation in surface waters would result in an increase in carbon sequestered in the deep ocean, and how long it would remain sequestered. This includes quantifying the export of particulate organic carbon and particulate inorganic carbon to the deep sea, and mineralization or dissolution of all forms at depth.
- Understanding the role of micronutrients (such as iron) and macronutrients (such as nitrogen and phosphorus) in regulation of the biological pump. Research on coupling of iron and carbon cycles might include studies of photo-oxidation, complexation adsorption/desorption, export and mineralization.
- Developing numerical models (regional or global) for carbon sequestration, especially those that provide a measurable output that allows for model testing. Models might be used to predict the efficiency of sequestration as a function of mid and deep water transport of carbon and remineralization.

2. Determining environmental consequences of long term ocean fertilization.

- Examining changes in structure and functioning of marine ecosystems (composition of phytoplankton and zooplankton communities, ocean food webs and trophodynamics), resulting from ocean fertilization.
- Examining changes in natural oceanic biogeochemical cycles (carbon,

nitrogen, phosphorus, and silicon) resulting from iron fertilization.

• Developing numerical models at an ecosystem level that predict downstream effects of fertilization on productivity and nutrient removal.

Research proposed on iron fertilization should also support the USGCRP Carbon Cycle Science Initiative (*http://www.gcrio.org/OnLnDoc/pdf/carb_cycle_toc.html*). In particular, the proposed research should provide the scientific foundation for assessing both the viability of using iron fertilization to enhance sequestration and storage of carbon dioxide and/or the potential for unintended effects of this carbon sequestration strategy.

Direct Injection

The overarching questions for this area of research are: Can direct CO_2 injection effectively sequester CO_2 in the ocean with minimal adverse environmental impacts? How and where might direct injection of CO_2 be most effective as a carbon sequestration strategy? What are the plume dynamics and hydrate behavior at depth? Fundamental research is needed to: assess the efficiency and consequences of direct injection; calculate the maximum ability of the ocean to sequester a maximum tolerable level of CO_2, while minimizing the impact on marine ecosystems. Current scientific literature on the physiology of deep sea animals suggests a high sensitivity of deep sea animals to acidosis and hypercapnia (CO_2 stress), however, there are few data on impacts of specific levels of CO_2 on animals from various marine habitats. Moreover, there are virtually no data on the potential effects of CO_2 on microbially-mediated biogeochemical transformations of nutrients in the deep sea. Models are needed that provide information on the fate of injected CO_2, particularly in the 100m to 100km range, from the point of injection. The ultimate goal is to be able to develop a coupled model that can predict the fate of injected CO_2 and its chemical, physical and biological effects on marine ecosystems.

Research may focus on experimental/observational studies and/or predictive modeling. Integrative studies that couple both experimental and numerical modeling are encouraged, especially those incorporate feedback between experiments and models. Such projects should involve experimental studies to test and improve models, and modeling studies to help identify and design experiments needed to fill key gaps in our understanding. Examples of relevant research areas for direct injection of carbon dioxide into the deep ocean include:

1. Determining the environmental consequences of direct injection of CO_2 into the ocean in midwater or deep sea habitats.

• Determining the effects of changes in pH and CO_2 on the physiology and survival of organisms (including microbes) from midwater and deep sea habitats. These studies might include lethal or sublethal effects on organisms.

• Understanding the effects of sustained release of concentrated CO_2 on biogeochemical processes, and on ecosystem structure and function. This might include investigations of biogeochemical interactions of seafloor sediments with a hydrated CO_2 plume.

• Effects of secondary of contaminants on plume and/or hydrate physical/chemical properties, and related effects on indigenous fauna.

2. Improving the effectiveness of direct injection of CO_2 for carbon sequestration.

• Understanding the longer-term fate of carbon that is added to the ocean including the carbonate chemistry of mid- and deep-ocean water.

• Investigation of physico-chemical behavior of a dense phase hydrate stream. Research might focus on such characteristics as determination of hydrate dissolution rates for a concentrated swarm, and calculation of plume dispersion and perturbation to state variables at depth.

• Addressing weaknesses in aspects of the Ocean General Circulation Models (OGCMs), specifically their ability to simulate accurately western boundary currents, ocean bottom currents, plume to eddy circulation; and testing models using natural or experimental tracers.

• Coupling near-field with far-field effects of CO_2 injection, for example, coupling plume modeling at the basin and global scale with ocean circulation models.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Program Funding

It is anticipated that up to $1,500,000 (per year) will be available for awards in this area during Fiscal Year 2003, contingent upon availability of appropriated funds. An additional $1,000,000 will be available for competition by DOE National Laboratories under a separate solicitation (LAB 03–15). Projects involving single investigators or small groups of investigators may be funded at a level up to $300,000 per year for up to 3 years. Integrative studies, multi-investigator studies that combine experimental/observational approaches with numerical modeling may be funded at a level of up to $400,000 per year for 3 years. Applications for field experiments involving larger groups of investigators will be considered, but must be approved at a preapplication level. Multiple year funding of awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need.

Preapplications

An informal preapplication may be submitted by E-mail. The preapplication should identify the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Ocean Carbon Sequestration Research Program. Preapplications are strongly encouraged prior to submission of a full application, especially for large, field-based collaborations. Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Formal Applications

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

For renewals, progress on previous DOE-funded research will be an important criterion for evaluation. The evaluation will include program policy

factors such as the relevance of the proposed research to the terms of the announcement, the agency's programmatic needs, and the uniqueness of approach. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both non-federal and federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 20 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. *Applicants who have had prior Ocean Carbon Sequestration Research Program support must include a Progress Section with a brief description of results and a list of publications derived from that funding.* On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages).

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC on December 2, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30919 Filed 12–5–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–356–001]

Canyon Creek Compression Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 26, 2002, Canyon Creek Compression Company (Canyon) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets, to be effective December 1, 2002.

Canyon states that the purpose of this filing is to comply with the Commission's Order dated November 22, 2002 which allows Canyon's rates and revised tariffs to go into effective December 1, 2002, subject to specified revisions.

Canyon states that copies of the filing are being mailed to each person designated on the official service list in Docket No. RP02–356–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30821 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–105–000]

Centra Pipelines Minnesota Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Centra Pipelines Minnesota Inc. (Centra Minnesota), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, a revised tariff sheet to reflect changes in its Index of Customers. Centra Minnesota requests an effective date of November 1, 2002.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30826 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–104–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 2003:

Thirty-Seventh Revised Sheet No. 11
Fourth Revised Sheet No. 171
Sixth Revised Sheet No. 332
Fifth Revised Sheet No. 343

CIG states that these tariff sheets provide for the discontinuation of the Account No. 858 Stranded Costs Surcharge.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30825 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–107–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on the Appendix attached to the filing, to become effective January 1, 2003.

El Paso states that these tariff sheets revise the Gas Research Institute surcharges.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30828 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–110–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 26, 2002, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Seventh Revised Sheet No. 5, Tenth Revised Sheet No. 6, and Sixth Revised Sheet No. 10, proposed to be effective January 1, 2003.

Equitrans states that the tariff sheets described above reflect the revised funding surcharges for the Gas Research Institute (GRI) for the year 2003. These surcharges were approved by the Commission in its letter order issued September 19, 2002, in Docket No. RP02–354–000, in which it also approved GRI's funding for its year 2003 research, development, and demonstration (RD&D) program and its 2003–2007 five-year RD&D plan.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30830 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–19–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fifth Revised Sheet No. 174, to become effective November 11, 2002.

FGT states that on October 11, 2002 it filed a revised tariff sheet to modify its tariff to allow FGT to terminate service contracts with replacement shippers for temporary capacity releases if the releasing shipper is no longer creditworthy and certain other conditions are met. Subsequently, on November 8, 2002, the Commission issued an order accepting FGT's filing, subject to FGT's filing a revised tariff sheet within 15 days providing that FGT may terminate contracts with replacement shippers when it has terminated the contract with the releasing shipper. In the instant filing, FGT states that it is proposing the tariff modifications as required by the order. However, FGT requests that the Commission defer action on accepting and making the modifications effective until after ruling on the request for rehearing, which FGT is filing concurrent with the instant filing.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30831 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–008]

Kern River Gas Transmission Company; Notice of Negotiated Rates

November 29, 2002.

Take notice that on November 26, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 495; Original Sheet No. 496; and Sheet Nos. 497–499 (Reserved), to be effective December 1, 2002.

Kern River states that the purpose of this filing is to implement negotiated rate transactions between Kern River and Coral Energy Resources; Kern River and Eagle Mountain City; Kern River and Questar Gas Company; and Kern River and Sempra Energy Trading Corporation, in accordance with the Commission's Policy Statement on alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30819 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–337–005]

Kern River Gas Transmission Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Original Sheet No. 200 (Effective January 1, 2003); Pro Forma Sheet No. 8; Pro Forma Sheet Nos. 69–B through 69–F; Pro Forma Sheet No. 214; and Pro Forma Sheet Nos. 339 through 342, to be effective as indicated.

Kern River states that the purpose of this filing is to comply with the Commission's October 31, 2002 "Order on Compliance Accepting and Rejecting Tariff Sheets" by submitting tariff sheets (1) to revise Kern River's segmentation provisions to clarify that forward haul and backhaul nominations to the same delivery point may exceed a shipper's transportation rights when capacity at the delivery point is available; and (2) to propose a new park and loan (PAL) service.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30820 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP03–101–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 22, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Sixth Revised Sheet No. 4D, to be effective January 1, 2003.

Pursuant to the Commission's Order issued September 19, 2002 in Docket No. RP02–354, KMIGT submits the proposed tariff sheet reflecting the required changes to the Gas Research Institute (GRI) surcharges in its tariff.

KMIGT states that a copy of this filing has been served upon all of its customers and affected 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30824 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–106–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 25, 2002, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 11 to become effective January 1, 2003.

Mojave states that this tariff sheet revises the Gas Research Institute surcharges.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30827 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–108–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 26, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 414 to be effective December 1, 2002.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Also, Natural tenders for filing copies of the Firm Transportation Rate Discount Agreement with Aquila, Inc. d/b/a Aquila Networks.

Natural states that copies of the filing are being mailed to 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30829 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–27–000]

Niagara Mohawk Power Corporation v. Huntley Power LLC; NRG Huntley Operations, Inc.; Dunkirk Power LLC; NRG Dunkirk Operations, Inc.; Oswego Harbor Power, LLC; NRG Oswego Operations, Inc; Notice of Complaint

November 29, 2002.

Take notice that on November 26, 2002 Niagara Mohawk Power Corporation (Niagara Mohawk), a subsidiary of National Grid USA, tendered for filing a complaint against Huntley Power LLC; NRG Huntley Operations, Inc.; Dunkirk Power, LLC; NRG Dunkirk Operations, Inc.; Oswego Harbor Power, LLC; and NRG Oswego Operations, Inc. (the Generators).

This complaint requests that the Commission make certain findings of fact and amplify its policies on self-supply and the scope of its jurisdiction vis-á-vis state regulators to enable enforcement of amounts owed by the Generators for station service provided to them by Niagara Mohawk.

Copies of the filing were served upon each of the Generators.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before December 16, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30817 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 29, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No:* 4113–061.

c. *Date filed:* September 27, 2002.

d. *Applicant:* Oswego Hydro Partners L.P.

e. *Name of Project:* Phoenix Project.

f. *Location:* The project is located on the Oswego River, Phoenix and Oswego Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Sean Fairfield, One South Plaza, Suite 103, PO Box 2175, Glen Falls, NY 12801, (905) 465–4518.

i. *FERC Contact:* Hillary Berlin at (202) 502–8915.

j. *Deadline for filing comments, motions to intervene and protest:* December 31, 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. 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 (4113–061) 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.

k. *Description of Application:* The licensee is requesting to amend the minimum flow requirement under article 38 for the June 1 through October 31 period. During this period, the downstream dissolved oxygen (DO) level would be monitored daily if the flow falls below 1900 cubic-feet-per-second (cfs), and the following actions would be taken: if DO falls below 5 mg/l and river flow is below 1500 cfs, all flows will be directed over the flashboards/spillway/tainter gates; if DO falls below 5 mg/l and river flow is between 1500 cfs and 1900 cfs, all but 700 cfs will be directed over the flashboards/spillway/tainter gates; for flows in excess of 1900 cfs, a minimum flow of 300 cfs will be directed over the flashboards/spillway/tainter gates; if DO is above 5 mg/l and river flow is less than 1900 cfs, a minimum flow of 300 cfs will be directed over the flashboards/spillway/tainter gates. The licensee is proposing to amend the license to incorporate the above minimum flow regime, including daily testing of DO in a manner consistent with that undertaken over the past four years. The licensee's proposed flow

regime is per a revised Water Quality Certificate issued on August 30, 2002.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

m. 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.

n. 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.

o. 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. 02–30818 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–71–000]

Overthrust Pipeline Company; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 13, 2002, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 and First Revised Volume No. 1-A, the following tariff sheets, to be effective December 13, 2002:

Original Volume No. 1
Seventh Revised Sheet No. 3
First Revised Volume No. 1–A
Fifth Revised Sheet No. 2

Effective November 1, 2001, Questar Pipeline Company (Questar Pipeline) purchased NGPL-Overthrust Inc.'s (NGPL) 18 percent ownership interest in Overthrust and effective July 1, 2002, Questar Overthrust Pipeline Company (Questar Overthrust) purchased CIG Overthrust, Inc.'s (CIG) 10 percent ownership interest in Overthrust. The purchase of NGPL's interest by Questar Pipeline and the purchase of CIG's interest by Questar Overthrust, results in Questar Corporation affiliates owning 100 percent of the general partnership. Revised Sheet No. 3 to Original Volume No. 1 and revised Sheet No. 2 to First Revised Volume No. 1–A reflects a revised Preliminary Statement.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30833 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–462–002]

Southern Natural Gas Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 126A, with an effective date of October 1, 2002.

Southern states that the purpose of this filing is to implement certain modifications to its tariff sheet in compliance with the Commission's Order issued on November 14, 2002, in the captioned proceeding to provide that Title Transfer Tracking Service Providers are subject to the standard NAESB intraday nomination cycles.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30822 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

November 29, 2002.

Take notice that on November 13, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 2002.

Transco states that the purpose of the instant filing is to track rate changes attributable to: (1) Transportation service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, and (2) transportation service purchased from Texas Gas Transmission Corporations (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS, Section 4 of Transco's Rate Schedules LSS and FT–NT.

Transco states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS and FT–NT rates.

Transco states that copies of the filing are being mailed to affected 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30834 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–20–001]

Transwestern Pipeline Company; Notice of Compliance Filing

November 29, 2002.

Take notice that on November 25, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 95J, to become effective November 11, 2002.

Transwestern states that on October 11, 2002, Transwestern proposed tariff revisions setting forth the criteria that would permit Transwestern to terminate a temporary capacity release (October 11 Filing). Specifically, Transwestern added a new section 30.4 (g) to Transwestern's General Terms and Conditions, Transporter's Right to Terminate a Temporary Capacity Release. Under this new section Transwestern proposed two conditions by which Transwestern would terminate a temporary capacity release upon 30-days' written notice. Those conditions were that: (1) The Releasing Shipper had failed to maintain creditworthiness in accordance with Rate Schedule FTS–1 and Sections 13 and 30 of the General Terms and Conditions of Transwestern's Tariff, and (2) that the rate stated in the effective Replacement Shipper's Service Agreement is less than the Releasing Shipper's contract rate. Transwestern states that on November 8, 2002, the Federal Energy Regulatory Commission ("Commission") issued an order ("Order") accepting the proposed tariff revisions subject to Transwestern modifying the provisions to provide that Transwestern may terminate the contract with the Replacement Shipper only after it has terminated the contract with the Releasing Shipper. The instant filing reflects the modification directed by the Commission's Order. However, Transwestern requests that the Commission defer action on accepting and making the modification effective until after ruling on the request for rehearing, which Transwestern is filing concurrent with the instant filing.

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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30832 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–100–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 29, 2002.

Take notice that on November 22, 2002, Williams Gas Pipelines Central, Inc. (Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective January 1, 2003:

Twenty-Second Revised Sheet No. 6A

Central states that pursuant to "Order Approving Settlement," issued by the Commission on April 29, 1998, in Docket No. RP97–149–003, et al. (83 FERC ¶ 61,093 (1998)) and Central's FERC Gas Tariff, Original Volume No. 1, Article 25 of its General Terms and Conditions, Central is filing to reflect the new GRI surcharges to be collected on nondiscounted transportation services for the 2003 calendar year. These funding units were reaffirmed in the Commission's letter order dated September 19, 2002, in Docket No. RP02–354–000.

Central states that copies of this filing have been served on all of Central's jurisdictional 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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. 02–30823 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–190–000, et al.]

CMS Panhandle Lake Charles Generating Company LLC, et al.; Electric Rate and Corporate Filings

November 21, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. CMS Panhandle Lake Charles; Generation Company LLC

[Docket No. ER03–190–000]

Take notice that on November 19, 2002, CMS Panhandle Lake Charles Generation Company LLC filed a Notice of Succession with regard to the market-based sales Rate Schedule FERC No. 1 of its predecessor, PanEnergy Lake Charles Generation Inc., to be effective October 19, 2001 and a Notice of Cancellation of that same Rate Schedule to be effective December 31, 2002.

Comment Date: December 10, 2002.

2. Peaker LLC

[Docket No. ER03–191–000]

Take notice that on November 19, 2002, Peaker LLC (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates.

Comment Date: December 10, 2002.

3. Southern California Edison Company

[Docket No. ER03–192–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing a Notice of Cancellation of FERC Tariff, First Revised Original Volume No. 6, Service Agreement No. 6, effective August 3, 2002. The Interconnection Facilities Agreement is between SCE and Mountainview Power Company L.L.C.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California. SCE request effective date of December 8, 2002.

Comment Date: December 11, 2002.

4. Southern California Edison Company

[Docket No. ER03–193–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and Energy Unlimited, Inc. (EUI). The purpose of the Letter Agreement is to provide an interim arrangement pursuant to which SCE will perform the work necessary to develop the easement documents including, but not limited to, survey of the existing site and for legal description, mapping, title, and estimate of land acquisition costs for EUI to interconnect its generating facility to SCE's distribution system.

Copies of this filing were served upon the Public Utilities Commission of the State of California and EUI.

Comment Date: December 11, 2002.

5. PJM Interconnection, L.L.C.

[Docket No. ER03–194–000]

Take notice that on November 19, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Duke Energy Fayette, LLC (Duke Energy).

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by Duke Energy and PJM. Copies of this filing were served upon Duke Energy and the state regulatory commissions within the PJM region.

Comment Date: December 10, 2002.

6. Little Bay Power Corporation

[Docket No. ER03–195–000]

Take notice that on November 19, 2002, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Little Bay Power Corporation (Little Bay) filed with the Federal Energy Regulatory Commission a Notice of Termination of its market-based rate tariff. Little Bay requests waiver of the Commission's prior notice requirements so that the termination may be effective January 1, 2003.

Comment Date: December 10, 2002.

7. Great Bay Power Corporation

[Docket No. ER03–196–000]

Take notice that on November 19, 2002, pursuant to Section 35.15(a), 18 CFR 35.15(a) of the Commission's Regulations, Great Bay Power Corporation (Great Bay) filed with the

Federal Energy Regulatory Commission a Notice of Termination of Great Bay's market-based rate tariffs, FERC Electric Tariff Nos. 2 and 3. Great Bay requests waiver of the Commission's prior notice requirements so that the terminations may be effective January 1, 2003.

Comment Date: December 10, 2002.

8. Southern California Edison Company

[Docket No. ER03–197–000]

Take notice that on November 20, 2002, Southern California Edison Company (SCE) tendered for filing the Shiprock-Four Corners Project 345-kV Switchyard Interconnection Agreement (IA) among the Four Corners Participants (SCE, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, and Tucson Electric Power Company) and the Interconnection Participants (Public Service of Colorado, Tri-State Generation and Transmission Association, Inc., and the United States of America acting by and through the Administrator, Western Area Power Administration, Department of Energy).

The IA establishes the rates, terms and conditions for installation, operation and maintenance of interconnection facilities related to the interconnection of the Interconnection Participants' transmission line from Shiprock Substation, located in Shiprock, New Mexico, to a 345–kV switchyard at the Four Corners Project which is jointly owned by the Four Corners Participants. Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: December 10, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30962 Filed 12–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Notice of Intent for Storm Water Discharges Associated With Construction Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Notice of Intent for Storm Water Discharges Associated With Construction Activity, EPA ICR Number 1842.04, OMB Control Number 2040–0188, that expires on March 31, 2003). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 4, 2003.

ADDRESSES: Please send comments on the proposed ICR to Jack Faulk, USEPA, Office of Wastewater Management, Water Permits Division, 1200 Pennsylvania Avenue, NW, EPA East, Room 7329E, Mail Code 4203M, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Please direct questions or a request for a copy of the ICR to: Jack Faulk, Industrial Branch, Water Permits Division, Office of Wastewater Management; tel.: (202) 564–0768, fax: (202) 564–6431; or e-mail: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which have storm water discharges associated with large construction activity (40 CFR 122.26(b)(14)(x)) to waters of the U.S.

Title: Notice of Intent for Storm Water Discharges Associated With Construction Activity, EPA ICR Number 1842.04, OMB Control Number 2040–0188, that expires on March 31, 2003.

Abstract: This ICR calculates the burden and costs associated with the preparation of the Notice of Intent (NOI) for Storm Water Discharges Asssociated with Construction Activity under an NPDES General Permit, and the Storm Water Pollution Prevention Plan (SWPPP). EPA uses the data contained in the NOIs to track facilities covered by the storm water general permit and assess permit compliance. EPA has developed a format for construction NOIs. The standard one page form is called: Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity Under a NPDES General Permit (EPA Form Number 3510–6). The construction NOI form requires the following information to be submitted and signed and certified to by an authorized representative of the project:

—Name, address, phone number of the facility.
—Status of the owner/operator (whether federal, state, public, or private).
—Name and location of the project (City, State, ZIP, Latitude, Longitude, County).
—Whether the facility is located on Indian Country Lands.
—Whether a Storm Water Pollution Prevention Plan (SWPPP) has been prepared.
—Optional: location for viewing SWPPP and telephone number for scheduling viewing times: Address, City, State, ZIP.
—The name of the receiving water.
—Estimated construction start date and completion date.
—The estimated area to be disturbed (to nearest acre).
—An estimate of the likelihood of a discharge.
—Whether any protected species or critical habitat in the project area.
—Which section of part I.B.3.e.(2) of the permit through which permit eligibility with regard to protection of endangered species is satisfied.

Respondents are required to obtain coverage under the NPDES General Permit for storm water discharges associated with construction 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 EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.5 hours per response by large construction NPDES permittees. EPA estimates that annually 201,213 large construction projects will perform activities covered by this ICR. These NPDES permittees are expected to provide 201,213 responses to State and Federal permit authorities annually. Additionally, 45 states/territories will perform information collection activities. Nationally, NPDES permittees will spend 7,738,888 hours per year on information collection activities as a result of the Storm Water Construction General Permit NOI and SWPPP requirements. The 45 states/territories are expected to spend 186,323 hours per year on information collection activities. Capital and start-up costs associated with the large construction NOI and SWPPP are expected to be negligible. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 8, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–30943 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http//www.epa.gov/compliance/nepa/*. Weekly receipt of Environmental Impact Statements filed November 25, 2002, through November 29, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020485, Final Supplement, AFS, WI, MI, Bond Falls Hydroelectric Project Related to Terms and Conditions for Geology and Soils, Water Quality and Quantity, Fisheries, Terrestrial, Recreation, Aesthetic, Cultural, Socieoeconomic and Land Use Resources, Ontonagon River Basin, Valas County, WI and Ontonagon and Gogebic Counties, MI, Wait Period Ends: January 6, 2003, Contact: Karen Steven (906) 932–1330.

EIS No. 020486, FINAL EIS, SFW, AZ, Roosevelt Habitat Conservation Plan, Issuance of an Incidental Take Permit To Allow Continued Operation of Roosevelt Dam and Lake, Implementation, Gila and Maricopa Counties, AZ, Wait Period Ends: January 6, 2003, Contact: Sherry Barrett (520) 670–4617.

EIS No. 020487, FINAL EIS, FTA, NC, Phase I Regional Rail System Improvements, Durham to Raleigh to North Raleigh, Implementation, Durham and Wake Counties, NC, Wait Period Ends: January 6, 2003, Contact: Alex McNeil (404) 562–3511. This document is available on the Internet at: *http://www.rideTTA.org*.

EIS No. 020488, FINAL SUPPLEMENT, AFS, WY, Squirrel Meadows Grand Targhee Land Exchange Proposal, New Information and Current Environmental and Socioeconomic Conditions, Implementation, Targhee National Forest, Teton County, NY, Wait Period Ends: January 6, 2003, Contact: Cheryl Probert (208) 557–5821.

EIS No. 020489, DRAFT EIS, AFS, NM, Sacramento, Dry Canyon and Davis Grazing Allotments, Proposal to Authorize Livestock Grazing Activities, Lincoln National Forest, Sacramento Ranger District, Otero County, NM, Comment Period Ends: January 27, 2003, Contact: Frank R. Martinez (505) 682–2551.

EIS No. 020490, DRAFT EIS, AFS, AK, Licking Creek Timber Sale, Proposal To Harvest up To Approximately 33,5456 CCF (16.8 MMBF) of Timber, Tongass National Forest, Ketchikan-Misty Fiords Ranger District, Revillagigedo Island, Ketchikan, AK, Comment Period Ends: January 21, 2003, Contact: Kathy O'Connor (907) 228–4124.

EIS No. 020491, DRAFT EIS, FHW, MN, Trunk Highway 371 Corridor Project, Construction from Junction with U.S. Truck Highway 10 to 0.5 miles North to County State Aid Highway 48, Morrison County, MN, Comment Period Ends: February 10, 2003, Contact: Cheryl Martin (651) 291–6120.

EIS No. 020492, DRAFT SUPPLEMENT, COE, TX, Dallas Floodway Extension (DFE) Project, Additional Information, Upper Trinity River Basin, Flood Damage Reduction and Environmental Restoration, Dallas County, TX, Comment Period Ends: January 21, 2003, Contact: Gene T. Rice, Jr. (817) 886–1374.

EIS No. 020493, DRAFT EIS, COE, CA, San Diego Harbor Deepening (Central Navigation Channel) Involves Three Components: Deepening Federal Central Navigation Channel; Disposal of the Dredged Material at the LA–5 Ocean Disposal Site and Relocation, Disposal and Abandonment of a 69 kV Electrical Site, San Diego County, Comment Period Ends: January 21, 2003, Contact: Joy Jaiswal (213) 452–3851.

EIS No. 020494, DRAFT EIS, AFS, WI, Cayuga Project Area, To Implement Various Resource Management Projects, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI, Comment Period Ends: January 21, 2003, Contact: Debra Sigmund (715) 634–4821. This document is available on the Internet at: *http://www.fs.fed.us/r9/cnnf/natres/index.htm1*.

EIS No. 020495, DRAFT EIS, NPS, FL, Biscayne National Park General Management Plan Amendment, To Evaluate the Effects of Several Alternatives for the Long-Term Management Plan, Stillsville, Biscayne National Park, Homestead, Miami-Dade County, FL, Comment

Period Ends: February 13, 2003, Contact: Linda Canzanelli (305) 230–1144. This document is available on the Internet at: *http://www.nps.gov/bisc/stiltsvillewelcome.htm.*

EIS No. 020496, FINAL EIS, AFS, CA, Red Star Restoration Project, Removal of Fire-Killed Trees, Fuel Reduction, Road Reconstruction and Decommissioning and Associated Restoration, Tahoe National Forest, Foresthill Ranger District, Placer County, CA, Wait Period Ends: January 06, 2003, Contact: Karen Jones (530) 367–2224. This document is available on the Internet at: *http://www.r5.fs.fed.us/tahoe/management.*

EIS No. 020497, FINAL EIS, DOE, WA, Grand Coulee-Bell 500-kV Transmission Line Project, Construction and Operation, U.S. Army COE Section 10 Permit Issuance, Douglas, Lincoln, Spokane and Grant Counties, WA, Wait Period Ends: January 06, 2003, Contact: Inez Graetzer (503) 230–3786.

Amended Notices

EIS No. 020473, DRAFT EIS, BLM, NV, Ivanpah Energy Center Project, Proposes to Construct and Operate a 500 Megawatt (MW) Gas-Fired Electric Power Generating Station in Southern Clark County, NV, Due: January 21, 2003, Contact: Jerrold E. Crockford (505) 599–6333. Revision of FR Notice Published on 11/22/2002: CEQ Comment Period Ending 1/3/2003 has been Corrected to 1/21/2003.

EIS No. 020475, DRAFT EIS, USN, CA, China Lake Naval Air Weapons Station, Proposed Military Operational Increases and Implementation of Associated Comprehensive Land Use and Integrated Natural Resources Management Plans, Located in the North and South Range, Inyo, Kern and San Bernardino Counties, CA, Due: February 18, 2003, Contact: John O'Gara (976) 939–3614. Revision of FR Notice Published on 11/22/2002: Contact Person's Phone Number Corrected from 076–093–9321 to 760–939–3614.

Dated: December 3, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–30948 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–FHW–J40157–MT Rating EC2, US 89 from Fairfield to Dupuyer Corridors Study, Reconstruction, Widening, Realignment and Route Connection between Yellowstone National Park to the South with Glacier National Park to the North, Teton and Pondera Counties, MT.

Summary: EPA expressed environmental concerns regarding impacts to wetlands and other aquatic resources. EPA recommended further analysis, disclosure and mitigation of these impacts. In addition, EPA recommended consultation with the Montana Department of Environmental Quality (MDEQ) to assure concurrence on proposed highway construction activities and compatibility with TMDL development.

ERP No. D–FRC–L05227–00 Rating EO2, Box Canyon Hydroelectric Project, (FERC Project No. 2042–013), New License Application for an existing 72-Megawatt (Mw) Hydroelectric Project, Public Utility District (PUD) No. 1, Pend Oreille River, Pend Oreille County, WA and Bonner County, ID.

Summary: EPA identified environmental objections with the preferred alternative because: (1) A comprehensive strategy for reducing elevated total dissolved gas concentrations has not been developed, (2) analyses needed to resolve questions related to fish passage at the project have not been completed and (3) studies needed to define project effects and mitigation have not been conducted nor completed.

ERP No. D–IBR–K39075–CA Rating EC2, Red Bluff Diversion Dam (RBDD) Fish Passage Improvement Project, Anadromous Fish Passage Improvements both Upstream and Downstream, Tehama-Colusa Canal Authority (TCCA), Tehama, Glenn, Colusa and Yolo Counties, CA.

Summary: EPA agreed with the project sponsors that the "Gates-Out" or "2-Month Gates-In" alternatives best meet the purpose and need of improving fish passage, while improving the reliability of agricultural water supply in the Tehama-Colusa and Corning Canal Systems. EPA expressed environmental concerns regarding hazardous materials, air quality and water quality impacts and requested additional information regarding these issues.

ERP No. DA–FHW–J40030–UT Rating EC2, US 189, Utah Valley to Heber Valley Widening and Realignment between the Junctions with UT–52 and US 40, Funding, Provo Canyon, Utah and Wasatch Counties, UT.

Summary: EPA expressed environmental concerns about the potential direct, indirect and cumulative impacts to aquatic resources. EPA requested that future documentation disclose impacts to aquatic resources and develop new alternatives that are responsive to the social and natural changes in the environment.

Final EISs

ERP No. F–AFS–J65013–MT Moose Post-Fire Project, Decrease in Potential Mortality from Bark Beetles to the remaining Live Douglas-fir and Spruce Trees, Merchantable Wood Fiber Recovery, Future Fire Risk Reduction and existing Road Access Modifications, Glacier View Ranger District, Flathead National Forest, Flathead County, MT.

Summary: EPA supports the selection of Alternative 3 although EPA continues to express environmental concerns regarding potential water quality impacts associated with logging in the watershed of Big Creek, a 303(d) listed stream.

ERP No. F–BLM–K65242–CA Coachella Valley California Desert Conservation Area Plan Amendment, Santa Rosa and San Jacinto Mountains Trails Management Plan, Implementation, Riverside and San Bernardino Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–H39010–KS Tuttle Creek Dam Safety Assurance Program, Flood Control, Water Supply, Water Quality, Fish and Wildlife, Recreation and Navigation Support Enhancements, Big Blue River, Riley and Potawatomie Counties, KS.

Summary: EPA has no objections to the preferred alternative of stabilizing the dam's foundation without drawdown.

ERP No. F–FHW–G40167–LA LA–1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, U.S. Army COE Section 10 and 404, NPDES and U.S. Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA.

Summary: EPA has no objection to the selection and implementation of the preferred alternative.

ERP No. F–IBR–K61154–AZ Reach 11 Recreation Master Plan, Central Arizona Project (CAP) Canal, Between Cave Creek and Scottsdale Roads for Recreational Purposes and a Flood Detention Basin, City of Phoenix, Maricopa County, AZ.

Summary: EPA found that the Final EIS adequately addresses the issues raised in our comment letter on the Draft EIS.

ERP No. FA–FRC–L05208–WA Rocky Creek Hydroelectric Project, (FERC No. 10311–002) Construction and Operation of a 8.3 Megawatt (Mw) Project, License Application, Rocky Creek, Skagit County, WA.

Summary: EPA continues to have environmental objections to the proposed project because it would: (1) Pose a high risk of landslides that could significantly impact aquatic and terrestrial habitat and water quality, (2) degrade water quality in Martin Creek, designated an "extraordinary" water body by the State of Washington and (3) undermine the environmental and biological protection provisions of the State of Washington Habitat Conservation Plan.

Dated: December 3, 2002.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–30949 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0332; FRL–7282–6]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0332, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7618; e-mail address: keigwin.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0332. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0332 The system is an"anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0332. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0332.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall# #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0332. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. 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. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 352–ANL. *Applicant*: E.I. du Pont de Nemours and Company. *Product Name*: DuPont Famoxadone (DPX-JE874) Technical Fungicide. Fungicide. *Active ingredient*:

Famoxadone at 97.8%. *Proposed classification/Use*: None. For the manufacture of fungicides only.

2. *File Symbol*: 352–ANU. *Applicant*: E.I. du Pont de Nemours and Company. *Product Name*: DPX-KP481 50DF Fungicide. Fungicide. *Active ingredients*: Famoxadone at 25% and Cymoxanil at 25%. *Proposed classification/Use*: None. For control of downy mildew in cucurbits and lettuce and for the control of early blight and late blight in potatoes and fruiting vegetables.

3. *File Symbol*: 3125–LLN. *Applicant*: Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: KWG 4168 300 CS. Fungicide. *Active ingredient*: Spiroxamine at 30.9%. Proposed classification/Use: None. For control of powdery mildew on grapes.

4. *File Symbol*: 3125–LLR. *Applicant*: Bayer CropScience. Product Name: Spiroxamine Technical. Fungicide. *Active ingredient*: Spiroxamine at 96.6%. *Proposed classification/Use*: None. For use in the manufacture of fungicides.

5. *File Symbol*: 7969–ROA. *Applicant*: BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. Product Name: BAS510 02F Turf Fungicide. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 70.0%. *Proposed classification/Use*: None. For disease control on golf course turfgrass.

6. *File Symbol*: 7969–ROI. *Applicant*: BASF Corporation. *Product Name*: BAS510 F Manufacturing Use Product. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'- biphenyl)-2-yl) at 99.0%. *Proposed classification/Use*: None. For use in fungicide formulations.

7. *File Symbol*: 7969–ROO. *Applicant*: BASF Corporation. *Product Name*: BAS516 02 F Crop Fungicide. Fungicide. *Active ingredients*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 25.2% and pyraclostrobin at 12.8%. *Proposed classification/Use*: None. For use on berries, bulb vegetables, grapes, carrots, pistachio, tree nuts, stone fruits, and strawberries.

8. *File Symbol*: 7969–ROT. *Applicant*: BASF Corporation. *Product Name*: BAS510 02 F Crop Fungicide. Fungicide. *Active ingredient*: 3-Pyridinecarboxamide, 2-chloro-*N*-(4'-chloro(1,1'-biphenyl)-2-yl) at 70.0%. *Proposed classification/Use*: None. For use on berries, dry and succulent beans, bulb vegetables, canola, carrots, fruiting vegetables, grapes, lettuce, peanuts, pistachio, potatoes, tree nuts, stone fruits, and strawberries.

9. *File Symbol*: 11656–OI. *Applicant*: Western Farm Services, Inc., P.O. Box 1168, Fresno, CA 93715. *Product Name*: Bud Break Plant Growth Regulator. Plant Growth Regulator. *Active ingredients*: Ammonium nitrate at 36.0% and Calcium nitrate at 31.0%. *Proposed classification/Use*: None. For agricultural use only.

10. *File Symbol*: 62719–GTG. *Applicant*: Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. *Product Name*: Quinoxyfen Technical. Fungicide. *Active ingredient*: Quinoxyfen at 97.7%. *Proposed classification/Use*: None. For manufacturing use only.

11. *File Symbol*: 62719–GTL. *Applicant*: *Product Name*: Quintec. Fungicide. *Active ingredient*: Quinoxyfen at 22.58%. *Proposed classification/Use*: None. A protectant fungicide for the control of powdery mildew on grapes and hops.

12. *File Symbol*: 62719–GTU. *Applicant*: Dow AgroSciences LLC. *Product Name*: Quinoxyfen Manufacturing Use Concentrate. Fungicide. *Active ingredient*: Quinoxyfen at 53.5%. *Proposed classification/Use*: None. For manufacturing use only.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 26, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–30945 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0316; FRL–7281–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request on the **Federal Register**.

DATES: The deletions are effective on June 4, 2003, or on January 6, 2003 for product registration 019713–00263, unless the Agency receives a withdrawal request on or before dates given above. The 30–day comment period applies to product registration 019713–00263 only.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

ADDRESSES: Withdrawal requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0316 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0316. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the

Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete From Label
000264–00325	SEVIN Brand 97.5% Manfacturing Concentrate Insecticide	Carbaryl	Poultry
001327–00041	Fulex Nicotine Fumigator	Nicotine	Greenhouse food crops
001812–00355	Trilin	Trifluralin	Eggplant, onion
004581–00402	TOPSIN M 70W Turf and Ornamentals	Thiophanate-methyl	Sod farms
004581–00405	TOPSIN M 4.5F Turf and Ornamentals	Thiophanate-methyl	Sod farms
019713–00263	Drexel Diazinon 5G	Diazinon	Celery
019713–00539	Drexel Metolachlor Technical	Metolachlor	Turf use
060063–00017	Sipcam Metolachlor Technical	Metolachlor	Turf use

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before dates indicated in **DATES** section of this notice to discuss withdrawal of the application for amendment. This 30 or 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.— REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000264	Bayer Cropscience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709
001327	Fuller System, Inc., Box 3053, Woburn, MA 01888
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603
004581	Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19046
019713	Drexel Chemical Co, 1700 Channel Ave., Box 13327, Memphis, TN 38113
060063	Sipcam Agro USA, Inc., 300 Colonial Parkway, Suite 230, Roswell, GA 30076

III. What is the Agency Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before dates indicated in **DATES** section of this notice.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 21, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division.

[FR Doc. 02–30944 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0319; FRL–7281–9]

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 ID number OPP–2002–0319, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: gandhi.bipin@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, pesticide manufacturer, or antimicrobial pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), e.g., Crop Production.
- Industry (NAICS 112), e.g., Animal Production.
- Industry (NAICS 311), e.g., Food manufacturing.
- Industry (NAICS 32532), e.g., Pesticide Manufacturing.
- Industry (NAICS 32561), e.g., Antimicrobial Pesticide.

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0319. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the " **Federal Register**" listings at http://www.epa.gov/fedrgstr/.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-

mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0319. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0319. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0319.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0319. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 20, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

3E6523

EPA has received a pesticide petition (PP 3E6523) from Akzo Nobel Industrial Specialties, Inc., 15200 Almeda Road, Houston, TX 77053 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.960 to establish an exemption from the requirement of a tolerance for α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles. EPA has determined that the petition contains data or information

regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. Akzo Nobel is petitioning that α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Therefore, an analytical method to determine residues of α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates in raw agricultural commodities (RACs) is not required.

B. Toxicological Profile

As part of the EPA policy statement on inert ingredients, the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without the data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the required studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. Akzo Nobel Industrial Specialties, Inc. believes that the data and the information described below are adequate to ascertain the toxicology and characterize the risk associated with the use of α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles which represent C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9), C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) and C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) as inert ingredients in pesticide formulations.

In the case of certain chemical substances that are defined as "polymers" the EPA has established a set of criteria which identify categories of polymers that present low risk. These criteria (codified in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The EPA believes that polymers meeting the criteria noted below will present minimal or no risk.

α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, poly(oxyethylene) content is 4–12 moles which represent C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9), C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) and C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) conform to the definition of a polymer given in 40 CFR 723.250(b) and meet the following criteria that are used to identify low risk polymers.

1. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

2. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates contain as an integral part of their composition the atomic elements carbon, oxygen, and hydrogen.

3. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates do not contain as an integral part of their composition any elements other those listed in 40 CFR 723.250(d)(2)(ii).

4. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not designed, nor are they reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not manufactured or imported from monomers and/or other reactants that are not already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are not water absorbing polymers.

7. α-Hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates do not contain any group as reactive functional groups.

8. The minimum number-average molecular weights of polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates are listed as shown below:

- C_8 alkyl ether citrate (CAS Registration Number: 330977–00–9) 1,300 daltons
- C_{10}-C_{16} alkyl ether citrates (CAS Registration Number: 330985–58–5) 1,100 daltons
- C_{16}-C_{18}-alkyl ether citrates (CAS Registration Number: 330985–61–0) 1,300 daltons

Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

9. The polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates have number-average molecular weights greater than 1,100 and contain less than 10% oligomeric material below molecular weight of 500 and less than 25% oligomeric material below 1,000 molecular weight.

In addition, the monomers/reactants that are used for the production of polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates have prior clearances by the Food and Drug Administration (FDA) under 21 CFR for food contact applications, and by the Environmental Protection Agency under 40 CFR for use in pesticide formulations applied to raw agricultural commodities (RAC).

1. Citric acid (CAS Registration Number: 77–92–9) was affirmed by FDA as generally recognized as safe (GRAS) under 21 CFR 184.1033 for use in food for human consumption.

2. Citric acid (CAS Registration Number: 77–92–9) is cleared under 40 CFR 180.1001(c) and (e) as an inert ingredient in pesticide formulations applied to RAC. It is included in Inerts - List 4A.

3. Fatty alcohols are widely present in oils, fats and waxes which are used in human food. Some waxes (bees wax, candelilla wax and carnauba wax) are GRAS substances (21 CFR Part 184). Bees wax and carnauba wax are in Inerts - List 4B.

4. C_8-C_{18} Alcohols are List 3 inerts. Ethoxylated C_{10}-C_{16} alcohols (CAS Registration Number: 68002–97–1) and ethoxylated C_{16}-C_{18} alcohols (CAS Registration Number: 68439–49–6) are included in Inerts - List 3. Ethoxylated C_9-C_{16} alcohols (CAS Registration Number: 97043– 91–9) are in Inerts - List 4B.

C. Aggregate Exposure

Although exposure to three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates may occur through dietary sources, the chemical characteristics of these polymers lead to the conclusion that there is a reasonable certainty of no harm from aggregate exposure to these polymers.

The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide products applied to food crops. EPA has also established exemptions from tolerance for polymeric materials used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of the pre-manufacturing notification.

Any exposure resulting from the approval of three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates in pesticide formulations for use on growing crops or to RAC after harvest is not warranted.

D. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates having a number average molecular weight of at least 1,100 would be cumulative with those of any other chemical substance(s). Given the categorization of these polymers as a "low risk polymer" (40 CFR 723.250) and their proposed use as inert ingredients in pesticide formulations, there is no reasonable expectation of increased risk due to cumulative exposure.

E. Safety Determination

1. *U.S. population.* As a matter of policy, EPA has in the past established exemptions from tolerance for polymeric substances used as pesticide inert ingredients that it considers to be intrinsically safe based on the fact that they are listed on the TSCA Inventory or meet the requirements of the amended TSCA polymer exemption and are thereby not subject to the requirements of premanufacture notice (PMN). The Agency has maintained that polymers meeting the polymer exemption criteria will present minimal risk to human health when used as inert ingredients in pesticide formulations.

2. *Infants and children.* FFDCA section 408 provides that EPA shall supply an additional tenfold margin of safety for infants and children in the case of threshold effects where prenatal and/or postnatal toxicity are found or there is incompleteness of the database, unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through the use of margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the low expected toxicity of these three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates, a safety factor analysis is not required for assessing the risk. For the same reasons the additional safety factor is unnecessary.

F. International Tolerances

Akzo Nobel Industrial Specialties, Inc. is not aware of any country requiring a tolerance for the three polymers represented by α-hydro-ω-hydroxy-poly(oxyethylene) C_8-C_{18}-alkyl ether citrates having a number average molecular weights of at least 1,100. Nor have there been any CODEX Maximum Residue Levels (MRLs) established for any food crops at this time.

[FR Doc. 02–30946 Filed 12–5–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0211; FRL–7283–3]

Imazethapyr; 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 ID number OPP–2002–0211, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305 5697; e-mail address: tompkins.jim@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:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in 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 Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0211. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0211 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0211. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0211.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0211. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4 If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 27, 2002.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 6F4746

EPA has received a pesticide petition (PP 6F4746) from BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528, 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 by establishing tolerances for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid) as its free acid or its ammonium salt (calculated as the acid), and its metabolite 2-[4, 5-dihydro-4-methyl-4-(1-methylethyl-5-oxo-1H-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridinecarboxylic acid both free and conjugated in or on nongrass animal feed crops, forage, hay and seed at 3.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of imazethapyr in clover is adequately understood. Based on studies conducted on soybean, edible and forage legumes, corn and canola, parent imazethapyr and common metabolites CL 288511 and CL 182704 are the only residues of concern for tolerance setting purposes.

2. *Analytical method.* A practical analytical method for detecting and measuring imazethapyr residues of concern in alfalfa and clover commodities was submitted to EPA with the alfalfa petition. The analytical method for alfalfa and clover forage, hay and seed is based on Capillary Electrophoresis (CE) with limits of quantitation (LOQ) of 0.50 ppm. This validated method was approved for analysis in alfalfa and is appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues.* A total of twelve field trials were conducted with imazethapyr and its metabolites on clover to demonstrate the residues in clover forage, hay and seed. In all clover residue studies, imazethapyr was applied at 0.094 lb ae/A, the maximum proposed label rate. Clover samples were cut at 15 DAT and 30 DAT, the proposed preharvest interval (PHI). At 30 DAT, all forage samples contained residues of imazethapyr and CL 288511 at less than 0.5 ppm. In most 30 DAT forage samples, residues of CL 182704 were below the LOQ (0.5 ppm). No hay samples had residues of imazethapyr above the LOQ (0.5 ppm). There was only one hay sample containing residues of CL 288511 above the LOQ. In all cases, for the 15 and 30 DAT forage and hay samples, the primary residue was CL 182704 (the glucose conjugate of CL 288511). Since CL 182704 is the derivitized form of CL 288511, the residues were converted to a total CL 288511 equivalent residue basis. Seed and seed screening samples were collected from studies conducted at two sites. In both studies, residues of imazethapyr, CL 288511 and CL 182704 were less than the LOQ.

The proposed tolerance for nongrass animal feeds is 3.0 ppm for imazethapyr, CL 288511 and the glucose conjugate, CL 182704. Residue levels of imazethapyr and CL 288511 in clover are all below the proposed tolerance. When residues of CL 182704 are adjusted to CL 288511 equivalents residues, the total equivalent CL 288511 residues are below the proposed 3.0 tolerance level in all clover studies.

B. Toxicological Profile.

A complete, valid and reliable database of mammalian and genetic toxicology studies supports the proposed tolerance for imazethapyr on nongrass animal feeds. This database was previously reviewed by the EPA in support of the tolerance petitions and registration of imazethapyr on soybeans, legume vegetables, corn, alfalfa and peanuts.

1. *Acute toxicity.* Imazethapyr technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the LD_{50} value of imazethapyr technical was greater than 5,000 milligrams/kilogram/ body weight (mg/kg b.w.) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazethapyr is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazethapyr technical was greater than 2,000 mg/kg b.w. for both

male and female rabbits. Imazethapyr technical is considered to be non-toxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4–hour LC_{50} value was greater than 3.27 mg/l (analytical) and greater than 4.21 mg/l (gravimetric) for both males and females. Imazethapyr technical was shown to be non-irritating to rabbit skin (Toxicity Category IV) and mildly irritating to the rabbit eye (Toxicity Category III). Based on the results of a dermal sensitization study (Buehler), imazethapyr technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicity.* Imazethapyr technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazethapyr does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity.* The developmental toxicity study in Sprague Dawley rats conducted with imazethapyr technical showed no evidence of developmental toxicity or teratogenic effects in fetuses. Thus, imazethapyr is neither a developmental toxicant nor a teratogen in the rat. The no observed adverse effect level (NOAEL) for maternal toxicity was 375 mg/kg b.w./day, based on clinical signs of toxicity in the dams (e.g. excessive salivation) at 1,125 mg/kg b.w./day. Imazethapyr technical did not exhibit developmental toxicity or teratogenic effects at maternal dosages up to and including 1,125 mg/kg b.w./day, the highest dose tested (HDT).

Results from a developmental toxicity study in New Zealand White rabbits with imazethapyr technical also indicated no evidence of developmental toxicity or teratogenicity. Thus, imazethapyr technical is neither a developmental toxicant nor a teratogen in the rabbit. The NOAEL for maternal toxicity was 300 mg/kg b.w./day, based on decreased food consumption and body weight gain, abortion, gastric ulceration and death at 1,000 mg/kg b.w./day, the next HDT. The NOAEL for developmental toxicity and teratogenic effects was determined to be > 1,000 mg/kg b.w./day based on no developmental toxicity or fetal malformations associated with the administration of all doses.

The results from the 2–generation reproduction toxicity study in rats with imazethapyr technical support a NOAEL for reproductive toxicity of 10,000 ppm (equivalent to 800 mg/kg b.w./day). The NOAEL for non-reproductive parameters (i.e. decreased weanling body weights) is 5,000 ppm.

4. *Subchronic toxicity.* A short-term (21–day) dermal toxicity study in rabbits was conducted with imazethapyr technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg b.w./day HDT, supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg b.w./day. In a subchronic (13–week) dietary toxicity study in rats with imazethapyr technical, no signs of systemic toxicity were noted, supporting a NOAEL of 10,000 ppm the highest concentration tested (HCT) (equivalent to 820 mg/kg b.w./day).

In a subchronic (13–week) dietary toxicity study in dogs with imazethapyr technical, no signs of systemic toxicity were noted. supporting a NOAEL of 10,000 ppm (equivalent to 250 mg/kg b.w./day), the (HCT).

5. *Chronic toxicity.* A 1–year dietary toxicity study was conducted with imazethapyr technical in Beagle dogs at dietary concentrations of 0, 1,000, 5,000 and 10,000 ppm. In this study, the NOAEL for systemic toxicity was 1,000 ppm (equivalent to 25 mg/kg b.w./day), based on slight anemia, i.e., decreased red cell parameters observed at 5,000 and 10,000 ppm concentrations. No treatment-related histopathological lesions were observed at any dietary concentration, including the HCT (10,000 ppm).

In a 2–year chronic dietary oncogenicity and toxicity study in rats conducted with imazethapyr technical, the NOAEL for oncogenicity and chronic systemic toxicity was 10,000 ppm (equivalent to 500 mg/kg b.w./day), the HCT. An 18–month chronic dietary oncogenicity and toxicity study in mice with imazethapyr technical supports a NOAEL for oncogenicity of 10,000 ppm, the HCT (equivalent to 1,500 mg/kg b.w./day), and a NOAEL for chronic systemic toxicity of 5,000 ppm (equivalent to 750 mg/kg b.w./day), based on decreased body weight gain in both sexes).

The EPA has classified imazethapyr as negative for carcinogenicity (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism.* The rat, goat and hen metabolism studies indicate that the qualitative nature of the residues of imazethapyr in animals is adequately understood.

In three rat metabolism studies conducted with radiolabeled imazethapyr technical the major route of elimination of the herbicide was through rapid excretion in urine and to a much lesser extent in feces. In the first study, almost 100% of the administered material was recovered in excreta within 96 hours (89–95% in urine, 6–11% in feces). The major residue in urine and feces was parent compound. Approximately 2% of the dose was metabolized and excreted as the a-hydroxyethyl derivative of imazethapyr. In the second study, the test material was rapidly and completely eliminated unchanged in the urine within 72 hours of dosing. After 24 hours, 92.1% of radioactivity was excreted in the urine with 4.67% in the feces. There was no significant bioaccumulation of radioactivity in the tissues from this rat metabolism study (< 0.01 ppm after 24 hours). In the third study, four groups treated with radiolabeled imazethapyr readily excreted > 95% of the test material in the urine and feces within 48 hours. A high percentage (97–99%) of the test material was excreted in the urine as unchanged parent, the remainder as the a-hydroxyethyl derivative of imazethapyr. For all three studies, the major route of elimination of the herbicide in rats was through rapid excretion of unchanged parent compound in urine. It is clear that imazathapyr and its related residues do not accumulate in tissues and organs. In the goat metabolism study, parent ^{14}C-imazethapyr was dosed to lactating goats at 0.25 ppm and 1.25 ppm. Results showed ^{14}C-residues of < 0.01 ppm in milk and < 0.05 ppm in leg muscle, loin muscle, blood, fat, liver and kidney. Laying hens dosed at 0.5 ppm and 2.5 ppm with ^{14}C-imazethapyr showed ^{14}C-residues of < 0.05 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney).

Additional animal metabolism studies have been conducted with CL 288511 (main metabolite in treated crops fed to livestock) in both laying hens and lactating goats. These studies have been repeated to support subsequent use extensions on crops used as livestock feed items which would theoretically result in a higher dosing of imazethapyr derived residues to livestock (i.e., corn, alfalfa). In these studies, lactating goats dosed at 42 ppm of ^{14}C-CL 288511 showed ^{14}C-residues of < 0.01 ppm in milk, leg muscle, loin muscle and omental fat. ^{14}C-Residues in blood were mostly < 0.01 ppm but reached 0.01 ppm on two of the treatment days. ^{14}C-Residue levels in the liver and kidney were 0.02 and 0.09 ppm, respectively. Laying hens dosed at 10.2 ppm of ^{14}C-imazethapyr showed ^{14}C-residues of < 0.01 ppm in eggs and all tissues (blood, muscle, skin/fat, liver and kidney). ^{14}C-imazethapyr or ^{14}C-CL 288511 ingested

by either laying hens or lactating goats was excreted within 48 hours of dosing. These studies indicate that parent imazethapyr and CL 288511-related residues do not accumulate in milk or edible tissues of the ruminant.

7. *Metabolite toxicology.* Metabolism studies in soybean, peanut, corn, alfalfa and canola indicate that the only significant metabolites are the a-hydroxyethyl derivative of imazethapyr, CL 288511 and its glucose conjugate CL 182704. The a-hydroxyethyl metabolite has also been identified in minor quantities in the previously submitted rat metabolism studies and in goat and hen metabolism studies. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the 2–generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species demonstrate no apparent estrogenic effects or treatment-related effects of imazethapyr on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazethapyr has been calculated from the proposed tolerance for use on rice and previously established tolerances for peanuts, legume vegetables, soybeans, alfalfa, endive, lettuce, and corn. This very conservative chronic dietary exposure estimate used the proposed tolerance of 0.5 parts per million (ppm) for rice, and tolerance values of 0.1 ppm for peanuts, 0.1 ppm for legume vegetables, 0.1 ppm for soybeans, 3.0 ppm for alfalfa, 0.1 ppm for endive (escarole), 0.1 ppm for lettuce, and 0.1 ppm for corn. In addition, these estimates assume that 100% of these crops contain imazethapyr residues. In support of this tolerance petition, a proposed tolerance of 3.0 ppm for nongrass animal feeds would not be expected to contribute significantly to this dietary risk assessment.

2. *Food.* Potential exposure to residues of imazethapyr in food will be restricted to intake of rice, peanuts, legume vegetables, soybeans, alfalfa (sprouts), endive, lettuce, and corn. Using the assumptions discussed above, the Theoretical Maximum Residue Concentration (TMRC) values of imazethapyr were calculated for the U.S. general population and subgroups. Based on the tolerances given above, the TMRC values for each group are:

- 0.000419 mg/kg b.w./day for the general U.S. population.
- 0.001104 mg/kg b.w./day for all infants (> 1 year).
- 0.001298 mg/kg b.w./day for non-nursing infants.
- 0.000870 mg/kg b.w./day for children 1 to 6 years of age.
- 0.000610 mg/kg b.w./day for children 7 to 12 years of age.

The TMRC values indicate that non-nursing infants are the most highly exposed population subgroup.

3. *Drinking water.* As a screening-level assessment for aggregate exposure, the U.S. EPA evaluates a drinking water level of comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. In 1990, the EPA set the reference dose (RfD) for imazethapyr at 0.25 mg/kg b.w./day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg b.w./day and a 100-fold uncertainty factor. Based on the cRfD of 0.25 mg/kg b.w./day and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazethapyr in water. For the adult population the chronic DWLOC was 8735 ppb and for children the DWLOC was estimated to be 2491 parts per billion (ppb).

Chronic drinking water exposure analyses were calculated for imazethapyr using EPA screening concentration in ground water (SCI-GROW), and genetic expected environmental concentration (GENEEC) for surface water. The SCI-GROW value is 16.54 ppb and the calculated peak GENEEC value is 5.96 ppb by aerial application. For the U.S. adult population, the estimated exposures of imazethapyr residues in ground water and surface water are approximately 0.19% and 0.07%, respectively, of the DWLOC. The estimated exposures of children to imazethapyr residues in groundwater and surface water are approximately 0.66%, and 0.24%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazethapyr use are negligible.

4. *Non-dietary exposure.* Imazethapyr products are not currently registered or requested to be registered for residential use; therefore the estimate of residential exposure is not relevant to this tolerance petition.

D. Cumulative Effects

Imazethapyr is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxyacid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazethapyr has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1. *U.S. population.* The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. In 1990, the EPA set the RfD for imazethapyr at 0.25 mg/kg b.w./day, based on the NOAEL from the 1–year dietary toxicity study in dogs of 25 mg/kg b.w./day and a 100-fold uncertainty factor. The chronic dietary exposure of 0.000419 mg/kg b.w./day for the general U.S. population will utilize only 0.2% of the RfD of 0.25 mg/kg b.w./day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazethapyr, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity database, the low toxicity of the active ingredient, and the results of the chronic dietary exposure risk assessment support the conclusion that there is a "reasonable certainty of no harm" from the proposed use of imazethapyr on imidazolinone tolerant rice, canola and nongrass animal feeds.

2. *Infants and children.* The conservative dietary exposure estimates of all registered uses including the proposed tolerance for rice show exposures of 0.001104, 0.000440, 0.000870, and 0.000610 mg/kg b.w./day which will utilize 0.4, 0.2, 0.3, and 0.2% of the RfD for all infants (< 1 year), nursing infants, children 1-6 years, and children 7-12 years, respectively. The chronic dietary exposures for non-nursing infants, the most highly exposed subgroup, will utilize only 0.5% of the RfD. Results from the 2-generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazethapyr is neither a developmental toxicant nor a teratogen in either the rat or rabbit.

Therefore, an additional safety factor is not warranted, and the RfD of 0.25 mg/kg b.w./day, which utilizes a 100-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of imazethapyr on nongrass animal feeds.

[FR Doc. 02–30947 Filed 12–5–02; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7419–2]

Alaric, Inc. Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative order on consent.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an administrative order on consent, pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, regarding the Alaric, Inc. Superfund Site, located in Tampa, Hillsborough County, Florida, with the following parties: Lee W. Oglesby, Sr. and Carolyn M. Oglesby, as individuals; the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended; Lee W. Oglesby, Sr., as trustee and beneficiary of the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended; and successor trustees of the Lee W. Oglesby, Sr. Living Trust, dated September 22, 1998, as amended. The settlement is designed to resolve fully each settling party's liability at the Site through a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and provide contribution protection. EPA will consider public comments on the proposed settlement within thirty (30) days of publication of this notice. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), Sam Nunn Atlanta Federal Center, Waste Management Division, CERCLA Program Services Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: November 20, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–30942 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–48–A (Auction No. 48); DA 02–1441]

Auction of Licenses for the Lower and Upper Paging Bands Scheduled for May 13, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 8,874 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,328 licenses in the upper paging bands (929–931 MHz) scheduled to commence on May 13, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before December 13, 2002, and reply comments are due on or before December 18, 2002.

ADDRESSES: Comments and reply comments must be sent by electronic mail to *auction48@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Rosemary Cabral at (202) 418–0660. *For general auction questions:* Roy Knowles at (717) 338–2888 or Barbara Sibert at (717) 338–2888. *For service rule questions:* Bettye Woodward at (202) 418–1345.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 48 Comment Public Notice* released on November 7, 2002. The complete text of the *Auction No. 48 Comment Public Notice* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 48 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The complete list of licenses available for this auction will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

1. By the *Auction No. 48 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the auction of 8,874 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,328 licenses in the upper paging bands (929–931 MHz) scheduled to commence on May 13, 2003 ("Auction No. 48"). This auction will include licenses that remained unsold from a previous auction or were defaulted on by a winning bidder in a previous auction. Due to the large volume of licenses in Auction No. 48, the complete list of licenses available for this auction will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

2. In the *Paging Reconsideration Order*, 64 FR 33762 (June 24, 1999), the Commission concluded that the lower bands licenses should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the upper band licenses should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa.

3. The following tables contain the Block/Frequency Cross-Reference List for the paging bands:

35 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
CA	35.19–35.21	CE	35.29–35.31	CI	35.45–35.47	CM	35.57–35.59
CB	35.21–35.23	CF	35.33–35.35	CJ	35.49–35.51	CN	35.59–35.61
CC	35.23–35.25	CG	35.37–35.39	CK	35.53–35.55	CO	35.61–35.63
CD	35.25–35.27	CH	35.41–35.43	CL	35.55–35.57	CP	35.65–35.67

43 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
DA	43.19–43.21	DE	43.29–43.31	DI	43.45–43.47	DM	43.57–43.59
DB	43.21–43.23	DF	43.33–43.35	DJ	43.49–43.51	DN	43.59–43.61
DC	43.23–43.25	DG	43.37–43.39	DK	43.53–43.55	DO	43.61–43.63
DD	43.25–43.27	DH	43.41–43.43	DL	43.55–43.57	DP	43.65–43.67

152 MHz and 158 MHz Lower Bands Unpaired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
EA	152.230–152.250	EC	158.090–158.110
EB	152.830–152.850	ED	158.690–158.710

152 MHz Lower Bands Paired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
FA	152.015–152.045 / 158.475–158.505	FJ	152.555–152.585 / 157.815–157.845
FB	152.045–152.075 / 158.505–158.535	FK	152.585–152.615 / 157.845–157.875
FC	152.075–152.105 / 158.535–158.565	FL	152.615–152.645 / 157.875–157.905
FD	152.105–152.135 / 158.565–158.595	FM	152.645–152.675 / 157.905–157.935
FE	152.135–152.165 / 158.595–158.625	FN	152.675–152.705 / 157.935–157.965
FF	152.165–152.195 / 158.625–158.655	FO	152.705–152.735 / 157.965–157.995
FG	152.195–152.225 / 158.655–158.685	FP	152.735–152.765 / 157.995–158.025
FH	152.495–152.525 / 157.755–157.785	FQ	152.765–152.795 / 158.025–158.055
FI	152.525–152.555 / 157.785–157.815	FR	152.795–152.825 / 158.055–158.085

454 MHz Lower Bands Paired Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency
GA	454.0125–454.0375 / 459.0125–459.0375	GN	454.3375–454.3625 / 459.3375–459.3625
GB	454.0375–454.0625 / 459.0375–459.0625	GO	454.3625–454.3875 / 459.3625–459.3875
GC	454.0625–454.0875 / 459.0625–459.0875	GP	454.3875–454.4125 / 459.3875–459.4125
GD	454.0875–454.1125 / 459.0875–459.1125	GQ	454.4125–454.4375 / 459.4125–459.4375
GE	454.1125–454.1375 / 459.1125–459.1375	GR	454.4375–454.4625 / 459.4375–459.4625
GF	454.1375–454.1625 / 459.1375–459.1625	GS	454.4625–454.4875 / 459.4625–459.4875
GG	454.1625–454.1875 / 459.1625–459.1875	GT	454.4875–454.5125 / 459.4875–459.5125
GH	454.1875–454.2125 / 459.1875–459.2125	GU	454.5125–454.5375 / 459.5125–459.5375
GI	454.2125–454.2375 / 459.2125–459.2375	GV	454.5375–454.5625 / 459.5375–459.5625
GJ	454.2375–454.2625 / 459.2375–459.2625	GW	454.5625–454.5875 / 459.5625–459.5875
GK	454.2625–454.2875 / 459.2625–459.2875	GX	454.5875–454.6125 / 459.5875–459.6125
GL	454.2875–454.3125 / 459.2875–459.3125	GY	454.6125–454.6375 / 459.6125–459.6375
GM	454.3125–454.3375 / 459.3125–454.3375	GZ	454.6375–454.6625 / 459.6375–459.6625

929–931 MHz Upper Bands Paging Channels

Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency	Block (license suffix)	Frequency
A	929.0125	AA	931.0125	AN	931.3375	BA	931.6625
B	929.1125	AB	931.0375	AO	931.3625	BB	931.6875
C	929.2375	AC	931.0625	AP	931.3875	BC	931.7125
D	929.3125	AD	931.0875	AQ	931.4125	BD	931.7375
E	929.3875	AE	931.1125	AR	931.4375	BE	931.7625
F	929.4375	AF	931.1375	AS	931.4625	BF	931.7875
G	929.4625	AG	931.1625	AT	931.4875	BG	931.8125
H	929.6375	AH	931.1875	AU	931.5125	BH	931.8375
I	929.6875	AI	931.2125	AV	931.5375	BI	931.8625
J	929.7875	AJ	931.2375	AW	931.5625	BJ	931.9625
K	929.9125	AK	931.2625	AX	931.5875	BK	931.9875
L	929.9625	AL	931.2875	AY	931.6125	.....	.....
	931.3125	AM	.....	AZ	931.6375		

Note: For Auction No. 48, licenses are not available in every block listed in the tables. The complete list of licenses available for Auction No. 48 will be provided in electronic format only, available as "Attachment A" to the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*.

4. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau seeks comment on the following issues relating to Auction No. 48.

I. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

5. The Bureau proposes to award the licenses included in Auction No. 48 in a simultaneous multiple-round auction. As described further, this methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

6. The Bureau has been delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.

7. The Bureau proposes to make the upfront payments equal to the minimum opening bids, which are established based on similar facts as described in section II.B. The specific upfront payments for each license are set forth in the list of licenses available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*. The Bureau seeks comment on this proposal.

8. The Bureau further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each license is assigned a specific number of bidding units equal to the upfront payment, listed in the license inventory available for Auction No. 48 ("Attachment A"), available with the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses as long as the total number of bidding units associated with those licenses does not exceed its maximum initial eligibility. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

C. Activity Rules

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than wait until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

10. The Bureau proposes to divide the auction into three stages, each characterized by an increased activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that it the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. For Auction No. 48, the Bureau proposes the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths ($^{50}/_{49}$).

12. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

D. Activity Rule Waivers and Reducing Eligibility

13. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

14. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

Note: If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

15. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

16. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

17. The Bureau proposes that each bidder in Auction No. 48 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. The Bureau seeks comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

18. The Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

F. Information Available to Bidders During the Course of the Auction

19. In the *Paging Second Report and Order*, 62 FR 11616 (March 12, 1997), the Commission concluded that, due to the large number of licenses to be auctioned, limiting the disclosure of information to bidders during the course of paging auctions (*e.g.*, revealing only high bids and total number of bids on each license and withholding bidder identities) might help to speed the pace of the auctions. In the *Paging Reconsideration Order*, the Commission directed the Bureau to seek further comment on this issue. Based on its experience in Auctions No. 26 and No. 40, in which the information was disclosed, the Bureau tentatively concludes that it is unnecessary to withhold bidder identities in Auction No. 48. The Bureau seeks comment on this tentative conclusion. In addition, as in Auctions No. 26 and No. 40, the Bureau proposes to disclose all information relating to the bids during Auction No. 48 after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal. The Bureau seeks comment on this proposal.

II. Bidding Procedures

A. Round Structure

20. The Commission will conduct Auction No. 48 over the Internet. Telephonic Bidding will also be available. As a contingency, the FCC Wide Area Network, will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection, and related charges, will be provided in the public notice announcing details of auction procedures.

21. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the

location and format of round results will be included in the same public notice.

22. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

23. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

25. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 48. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective auction tool.

26. Because multiple licenses in the same geographic area are being auctioned at the same time, under the same general conditions, the Commission believes that it is appropriate to use a common baseline to establish the minimum opening bid formula for all the licenses in the auction. The gross high bids from the prior Lower and Upper Paging Bands Auction (Auction No. 40) provide the most comprehensive paging baseline. Therefore, the Bureau proposes to base the minimum opening bid for each license available in Auction No. 48 on the average of the corresponding gross high bids received in Auction No. 40, as follows:

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same MEA.
- For a license being auctioned by EA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 40 in the same EA.

The Commission will set a "floor" for minimum opening bids at $500 for licenses in both the upper paging bands (929–931 MHz) and the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz).

27. This formula is intended to apply to all geographic paging licenses in Auction No. 48, and takes into account considerations discussed. The specific proposed minimum opening bid for each license available in Auction No. 48 is set forth in the list of licenses provided in electronic format as "Attachment A" of the *Auction No. 48 Comment Public Notice* at *http://wireless.fcc.gov/auctions/48/*. Comment is sought on this proposal.

28. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the paging bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

29. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license, the minimum acceptable bid for that license will be equal to the standing high bid plus the defined increment.

30. For Auction No. 48, the Bureau proposes to set the defined increment for each license based on a percentage of the standing high bid on the license or, if no bid has been placed on the license, a percentage of the minimum opening bid for the license. The defined increment will be calculated as follows. Presuming, for example, that the percentage being used is 20 percent, we will multiply the standing high bid (or, if no standing high bid exists for the particular license, the minimum opening bid) by 1.2. (If the percentage being used is 30 percent, we would multiply by 1.3, etc.) The product will be rounded as follows: amounts below $1,000 will be rounded to the nearest $10; amounts above $1,000 but below $10,000 will be rounded to the nearest $100; and amounts above $10,000 will be rounded to the nearest $1,000. The defined increment then will be determined by subtracting the standing high bid (or, if applicable, the minimum opening bid) from the rounded result. At the start of the auction, the Bureau proposes to use 20 percent to calculate the defined increment. The Bureau also proposes to retain discretion to change the percentage used to calculate the defined increment if we determine that circumstances so dictate. Further, the Bureau proposes to retain discretion to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount.

31. In addition, the Bureau proposes that it have discretion to use a smaller defined increment to calculate acceptable bids higher than the minimum acceptable bid. The smaller defined increment would be calculated using a smaller percentage than the percentage used to calculate the defined increment that sets the minimum acceptable bid. For example, 20 percent might be used to calculate the defined increment for the minimum acceptable bid and 10 percent might be used to calculate the smaller defined increment used to calculate higher acceptable bids. In all other respects, the smaller defined increment would be calculated in exactly the manner described for the initial defined increment, including rounding.

32. For example, the Bureau could calculate bids using 20 percent to calculate the defined increment for the minimum acceptable bid and 10 percent to calculate the smaller defined increment. Assuming that the standing

high bid on a given license is $50,000, in the next round,

Defined Increment=Rounded (Standing High Bid * 1.2)—Standing High Bid
=Rounded ($50,000 * 1.2)—$50,000
=Rounded ($60,000)—$50,000
=$60,000—$50,000
=$10,000
Minimum Acceptable Bid=Standing High Bid + Defined Increment
=$50,000 + $10,000
=$60,000
Smaller Defined Increment=Rounded (Standing High Bid * 1.1)—Standing High Bid
=Rounded ($50,000 * 1.1)—$50,000
=Rounded ($55,000)—$50,000
=$55,000—$50,000
=$5,000
One Increment Higher Than Minimum Acceptable Bid=Minimum Acceptable Bid + (Smaller Defined Increment * 1)
=$60,000 + ($5,000 * 1)
=$60,000 + $5,000
=$65,000
Two Increments Higher Than Minimum Acceptable Bid=Minimum Acceptable Bid + (Smaller Defined Increment * 2)
=$60,000 + ($5,000 * 2)
=$60,000 + $10,000
=$70,000

33. This procedure would enable bidders unwilling to raise the standing high bid by twice the defined increment to place bids higher than the minimum acceptable bid. Thus, in the example, a bidder wanting to bid above the minimum acceptable bid but unwilling to raise the standing high bid of $50,000 by twice the defined increment of $10,000 ($20,000 or 40 percent) would have the flexibility to bid $65,000, raising the standing high bid by $15,000.

34. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the defined increment, as stated.

35. In summary, the Bureau proposes it have discretion at any time during the auction to change the initial 20 percent used to calculate the defined increment and/or to set an absolute dollar amount floor for the increment used to calculate the minimum acceptable bid. The Bureau also proposes that it have additional discretion to calculate the minimum acceptable bid using one percentage and to calculate higher acceptable bids using another percentage, as described. The Bureau's decision to exercise its discretion with regard to minimum acceptable bids and bid increments would be announced via the Automated Auction System. The Bureau seeks comment on these proposals.

D. High Bids

36. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each license. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), the Bureau proposes to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will again be determined on the highest gross bid amount received for the license. The Bureau seeks comment on this proposal.

37. A high bid will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a "standing high bid." Bidders are reminded that standing high bids confer activity credit.

E. Information Regarding Bid Withdrawal and Bid Removal

38. For Auction No. 48, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove selected bids function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

39. A high bidder may withdraw its standing high bids from previous rounds using the withdrawal function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

40. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

41. Applying this reasoning, the Bureau proposes to limit each bidder in Auction No. 48 to withdrawing standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

F. Stopping Rule

42. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 48, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain open until bidding closes simultaneously on all licenses.

43. Bidding will close simultaneously on all licenses after the first round in which no new acceptable bids, proactive waivers, or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

44. However, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 48:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any

other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used at any time or only in stage three of the auction.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) only for licenses on which the high bid increased in at least one of a specified preceding number of rounds.

45. The Bureau proposes to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

III. Conclusion

46. Comments are due on or before December 13, 2002, and reply comments are due on or before December 18, 2002. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction48@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 48 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850. Parties that have previously filed comments or reply comments for Auction No. 48 need not refile them.

47. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division.

[FR Doc. 02–30500 Filed 12–5–02: 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–3285]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 3, 2002, the Commission released a public notice announcing the December 11, 2002 conference call meeting and agenda of the North American Numbering Council (NANC). The conference bridge number for domestic participants is (800) 377–4273 (toll free). The call in number for international participants is (816) 650–0771 (caller pays). The Chairperson to ask for is Robert Atkinson. Due to limited port space, NANC members and Commission staff will have first priority on the call. Members of the public may join the call as remaining port space permits or may attend in person at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW., Room 6–B516, Washington, DC 20554. The intended effect of this action is to make the public aware of the NANC's conference call meeting and agenda scheduled for December 11, 2002. This notice of the December 11, 2002. NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to the NANC's need to discuss a time sensitive issue before the next scheduled meeting.

This statement complies with the General Services Administration Management regulations implementing the Federal Advisory Committee Act. *See* 41 CFR section 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Wednesday, December 11, 2002 1 PM

To discuss NANC recommendation to the Federal Communications Commission regarding the Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule.

Federal Communications Commission

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 02–30952 Filed 12–5–02: 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:42 a.m. on Tuesday, December 3, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 4, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–31078 Filed 12–4–02; 3:34 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011626–008.

Title: Alianca/Columbus/Crowley/P&O Nedlloyd Agreement.

Parties: Alianca Navegacao e Logistica Ltda., Hamburg-Sud, d/b/a Columbus Line and Crowley American Transport, P&O Nedlloyd Limited, P&O Nedlloyd B.V., Oceanica AGW Com. e Rep. Ltda., d/b/a Mercosul Line.

Synopsis: The proposed amendment adds Panama to the geographic scope of the agreement. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: December 3, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–30896 Filed 12–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MB Financial, Inc., Chicago, Illinois; to merge with South Holland Bancorp, Inc., South Holland, Illinois, an thereby indirectly acquire South Holland Trust & Savings Bank, South Holland, Illinois.

Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. FSB Bancshares, Inc., Knoxville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Henderson, Tennessee.

Board of Governors of the Federal Reserve System, December 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30882 Filed 12–5–02; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0277]

Market Research Collection for the Office of Citizen Services and Communications

AGENCY: General Services Administration (GSA).

ACTION: Notice of a new one-time collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration, Office of Acquisition Policy will submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Market Research for the Office of Citizen Services and Communication.

This information collection will be used to determine the utility and ease of use of GSA's Web site *http://www.GSA.gov*. The respondents include individuals and representatives form businesses currently holding GSA contracts.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of the functions of the agency including whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected, including through the use of automated collection techniques or other forms of information technology.

DATES: *Comment Due Date:* February 4, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Sharon Holcombe, Office of Citizen Services and Communications, (202) 501–2719.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Stephanie Morris, General Services Administration (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection is to inform the General Services Administration (GSA) on how to best provide service and relevance to the American public via GSA's Web site, *http://www.GSA.gov*. The information collected from an online survey, focus groups, and Web site usability testing, will be used to refine the *http://www.GSA.gov* Web site. The questions to be asked are non-invasive and do not address or probe sensitive issues. It is important for the GSA to gain information from the many diffuse groups it serves; therefore, the GSA will be questioning individuals and households, and businesses and other-for-profit groups.

B. Annual Reporting Burden

Respondents: 190.

Responses Per Respondent: 1.

Total Responses: 190.

Hours Per Response: 72.6 minutes.

Total Burden Hours: 230.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite Market Research Collection for the Office of Citizen Services and Communication in all correspondence.

Dated: October 2, 2002.

Michael Carleton,

Chief, Information Officer.

[FR Doc. 02–30868 Filed 12–5–02; 8:45 am]

BILLING CODE 6820–CX–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0463]

Guidance for Industry; Implementation of the Federal Food, Drug, and Cosmetic Act Regarding the Use of the Term "Catfish;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry; Implementation of Section 403(t) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(t)) Regarding the Use of the Term 'Catfish.'" Section 10806 of the Farm Security and Rural Investment Act of 2002 amends the Federal Food, Drug, and Cosmetic Act (the act) to provide that a food shall be deemed to be misbranded "[i]f it purports to be or is represented as catfish, unless it is fish classified within the family *Ictaluridae*." This guidance assists importers and domestic distributors of fish previously called "catfish" in selecting a new common or usual name that is consistent with the act.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments 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.

Submit written requests for single copies of this guidance to the Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Include a self-adhesive address label to assist that office in processing your request, or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to this guidance document.

FOR FURTHER INFORMATION CONTACT: Spring C. Randolph, Center for Food Safety and Applied Nutrition (HFS–415), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2303, FAX 301–436–2599.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 2002, Public Law 107–171, entitled the Farm Security and Rural Investment Act of 2002 (FSRIA), became law. Section 10806 of the FSRIA amends the food misbranding provision in section 403 of the act (21 U.S.C. 343) to provide that a food shall be deemed to be misbranded "[i]f it purports to be or is represented as catfish, unless it is fish classified within the family *Ictaluridae*." This amendment overrides prior guidance that lists fish other than those from the family Ictaluridae as fish bearing the acceptable name "catfish."

The guidance document states that, consistent with the amendment to section 403 of the act, importers, domestic distributors, and sellers of fish in interstate commerce bearing the term "catfish," that are not classified within the family *Ictaluridae*, may no longer use the term "catfish" on labeling, in whole or as part of their common or usual name. This guidance relates to all fish that are distributed in interstate commerce, including imports.

The document discusses how to apply FDA's common or usual name "general principles" regulation (21 CFR 102.5) in determining a name that can be used for the fish once known as "catfish," but for which that name can no longer be used.

This guidance represents the agency's current thinking on acceptable common or usual names for fish bearing the name "catfish" that are not from the family *Ictaluridae*. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This guidance is a level 1 guidance issued consistent with FDA's good guidance practices (GGPs) regulation (§ 10.115 (21 CFR 10.115)). Consistent with GGPs, the agency is soliciting public comment, but is implementing the guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. Section 403(t) of the act is now in effect and must be implemented immediately. Thus, FDA is making the guidance effective immediately.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number

found in brackets in the heading of this document. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: November 15, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30901 Filed 12–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Request for Generic Clearance to Conduct Voluntary Customer/Partner Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Voluntary Customer Satisfaction Surveys.

Type of Information Collection Request: Extension. OMB Control No. 0925–0476, with an expiration date of March 31, 2003.

Need and Use of Information Collection: Executive Order 12962 directed agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Additionally, since 1994, the NLM has been a "Federal Reinvention Laboratory " with a goal of improving its methods of delivering information to the public. An essential strategy in accomplishing reinvention goals is the ability to periodically receive input and feedback from customers about the design and quality of the services they receive.

The NLM provides significant services directly to the public including health providers, researchers, universities, other federal agencies, state and local governments, and to others through a range of mechanisms, including publications, technical assistance, and Web sites. These services are primarily focused on health and medical information dissemination activities. The purpose of this submission is to obtain OMB's generic approval to continue to conduct satisfaction surveys of NLM's customers. The NLM will use the information provided by individuals and institutions to identify strengths and weaknesses in current services and to make improvements where feasible. The ability to periodically survey NLM's customers is essential to continually update and upgrade methods of providing high quality service.

Frequency of Response: Annually or biennially.

Affected Public: Individuals or households; businesses or other for profit; state or local governments; Federal agencies: non-profit institutions; small businesses or organizations.

Type of Respondents: Organizations, medical researchers, physicians and other health care providers, librarians, students, and the general public. Annual reporting burden is as follows:

Title of survey	Type of survey	Number of respondents	Estimated response time	Burden hours
Evaluation of Clinical Studies Database	Web-based	1,000	.167	167
Visible Human Project—Image Processing Tools	Electronic Mail	1,000	.25	250
PubMed	Web-based	5,000	.0835	418
Entrez	Web-based	2,000	.0835	167
GeneMap	Web-based	2,000	.0835	167
NCBI Web Site	Web-based	2,000	.0835	167
NLM Service Desk Survey	Interactive Voice Response telephone	400	.0835	33
NLM Onsite Reading Room Use	Exit Interview	500	.167	84
NLM Electronic Mail Customer Survey	Electronic Mail	1,000	.0835	84
MEDLINEplus User Survey	Web-based	500	.0835	59
Survey of Unified Medical Language System (UMLS) Use	Mail Survey	1,000	.5	500
NLM Services Satisfaction Survey	Web-based	2,000	.0835	167
Total		18,400		2,263

There are no capital costs to report. There are no operating 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; (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 additional information on the proposed collection of information contact Ronald F. Stewart, National Library of Medicine, Building 38, Room 2N13, 8600 Rockville Pike, Bethesda, MD 20894, or call 301–496–6491 (not a toll-free number). You also may e-mail your request to: *ron_stewart@mail.nlm.nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 2, 2002.

Jon G. Retzlaff

Executive Officer, National Library of Medicine.

[FR Doc. 02–30865 Filed 12–5–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 27, 2002.

John D. Garrity,

Director, Office of Special Needs, Assistant Programs.

[FR Doc. 02–30571 Filed 12–5–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will be held on Wednesday, December 11, 2002, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, 900 S. Orme Street, Arlington, VA 22204; (703) 521–1900.

Summary minutes of the conference will be maintained by the Council Coordinator at 4501 N. Fairfax Drive, Room 4036, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Laury Parramore, Council Coordinator, at (703) 358–1711.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council includes the Director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. The Council will convene to discuss: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic vision for its Fisheries Program; (2) the Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues; and (3) the Council's role in providing the Interior Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Interior Secretary approved the Strategic Plan in February 1999, as well as the five-year, $36-million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: November 27, 2002.

Steve Williams,

Director.

[FR Doc. 02–30891 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0041).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart K "Oil and Gas Production Rates."

DATES: Submit written comments by February 4, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0041" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team,

(703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and form MMS–140 that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart K, Oil and Gas Production Rates.

OMB Control Number: 1010–0041.

Form Number: Form MMS–140.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1334(g)(2) states "* * * the lessee shall produce such oil or gas, or both, at rates * * * to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). The regulations at 30 CFR part 250, subpart K, concern oil and gas production rates and implement these statutory requirements. The information collection requirements in subpart K and form MMS–140 are the subject of this notice.

We use the information collected to determine if produced gas can be economically put to beneficial use, to analyze the risks of transporting the liquid hydrocarbons against the value of the resource, and to account for volumes of flared gas and burned liquid hydrocarbons. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Specifically, MMS uses the information to review records of burning liquid hydrocarbons and venting and flaring actions to ensure that they are not excessive; to determine maximum production and maximum efficient rates; to compare the volume of hydrogen sulfide (H_2S) flared and the sulphur dioxide (SO_2) emitted to the specified amounts in approved contingency plans; to monitor monthly atmospheric emissions of SO_2 for air quality; to review applications for downhole commingling to ensure that action does not result in undervalued royalties; and to ensure that operations are effective and result in optimum ultimate recovery.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion or monthly.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 14,189 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart K	Reporting & recordkeeping requirement	hour burden
1101(b)	Request approval to produce within 500 feet of a lease line	5
1101(c)	Request approval to produce gas cap of a sensitive reservoir	12
1102	Submit forms MMS–126, MMS–127, and MMS–128. (Burden covered under 1010–0039, 1010–0018, and 1010–0017.).	
1102(a)(5)	Submit alternative plan for overproduction status. (We are not currently collecting this information.)	
1102(b)(6)	Request extension of time to submit results of semiannual well test	½
1103(a)	Request approval of test periods of less than 4 hours and pretest stabilization periods of less than 6 hours	½
1103(c)	Provide advance notice of time and date of well tests	½
1104(c)	Submit results of all static bottomhole pressure surveys obtained by lessee. Information is submitted on form MMS–140 in the Gulf of Mexico Region.	1
1105(a), (b)	Request special approval to flare or vent oil-well gas	6
1105(c)	Request approval to burn produced liquid hydrocarbons	1
1105(f)	Submit monthly reports of flared or vented gas containing H_2S.	2
1105(f)	H_2S Contingency, Exploration, or Development and Production Plans. (Burden covered under 1010–0053 and 1010–0049.).	
1106	Submit application to commingle hydrocarbons produced from multiple reservoirs and inform other lessees having an interest.	6
1107(b)	Submit proposed plan for enhanced recovery operations	12
1107(c)	Submit periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced	2
1100–1107	General departure and alternative compliance requests not specifically covered elsewhere in subpart K	2
	Reporting Subtotal	
1105(d), (e)	Maintain records for 2 years detailing gas flaring or venting	13
1105(d), (e)	Maintain records for 2 years detailing liquid hydrocarbon burning	½

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before an ICR is submitted to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 27, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–30954 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice of request for extension of a currently approved information collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request an extension for a currently approved information collection in support of its Concession Management Program.

DATES: Comments in this notice must be received no later than January 6, 2003.

ADDRESSES: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Interior Department, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Please also send a copy of your comments to Cynthia L. Orlando, Concession Program Manager, National Park Service, Department of the Interior, 1849 C Street, NW (2410), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Title: Proposed Sale of Concession Operations.

OMB Number: 1024–0126.

Expiration Date of Approval: November 30, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment, or encumbrance.

16 U.S.C. 5957 provides that no concessions contract or leasehold surrender interest may be transferred, assigned or sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary. Regulations at 36 CFR part 51, subpart J, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in an adverse impact on the protection, conservation, or preservation of the resources of the unit of the National Park System, decreased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of existing approved rates to the public. In addition, pursuant to the regulations at 36 CFR part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees, belong to the Government.

If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be adequate.

Estimate of Burden: Approximately 80 hours per response.

Estimated Number of Respondents: Approximately 20.

Estimated number of Reponses per Respondent: One.

Estimated Total Annual Burden on Respondents: 1600 Hours.

A list of information required to be submitted with a request for sale, assignment, transfer or encumbrance of a concession authorization is set forth at 36 CFR part 51, subpart J.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection to the Office of Management and Budget at

the address in the **ADDRESSES** section. For further information about this information collection request, you may contact Erica Smith-Chavis at 202/513–7144, or by written request (see **ADDRESSES**). All comments will also become a matter of public record.

Dated: November 25, 2002.

Cynthia L. Orlando,

Concession Program Manager.

[FR Doc. 02–30922 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is awarded, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
BAND001	Bandelier Trading, Inc.	Bandelier National Monument.
BRCA002	Bryce-Zion Trail Rides	Bryce Canyon National Park.
CANY001	Adventure Bound, Inc.	Canyonlands National Park.
CANY002	Abercrombie & Kent America Adventures, Ltd.	Canyonlands National Park.
CANY003	NAVTEC Expeditions, Inc.	Canyonlands National Park.
CANY004	Colorado Outward Bound School	Canyonlands National Park.
CANY005	Colorado River & Trail Expeditions, Inc.	Canyonlands National Park.
CANY006	Don Hatch River Expeditions, Inc.	Canyonlands National Park.
CANY007	Holiday River Expeditions, Inc.	Canyonlands National Park.
CANY009	Moki Mac River Expeditions, Inc.	Canyonlands National Park.
CANY010	O.A.R.S. Canyonlands, Inc.	Canyonlands National Park.
CANY011	Western River Expeditions, Inc.	Canyonlands National Park.
CANY012	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY014	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY015	Holiday River Expeditions, Inc.	Canyonlands National Park.
CANY016	Tour West, Inc.	Canyonlands National Park.
CANY017	Western River Expeditions, Inc.	Canyonlands National Park.
CANY018	American Wilderness Expeditions, Inc.	Canyonlands National Park.
CANY019	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY020	World Wide River Expeditions, Inc.	Canyonlands National Park.
DINO001	Adventure Bound Tours, Inc.	Dinosaur National Park.
DINO002	American River Touring Assoc.	Dinosaur National Park.
DINO003	Colorado Outward Bound School	Dinosaur National Park.
DINO005	Holiday River Expeditions, Inc.	Dinosaur National Park.
DINO006	Don Hatch River Expeditions, Inc.	Dinosaur National Park.
DINO008	Dinosaur River Expeditions	Dinosaur National Park.
DINO009	O.A.R.S., Inc.	Dinosaur National Park.
DINO011	National Outdoor Leadership School, Inc.	Dinosaur National Park.
DINO012	Sheri Griffith Expeditions	Dinosaur National Park.
DINO014	Eagle Outdoor Sports	Dinosaur National Park.
DINO016	Adrift Adventures, Inc.	Dinosaur National Park.
GRTE001	Grand Teton Lodge Co.	Grand Teton National Park.
GRTE024	Jackson Hole Ski Corp	Grand Teton National Park.
GRTE025	Rendezvous Ski Tours	Grand Teton National Park.
GRTE032	Spring Creek Ranch	Grand Teton National Park.
GRTE046	Gros Ventre River Ranch	Grand Teton National Park.
GRTE047	The National Outdoor Leadership School	Grand Teton National Park.
MEVE001	Aramark Mesa Verde Co.	Mesa Verde National Park.
WHSA001	White Sands Concessions	White Sands National Monument.
YELL001	West Park Hospital	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC. 20240. Telephone 202/513–7156.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Workforce Development and Business Practices.

[FR Doc. 02–30923 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permit listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concessions permit, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity, the temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
BICA007	LuCon Corporation	Bighorn Canyon National Recreation Area.
CANY022	O.A.R.S. Canyonlands, Inc.	Canyonlands National Park.
CANY024	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY025	NAVTEC Expeditions, Inc.	Canyonlands National Park.
CANY026	Niskanen & Jones, Inc.	Canyonlands National Park.
CANY027	3–D River Visions, Inc.	Canyonlands National Park.
DINO010	Faron & Wayne Wilkins	Dinosaur National Park.
GLAC004A	Glacier Wilderness Guides, Inc.	Glacier National Park.
GLAC006	Glacier Wilderness Guides, Inc.	Glacier National Park.
GLAC010	Edward Desrosier (Sun Tours)	Glacier National Park.
GLCA021	Banner Health System	Glen Canyon National Recreation Area.
GOSP001	McFarland Distributing	Golden Spike National Historic Site.
GRCA033	Grand Canyon Railway, Inc.	Grand Canyon National Park.
GRTE034	Wilderness Ventures	Grand Teton National Park.
GRTE037	Trail Creek Ranch	Grand Teton National Park.
GRTE038	Teton Valley Ranch	Grand Teton National Park.
GRTE049	Diamond Cross Ranch	Grand Teton National Park.
JODR003	Cache Creek Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR004	Heart 6 Ranch Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR005	Old Faithful Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR006	High Country Snowmobile Tours	John D Rockefeller, Jr. Memorial Parkway.
JODR007	Goosewing Ranch Snowmobile Safaris	John D. Rockefeller, Jr. Memorial Parkway.
JODR008	Best Adventures, Inc.	John D. Rockefeller, Jr. Memorial Parkway.
JODR009	Jackson Hole Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR010	National Park Adventures	John D. Rockefeller, Jr. Memorial Parkway.
JODR012	Cowboy Village Resort at Togwotee	John D. Rockefeller, Jr. Memorial Parkway.
JODR013	Rocky Mountain Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
JODR014	Yellowstone Snowmobile Tours	John D. Rockefeller, Jr. Memorial Parkway.
LIBI001	Institute for Micro-Business Development	Little Bighorn Battlefield National Monument.
ROMO003	Andrews, Bicknell & Crothers LLC	Rocky Mountain National Park.
YELL102	Beardsley Outfitting	Yellowstone National Park.
YELL103	Triangle X Ranch	Yellowstone National Park.
YELL104	Horse Creek Ranch	Yellowstone National Park.
YELL105	Bear Paw Outfitters	Yellowstone National Park.
YELL106	Jackson Hole Llamas	Yellowstone National Park.
YELL107	Wyoming Wilderness Outfitters	Yellowstone National Park.
YELL108	Bleu Sky Pack Station, Inc.	Yellowstone National Park.
YELL110	Diamond J. Ranch	Yellowstone National Park.
YELL113	7D Ranch	Yellowstone National Park.
YELL114	Wilderness Connection	Yellowstone National Park.
YELL115	Gary Fales Outfitting	Yellowstone National Park.
YELL117	Mountain Trail	Yellowstone National Park.
YELL118	Yellowstone Mountain Guides	Yellowstone National Park.
YELL120	Slough Creek Outfitters	Yellowstone National Park.
YELL121	Yellowstone Llamas	Yellowstone National Park.
YELL122	Sheep Mesa Outfitters	Yellowstone National Park.
YELL123	Castle Creek Outfitters	Yellowstone National Park.
YELL124	Jack's Horses	Yellowstone National Park.
YELL125	Big Bear Lodge	Yellowstone National Park.
YELL126	Heimer Outfitting	Yellowstone National Park.
YELL127	Medicine Lake Outfitters	Yellowstone National Park.
YELL130	Skyline Guest Ranch	Yellowstone National Park.
YELL131	Hell's A Roarin'	Yellowstone National Park.
YELL132	Nine Quarter Circle Ranch	Yellowstone National Park.
YELL134	John Henry Lee Outfitters	Yellowstone National Park.
YELL137	Wilderness Pack Trips	Yellowstone National Park.
YELL138	Rendezvous Outfitters	Yellowstone National Park.
YELL139	Triple Tree Ranch	Yellowstone National Park.
YELL140	Black Otter Guide Service	Yellowstone National Park.
YELL141	Lost Fork Ranch	Yellowstone National Park.
YELL144	Lone Mountain Ranch	Yellowstone National Park.

Concessioner ID No.	Concessioner name	Park
YELL145	Crescent B Outfitters	Yellowstone National Park.
YELL146	Bar Z Guest Ranch	Yellowstone National Park.
YELL147	Farvalley Ranch	Yellowstone National Park.
YELL148	Teton Ridge Ranch	Yellowstone National Park.
YELL149	T Lazy T Outfitters	Yellowstone National Park.
YELL156	Two Ocean Pass Ranch/Outfitters	Yellowstone National Park.
YELL157	Beartooth Plateau	Yellowstone National Park.
YELL158	Wilderness Trails	Yellowstone National Park.
YELL159	Ron Dube's Wilderness Adventure	Yellowstone National Park.
YELL162	Grizzly Ranch	Yellowstone National Park.
YELL164	Gallatin Way Ranch	Yellowstone National Park.
YELL165	Gunsel Horse Adventures	Yellowstone National Park.
YELL166	Elkhorn Ranch	Yellowstone National Park.
YELL168	Llamas of West Yellowstone	Yellowstone National Park.
YELL169	Shoshone Lodge Outfitters	Yellowstone National Park.
YELL170	Diamond K Outfitters	Yellowstone National Park.
YELL300	Yellowstone Expeditions	Yellowstone National Park.
YELL301	Loomis Enterprises	Yellowstone National Park.
YELL302	Yellowstone Tour and Travel	Yellowstone National Park.
YELL303	Yellowstone Alpen Guides	Yellowstone National Park.
YELL304	International Leisure Hosts	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30925 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID No.	Concessioner name	Park
LP–CUVA001–94	American Youth Hostels	Cuyahoga Valley National Park.
CC–HOSP001–80	City/Hot Springs Tower	Hot Springs National Park.
CC–HOSP004–88	Libbey Memorial	Hot Springs National Park.
CP–INDU003–94	Michiana Industries	Indiana Dunes National Landmark
CP–ISRO001–95	The Royale Line	Isle Royale National Park.
CP–ISRO007–95	GRPO–ISRO Trans Line	Isle Royale National Park.
CC–WASO001–82	National Park Concessions, Inc.	
CC–JEFF001–96	Compass Group USA	Jefferson National Expansion Memorial
LP–MWRP001–95	Eastern National Parks & Monuments	Midwest Regional Office
CP–ENPMA01–91	Eastern National Parks & Monuments	
CC–MORU001–93	Xanterra Parks & Resorts	Mount Rushmore National Memorial
CC–OZAR012–88	Akers Ferry Canoe	Ozark National Scenic Riverway.
LP–OZAR037–91	Akers Ferry Tube Rent	Ozark National Scenic Riverway.
CC–OZAR001–88	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR003–86	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR015–94	Big Spring Lodge	Ozark National Scenic Riverway.
CC–OZAR050–97	Big Spring River Camp tube	Ozark National Scenic Riverway.
CC–OZAR016–89	Carr's Grocery/Canoe	Ozark National Scenic Riverway.
CC–OZAR040–97	Carr's Tube Rental	Ozark National Scenic Riverway.
CC–OZAR011–97	Current River Canoe	Ozark National Scenic Riverway.
CC–OZAR010–97	Deer Run Campground	Ozark National Scenic Riverway.
CC–OZAR013–97	Eminence Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR023–97	Hawthorne Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR002–97	Jack's Fork Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR020–97	Jadwin Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR024–97	The Landing Canoe	Ozark National Scenic Riverway.
CC–OZAR036–97	Maggard Canoe/Boat	Ozark National Scenic Riverway.

Concid ID No.	Concessioner name	Park
CC–OZAR008–97	Round Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR028–97	Running River Canoe	Ozark National Scenic Riverway.
CC–OZAR007–97	Silver Arrow Canoe Rental	Ozark National Scenic Riverway.
CC–OZAR049–97	Smalley's Motel Tube	Ozark National Scenic Riverway.
CC–OZAR018–97	Two Rivers Canoe	Ozark National Scenic Riverway.
CC–OZAR005–97	Wild River Canoe	Ozark National Scenic Riverway.
CC–OZAR014–97	Windy's Canoe Rental	Ozark National Scenic Riverway.
CC–SLBE005–86	Manitou Island Transit	Sleeping Bear Dunes National Landmark.
CC–SLBE008–99	Blough Firewood	Sleeping Bear Dunes National Landmark.
CC–THRO001–98	Shadow County Outfitters	Theodore Roosevelt National Park.
LP–WICA002–98	Black Hills Parks	Wind Cave National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: October 25, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30926 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed one year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of current contracts as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
AMIS002	Lake Amistad Resort and Marina	Amistad National Recreation Area.
AMIS003	Rough Canyon Marina, Inc.	Amistad National Recreation Area.
CACA001	Cavern Supply Co., Inc.	Carlsbad Caverns National Park.
CURE001	Elk Creek Marina, Inc.	Curecanti National Recreation Area.
GLAC001	Glacier Park Boat Company, Inc.	Glacier National Park.
GLAC003	Mule Shoe Outfitters, Inc.	Glacier National Park.
GLAC004B	Belton Chalets/Sperry Chalets	Glacier National Park.
GLCA001	Wilderness River Adventures	Glen Canyon National Recreation Area.
GLCA003	Wahweap Lodge and Marina, Inc.	Glen Canyon National Recreation Area.
GRCA004	Grand Canyon Trail Rides	Grand Canyon National Park.
GRCA005	Verkamp's, Inc.	Grand Canyon National Park.
GRTE003	Signal Mountain Lodge	Grand Teton National Park.
GRTE009	Exum Mountain Guides	Grand Teton National Park.
LAMR002	Lake Meredith Marina, Inc.	Lake Meredith National Recreation Area.
PAIS001	Padre Island Park Company	Padre Island National Seashore
PEFO001	Xanterra Parks and Resorts, LLC	Petrified Forest National Park.
ROMO001	Rex G. & Ruth G. Maughan (Trail Ridge Store).	Rocky Mountain National Park.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.
YELL400	Ace Snowmobile Rental	Yellowstone National Park.
YELL401	Gary Fales Outfitting	Yellowstone National Park.
YELL402	Backcountry Adventures	Yellowstone National Park.
YELL403	Yellowstone Arctic—Yamaha	Yellowstone National Park.
YELL404	Loomis Enterprises	Yellowstone National Park.
YELL405	Pahaska Tepee	Yellowstone National Park.
YELL406	Yellowstone Adventures	Yellowstone National Park.
YELL407	Targhee Snowmobile Tours	Yellowstone National Park.
YELL408	Two Top Snowmobile Rental	Yellowstone National Park.
YELL409	Three Bear Lodge	Yellowstone National Park.
ZION001	Bryce-Zion Trail Rides	Zion National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/565–1210.

Dated: October 31, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–30924 Filed 12–5–02; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–2]

Certain Steel Wire Garment Hangers From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) (the Act).

SUMMARY: Following receipt of a petition properly filed on November 27, 2002, on behalf of CHC Industries, Inc., Palm Harbor, FL; M&B Hangers Co., Leeds, AL; and United Wire Hanger Corp., South Hackensack, NJ, the Commission instituted investigation No. TA–421–2, Certain Steel Wire Garment Hangers from China, under section 421(b) of the Act to determine whether certain steel wire garment hangers [1] from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and E (19 CFR part 206).

EFFECTIVE DATE: November 27, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.47 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearing.—The Commission has scheduled a hearing in connection with this investigation beginning at 9:30 a.m. on January 9, 2003, at the U.S. International Trade Commission Building. Subjects related to both market disruption or threat thereof and remedy may be addressed at the hearing. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 2, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2003 at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is January 3, 2003. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is January 13, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of market disruption or threat thereof and/or remedy on or before January 13, 2003. Parties may submit final comments on market disruption or threat thereof on January 23, 2003 and on remedy, if necessary, on January 29, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Remedy.—Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present arguments on the issue of remedy may do so orally at the hearing or in their prehearing brief, posthearing brief, or final comments on remedy.

Authority: This investigation is being conducted under the authority of section 421 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

[1] Certain steel wire garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to Shirt, Suit, Strut and Caped hangers. Specifically excluded are wooden, plastic, aluminum and other garment hangers that are covered under separate subheadings of the Harmonized Tariff Schedule of the United States (HTSL The products subject to this investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.00.20. Although the HTS subheading is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Issued: December 2, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30881 Filed 12–5–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Drug Intelligence Center; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; reinstatement, with change, of a previously approved collection for which approval has expired. National drug threat survey.

The United States Department of Justice, National Drug Intelligence Center has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval 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 until February 4, 2003. This process is in accordance with 5 CFR 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Manuel A. Rodriguez, General Counsel, National Drug Intelligence Center, Fifth Floor, 319 Washington Street, Johnstown, PA 15901.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumption 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:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* National Drug Threat Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NDIC Form #A–34c, National Drug Intelligence Center.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* Federal State and Local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 3500 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection.* The total annual public burden hours for this information collection is estimated to be 1750 hours.

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., Washington, DC 20004.

Dated: December 2, 2002.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 02–30876 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection. Application for individual manufacturing quota for a basic class of controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval 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 until February 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 189. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: None.

Abstract: Title 21, United States Code, section 826, and Title 21, Code of Federal Regulations (CFR) 1303.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class must apply on DEA Form 189 for a manufacturing quota for such quantity of such class.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 264 responses, provided by 44 respondents. The estimated time required for the average respondent to respond is 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 132 annual burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 2, 2002.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 02–30877 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection application for procurement quota for controlled substances.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval 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 until February 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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:* Application for Procurement Quota for Controlled Substances.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 250. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.
Other: None.

Abstract: Title 21, United States Code, section 826, and Title 21, Code of Federal Regulations (CFR), 1303.12(b) require that United States companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for a procurement quota for such class. DEA is required by statute (21 U.S.C. 826(c)) to limit the production of Schedule I and II controlled substances to the amounts necessary to meet "the estimated legitimate medical, scientific, research and industrial needs of the United States."

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 284 respondents, completing 818 annual responses. Each response is estimated to take 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 818 annual burden hours associated with this information collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: December 2, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–30878 Filed 12–5–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional

statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. The decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Maryland
MD020021 (Mar. 01, 2002)

Volume III

None

Volume IV

Minnesota
MN020007 (Mar. 01, 2002)
MN020008 (Mar. 01, 2002)
MN020012 (Mar. 01, 2002)
MN020013 (Mar. 01, 2002)
MN020015 (Mar. 01, 2002)
MN020027 (Mar. 01, 2002)
MN020031 (Mar. 01, 2002)
MN020043 (Mar. 01, 2002)
MN020058 (Mar. 01, 2002)
MN020059 (Mar. 01, 2002)
MN020061 (Mar. 01, 2002)
MN020062 (Mar. 01, 2002)

Volume V

None

Volume VI

Oregon
OR20001 (Mar. 01, 2002)

Volume VII

California
CA020009 (Mar. 01, 2002)
CA020019 (Mar. 01, 2002)
CA020029 (Mar. 01, 2002)
CA020030 (Mar. 01, 2002)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 27th day of November, 2002.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–30773 Filed 12–5–02; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–146)]

NASA Advisory Council, Space Science Advisory Committee Solar System Exploration Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Monday, December 16, 2002, 8:30 a.m. to 5 p.m., and Tuesday, December 17, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC 20546, room 3H46.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Solar System Exploration Program—Current Status

—Mars Exploration Program—Current Status

—Mars Exploration Program—Planning for Future

—Discussion of Draft 2003 Roadmap for Solar System Exploration

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Solar System Exploration Subcommittee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (5 p.m. EDT on December 10, 2002) prior to the date of the public meeting. Identification information is to be provided to Marian Norris, 202/358–4452, mnorris@hq.nasa.gov. Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. NASA may provide for simulcast in an overflow facility. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600).

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–30936 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 21, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Lifecycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Lifecycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–3120. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–1, 10

items, 9 temporary items). Records of the Office of Response and Restoration, including such files as incident response and waste site financial records, data, documentation, inputs, and outputs for an electronic system used to coordinate watershed information, coastal resource coordinator records, and hazardous materials response records relating to medium and minor spills. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of hazardous materials response records that document major spills, including related finding aids. Files relating to medium and minor spills that significantly document agency policies or spills in ecologically sensitive areas will be brought to NARA's attention for appraisal on a case-by-case basis.

2. Department of Defense, Defense Intelligence Agency (N1–373–03–1, 1 item, 1 temporary item). Backup tapes containing information used for accountability and control of access regarding agency information systems.

3. Department of Defense, Defense Commissary Agency (N1–506–02–6), 53 items, 53 temporary items). Records relating to inspections and investigations conducted by the Office of the Inspector General. Included are such records as congressional correspondence, process reviews, referrals, complaints, hotline case files, trends and analysis files, and staff assistance reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–02–1, 7 items, 5 temporary items). Media relations files relating to the clearance and dissemination of press materials as well as articles appearing in the press concerning health care issues. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of news releases, press conference transcripts, and related background materials.

5. Department of Justice, Civil Division (N1–60–02–7, 6 items, 1 temporary item). Electronic versions of comments relating to the "September 11th Victim Compensation Fund of 2001" received by the agency or created for posting on the agency Web site. Proposed for permanent retention are recordkeeping copies of comments as well as an electronic database used for tracking the comments.

6. Department of State, Bureau of Public Affairs (N1–59–03–2, 4 items, 3 temporary items). Bibliographic and biographic card files and source documents for special historical projects carried out by the Office of the Historian. Proposed for permanent retention are general files relating to a project on U.S.-Russian relations in the period 1816 to 1865.

7. National Aeronautics and Space Administration, Agency-wide (N1–255–01–1, 7 items, 6 temporary items). Problem reporting and corrective action reports, quality assurance surveillance records, including audits, studies, and inspection stamp issuance documents, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of safety, reliability and quality assurance records that relate to flight hardware.

8. National Aeronautics and Space Administration, Agency-wide (N1–255–01–2, 3 items, 2 temporary items). Project-level records that support the certification of flight readiness and flight readiness reviews. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of programmatic records for the certification of flight readiness and flight readiness reviews for manned space flight programs and projects.

9. National Aeronautics and Space Administration, Agency-wide (N1–255–01–3, 5 items, 5 temporary items). Forms that document the shipment of equipment to and from agency installations by commercial shippers or contractors. Also included are electronic copies of records created using electronic mail and word processing.

10. National Aeronautics and Space Administration, Office of Public Affairs (N1–255–03–01, 1 item, 1 temporary item). Water-damaged materials from the agency's headquarters still photograph reference collection that could not be recovered, including captions, transparencies, negatives, and hardcopy prints and slides.

11. National Commission on Library and Information Science, Library Statistics Program (N1–220–02–29, 3 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to forums sponsored by the agency and the National Center for Education Statistics. Recordkeeping copies of these files are proposed for permanent retention.

12. Office of Navajo and Hopi Indian Relocation, Relocation Operations Division (N1–220–02–20, 1 item, 1 temporary item). A slide presentation stored in two projector cartridges for which there is no accompanying script nor are the slides annotated.

13. Office of Navajo and Hopi Indian Relocation, Executive Direction Division (N1–220–02–21, 2 items, 1 temporary item). Sound recordings of public hearings and meetings conducted by the agency during calendar years 1979 to 1983 from which no information is retrievable. Proposed for permanent retention are sound recordings of public hearings and meetings conducted by the agency during these years from which information is retrievable.

14. Overseas Private Investment Corporation, Human Resources Department (N1–420–03–1, 3 items, 3 temporary items). Forms and other records completed by separating employees. Included are electronic copies of records created using electronic mail and word processing.

15. Peace Corps, Office of the Inspector General (N1–490–02–4, 11 items, 8 temporary items). Records relating to inspections and evaluations, investigations, and audits. Also included are electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of selected audit files, reports to Congress, and country evaluation reports.

16. Tennessee Valley Authority, Education, Training and Diversity (N1–142–02–1, 10 items, 9 temporary items). Correspondence files, training manuals, and course materials. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are electronic versions of correspondence files created by the Senior Vice President for Education, Training, and Diversity.

Dated: November 29, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–30880 Filed 12–5–02; 8:45 am]

BILLING CODE 7515–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 34b–1; File No. 270–305; OMB Control No. 3235–0346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• *Rule 34b–1 (17 CFR 270.34b–1) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading.*

Rule 34b–1 under the Investment Company Act (17 CFR 270.34b–1) governs sales material that accompanies or follows the delivery of a statutory prospectus ("sales literature"). Rule 34b–1 deems to be materially misleading any investment company sales literature, required to be filed with the Commission by section 24(b) of the Investment Company Act (15 U.S.C. 80a–24(b)),[1] that includes performance data unless it also includes the appropriate uniformly computed data and the legend disclosure required in advertisements by rule 482 under the Securities Act of 1933 (17 CFR 230.482).

Requiring the inclusion of such standardized performance data in sales literature is designed to prevent misleading performance claims by funds and to enable investors to make meaningful comparisons among fund performance claims.

The Commission estimates that respondents file approximately 37,000 responses with the Commission, which include the information required by rule 34b–1. The burden from rule 34b–1 requires slightly more than 2.4 hours per response resulting from creating the information required under rule 34b–1.[2] The total burden hours for rule 34b–1 is 89,143 per year in the aggregate (37,000 responses x 2.4092702 hours per response). Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 34b–1 is mandatory. The information provided under rule 34b–1 is not kept confidential. The Commission 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: November 22, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30885 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] Sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Investment Company Act upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising. *See* rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3).

[2] The estimated burden per response is 2.9 hours for 686 responses and 2.4 hours for the remaining, giving a more exact weighted average burden per response of approximately 2.4092702.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25840; 812–12524]

Maxim Series Fund, Inc., *et al.*; Notice of Application

December 2, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: Applicants seek an order to permit certain registered investment companies to (a) pay an affiliated lending agent, and the lending agent to accept, fees based on a share of the revenues generated from securities lending transactions, and (b) lend portfolio securities to affiliated broker-dealers.

Applicants: Maxim Series Fund, Inc. ("Maxim"), Orchard Series Fund ("Orchard"), Barclays Global Investors Funds ("BGIF"), Master Investment Portfolio ("MIP"), iShares, Inc., and iShares Trust (collectively, the "Trusts"), Barclays Global Fund Advisors ("BGFA"), and Barclays Global Investors, N.A. ("BGI").

Filing Dates: The application was filed on May 23, 2001, and amended on August 12, 2002, and November 27, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are either a Maryland corporation or a Delaware statutory trust. Each Trust consists of multiple series (the Trusts and their series, the "Funds"). BGFA, an investment adviser registered under the

Investment Advisers Act of 1940, serves as investment adviser to the MIP, iShares, Inc., and iShares Trust Funds and as investment sub-adviser to the Maxim and Orchard Funds and is a wholly-owned subsidiary of BGI. BGI is a national banking association and acts as a securities lending agent on behalf of fiduciary accounts and collective trust funds.

2. Applicants request that the order also apply to any registered management investment company and series thereof that currently is or in the future may be advised or sub-advised by BGFA, or any successor in interest (included in the term "Funds"),[1] and any other broker-dealers now or in the future controlling, controlled by, or under common control with BGI ("Affiliated Broker-Dealers"). All entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that relies on the order in the future will comply with the terms and conditions in the application.

3. Each Fund is, or will be, authorized to lend its portfolio securities. The Funds seek to participate from time to time as lenders in a securities lending program administered by BGI (the "Program").[2] Under the Program, BGI acts as securities lending agent for each of the Funds pursuant to a securities lending agency agreement ("Lending Agreement"). BGI will enter into securities loan agreements ("Loan Agreements") on behalf of a Fund with registered broker-dealers, including Affiliated Broker-Dealers, that wish to borrow securities owned by the Fund ("Borrowers"). Applicants represent that the duties to be performed by BGI as lending agent will not exceed the parameters set forth in *Norwest Bank, N.A.* (pub. avail. May 25, 1995).

4. Pursuant to the Loan Agreements, BGI will deliver portfolio securities to the Borrowers, who have been approved by a Fund, in exchange for cash collateral or other types of collateral, such as U.S. government securities. Cash collateral will be delivered in connection with most loans. BGI will invest the cash collateral on behalf of the Fund in accordance with specific parameters established by the Fund. These guidelines include the permissible investment of the cash collateral, as well as a list of eligible types of investments.

5. With respect to loans that are collateralized by cash, the Borrower will be entitled to receive a fee based on the amount of cash collateral. The Fund is compensated on the spread between the net amount earned on the investment of cash collateral and the Borrower's fee. In the case of collateral other than cash, the Fund will receive a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Loan Agreement. BGI may invest the cash collateral in certain short-term instruments through one or more joint accounts which will operate in reliance on the no-action letter issued to *The Chase Manhattan Bank* (pub. avail. Jul. 24, 2001). BGI may also invest the cash collateral in money market funds, including those managed by BGFA, in reliance on an exemptive order.

6. Applicants request an order to permit (a) the Funds to pay BGI, and BGI as lending agent to accept, fees based on a share of the proceeds derived from the Program, and (b) the Funds to lend portfolio securities to Affiliated Broker-Dealers.

Applicants' Legal Analysis

A. Payment of Lending Agent Fees to BGI

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because BGI is the parent company of BGFA, an investment adviser for each Fund, BGI is an affiliated person of an affiliated person (or second-tier affiliate) of the Funds. Applicants state that a fee arrangement between a lending agent and a lending registered investment company, under which compensation is based on a percentage of the revenue generated by the securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to permit each Fund to pay, and BGI to accept, fees that are based on a share of the proceeds derived by the lending Funds in connection with the Program.

2. In determining whether to approve a joint transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

3. Applicants propose that each Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BGI, as lending agent, will meet the standards of rule 17d–1:

a. In connection with the approval of BGI as lending agent for a Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees (the "Board"), including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Disinterested Members"), of the Fund will determine that (i) the contract with BGI is in the best interest of the Fund and its shareholders; (ii) the services performed by BGI are required for the Fund; (iii) the nature and quality of the services provided by BGI are at least equal to those provided by others offering the same or similar services; and (iv) the fees for BGI's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. Each Fund's Lending Agreement with BGI will be reviewed at least annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Members) makes the findings referred to in paragraph (a) above.

c. In connection with the initial implementation of the proposed fee arrangement whereby BGI will be compensated as lending agent based on a percentage of the revenue generated by a Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Disinterested Members, will (i) determine at each regular quarterly

[1] The term "successor" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Applicants represent that BGI's personnel providing day-to-day lending agency services to the Funds will not provide investment advisory services to the Funds or participate in any way in the selection of portfolio securities for, or any other aspects of the management of, the funds.

meeting whether the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which it was determined that each loan was made in accordance with the procedures set forth above and the conditions to the application.

4. Applicants state that, under the terms of a Lending Agreement, BGI or an affiliate may indemnify a Fund against losses incurred by the Fund resulting from a default by one or more Borrowers that participate in the Program. Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to purchase the right to indemnification by BGI or an affiliate in instances of Borrower default, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) to permit a Fund to accept an indemnification payment from BGI or an affiliate in exchange for the Fund's right to proceed against the defaulting Borrower ("Indemnification").

5. Sections 17(a)(1) and (2) of the Act make it unlawful for an affiliated person of a registered investment company or an affiliated person of that person, acting as principal, to knowingly sell or purchase any security or other property to or from the company. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants state that Indemnification is an increasingly common term provided by non-affiliated securities lending agents to investment companies. Applicants state that Indemnification, if any, will be part of the Lending Agreement between BGI and a Fund and no separate fee will be charged for the Indemnification without obtaining further exemptive relief from the Commission. Applicants state that the Indemnification right will not be applied differently based on the identity of a Borrower. Furthermore, applicants state that a Fund's Board will be asked to review any Indemnification settlements made by the Fund at each quarterly Board meeting. A Fund will not accept any amount less than the full amount of the loss under an Indemnification settlement without obtaining an exemptive order from the Commission.

B. Lending to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company or an affiliated person of such person, acting as principal, to borrow money or other property from the registered investment company. Applicants state that because the Affiliated Broker-Dealers may be deemed to be controlled by or under common control with BGI and under common control with BGFA, the Affiliated Broker-Dealers may be deemed to be affiliated persons of BGI and/or BGFA, and also second-tier affiliated persons of the Funds. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing portfolio securities from the Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to lend portfolio securities to Affiliated Broker-Dealers. Applicants state that the Funds seek to diversify the Borrowers to whom they lend in order to ensure the stability and efficiency of the Program. Applicants submit that because only a few Borrowers may seek to borrow a particular security at a given time, a prohibition on lending to Affiliated Broker-Dealers could disadvantage a Fund.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated Borrowers.[3] In this regard, applicants state that at least 50% of the loans made by the Funds, on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act), will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Fund, including a majority of the Disinterested Members. All transactions with the Affiliated Broker-Dealers will be reviewed periodically by an officer of the Funds. The Fund's Board, including a majority of the Disinterested Members, also will review quarterly reports on all lending activity.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Payment of Lending Agent Fees

1. The Program will comply with all present and future applicable guidelines of the Commission and staff regarding securities lending arrangements.

2. The approval of a Fund's Board, including a majority of Board members who are Disinterested Members, shall be required for the initial and subsequent approvals of BGI's service as lending agent for the Fund pursuant to the Program, and for any periodic review of loan transactions for which BGI acted as lending agent pursuant to the Program.

B. Lending to Affiliated Broker-Dealers

1. The Funds on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act) will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one Borrower on the approved list will be in accordance with a schedule to be approved by the Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Fund, computed at market value.

3. A Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. a. All loans will be made with spreads no lower than those set forth in a schedule of spreads which will be established and may be modified from

[3] A "spread" is the compensation earned by a Fund, as lender, from a securities loan. The compensation is in the form either of a lending fee payable by the Borrower to the Fund (where non-cash collateral is posted) or of the excess—retained by the Fund—over a rebate rate payable by the Fund to the Borrower (where cash collateral is posted and then invested by the Fund).

time to time by each Fund's Board and by a majority of the Disinterested Members ("Schedule of Spreads").

b. The Schedule of Spreads will set forth rates of compensation to each Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all Borrowers of a Fund's securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

d. If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. The Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Fund's Board, including a majority of the Disinterested Members.

5. Each Fund's Board, including a majority of the Disinterested Members, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such procedures for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30913 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25839; 812–12874]

Stratigos Fund, L.L.C., et al.; Notice of Application

December 2, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit a limited liability company to transfer its assets to a registered closed-end investment company in exchange for interests in the closed-end investment company.

Applicants: Stratigos Fund, L.L.C. ("Stratigos"), Balius Fund, L.L.C. ("Balius") and CIBC Oppenheimer Advisers, L.L.C. ("Adviser").

Filing Dates: The application was filed on August 27, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o CIBC World Market Corp., 622 Third Avenue, 8th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Stratigos, a Delaware limited liability company, is registered under the Act as a closed-end management investment company. Balius, a Delaware limited liability company, is not registered under the Act in reliance on section 3(c)(7) of the Act. Limited liability company interests ("Interests") in Stratigos and Balius are not registered under the Securities Act of 1933, as amended (the "1933 Act"), and are sold to investors ("Members") in a private placement in reliance upon section 4(2) of the 1933 Act and Regulation D under the 1933 Act.

2. The Adviser, a Delaware corporation, serves as (a) Stratigos' investment adviser and (b) the managing member of Balius and, in that capacity, has overall responsibility for the management, operation and administration of Balius, including Balius' investment activities. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. As of July 31, 2002, the Adviser owned an Interest in Stratigos with a net asset value of $52,452.31 (which represented 0.74% of the value of the outstanding Interests in Stratigos as of such date). As of July 31, 2002, Canadian Imperial Holdings, Inc. ("CIHI"), an affiliated person of the Adviser, owned an Interest in Balius with a net asset value of $67,459.64 (which represented 0.81% of the value of the outstanding Interests in Balius as of such date).

3. Applicants propose that, pursuant to an agreement and plan of acquisition ("Acquisition Agreement"), Balius will transfer to Stratigos substantially all of its assets, which will consist of cash and the portfolio securities of Balius that (a) are permissible investments under the investment policies and restrictions of Stratigos, as set forth in its offering memorandum ("Offering Memorandum") and its limited liability company agreement ("Company Agreement"), and (b) have readily available market quotations (the "Assets"), in exchange for Interests of Stratigos (the "Exchange"). All of

Balius' known liabilities (excluding short positions in securities and options) will be paid by Balius prior to the Exchange, and no liabilities of Balius (excluding short positions and options) will be transferred to Stratigos. Under the Acquisition Agreement, Interests of Stratigos delivered to Balius will have an aggregate net asset value equal to the net asset value of the Assets transferred by Balius to Stratigos. The Assets will be valued in accordance with the valuation policies of Stratigos as set forth in its Offering Memorandum and Company Agreement ("Valuation Procedures"). Interests in Stratigos received by Balius in the Exchange will be distributed to the Members of Balius and will be allocated to each Member of Balius in proportion to that Member's closing capital account in Balius, as determined immediately before the Exchange, in complete liquidation of Balius. The Exchange is scheduled to occur on or about December 31, 2002. No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by Stratigos or Balius in connection with the Exchange. Stratigos and Balius each will pay its *pro rata* share, based on their relative net assets on the date of the Exchange, of the expenses incurred in connection with the Exchange. Applicants agree not to make any material changes to the Acquisition Agreement without prior approval of the Commission or its staff.

4. On August 1, 2002, the board of managers of Stratigos (the "Board"), including a majority of the members who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Managers"), approved the Acquisition Agreement. In approving the Acquisition Agreement, the Board concluded that: (a) The Exchange is consistent with the policies of Stratigos, as recited in its registration statement, (b) the terms of the Exchange, including the consideration to be received by Stratigos, are reasonable and fair and do not involve overreaching on the part of any concerned, (c) participation by Stratigos in the Exchange is in the best interests of Stratigos and its Members and the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange, and (d) the Exchange is consistent with the general purposes of the Act. These findings, and the basis upon which they were made, are recorded in the minute books of Stratigos.

5. With respect to Balius, the Adviser (as Balius' managing member) believes that the Exchange is in the best interests of Balius and the Members of Balius. The Exchange is required to be approved by Members of Balius that represent more than 50% of the aggregate value of the outstanding Interests of Balius.

6. The Exchange will not be effected until: (a) The Commission has issued the requested order; and (b) Stratigos and Balius have received an opinion of counsel substantially to the effect that the Exchange will not result in taxable income to Balius, Stratigos or their respective Members.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person controlling, controlled by, or under common control with, the other person; and, if the other person is an investment company, its investment adviser. Section 2(a)(9) of the Act, in relevant part, defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official positions with such company."

2. Applicants state that Balius could be deemed to be an affiliated person of Stratigos because Balius and Stratigos might be deemed to be under the common control of the Adviser. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.*, Interests of Stratigos) and certain of the assets transferred will be valued in accordance with the Valuation Procedures, rather than the methodology set forth in paragraph (b) of rule 17a–7.[1] Applicants also state that Balius may be deemed to be affiliated with Stratigos for reasons other than those set forth in the rule 17a–7. There is a possibility that, as a result of withdrawals of capital by Members of Balius and Stratigos prior to the Exchange, the Adviser or CIHI may, at the time of the Exchange, own five percent or more of the outstanding Interests in Stratigos or Balius, or both.

4. Rule 17a–8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company (collectively, "Asset Acquisitions")) otherwise prohibited by section 17(a) of the Act, provided, among other requirements, that the Asset Acquisition is between registered investment companies or between a registered investment company and an eligible investment fund (as defined in the rule) ("Eligible Unregistered Fund"). Applicants state that the relief provided by rule 17a–8 may not be available for the Exchange because the Exchange will involve Balius, which is not a registered investment company nor an Eligible Unregistered Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Interests issued by Stratigos will have an aggregate net asset value equal to the aggregate net asset value of the assets acquired from Balius. Because the Valuation Procedures will be those used by Stratigos to value its portfolio securities, the Interests of existing Members of Stratigos will not be diluted as a result of the Exchange. Applicants also state that the investment objective and policies of Balius are substantially similar to those of Stratigos. Applicants further state that the Board, including a majority of the Independent Managers, has approved the Acquisition

[1] Under the Valuation Procedures, domestic exchange traded or NASDAQ listed equity securities are valued at their last composite sales price as reported on the exchanges where those securities are traded. If no sales of such securities are reported on a particular day, the securities are valued based upon their composite bid prices for securities held long, or their composite ask prices for securities held short, as reported by such exchanges. The rationale for this approach is that in the absence of an actual sale price, the bid would best reflect the price at which Stratigos could expect to sell securities held long and the ask would best reflect the price at which Stratigos could expect to purchase the securities held short if it were required to do so.

Agreement and that the Exchange will comply with the terms of paragraph (b) of rule 17a–7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of rule 17a–7 and the provisions of rule 17a–8 (as those provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition: The Exchange will comply with the terms of paragraph (b) of Rule 17a–7, except as described in the application, paragraphs (c), (d), (e), (f) and (g) of Rule 17a–7 and the provisions of Rule 17a–8 (as these provisions apply to a merger of an Eligible Unregistered Fund with a registered investment company).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30914 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 71599, December 2, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting on December 3, 2002 at 2:30 p.m. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 4, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–31021 Filed 12–4–02; 12:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 9, 2002:

A Closed Meeting will be held on Tuesday, December 10, 2002, at 10 a.m., and an Open Meeting will be held on Wednesday, December 11, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, December 10, 2002 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

The subject matter of the Open Meeting scheduled for Wednesday, December 11, 2002 will be:

1. The Commission will consider whether to adopt the repeal of Rule 11Ac1–7 under the Securities Exchange Act of 1934. Rule 11Ac1–7 requires a broker-dealer to disclose to its customer when the customer's order for listed options is executed at a price inferior to a better published quote, and to disclose the better published quote available at that time, unless the broker-dealer effects the transaction on an exchange that participates in an approved linkage plan.

2. The Commission will consider whether to propose amendments to Forms N–1A, N–2, N–3, proposed Form N–CSR, and Articles 6 and 12 of Regulation S–X as well as new rule 30b1–4 and new Form N–Q under the Investment Company Act. The proposals would (1) require a registered management investment company to file a schedule of its complete portfolio holdings with the Commission on a quarterly basis; (2) permit a registered management investment company to include a summary portfolio schedule in reports to shareholders and exempt money market funds from including a portfolio schedule in reports to shareholders, provided that the complete portfolio schedule is filed with the Commission and available to shareholders upon request; (3) require a registered management investment company to include a tabular or graphic presentation of a fund's portfolio holdings in its reports to shareholders; (4) require a mutual fund to disclose in its reports to shareholders fund expenses borne by shareholders during the reporting period; and (5) require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

3. The Commission will consider whether to adopt amendments to rule 203A–2(f) under the Investment Advisers Act of 1940 to exempt certain investment advisers that provide advisory services through the Internet from the prohibition on Commission registration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31022 Filed 12–4–02; 12:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46929; File No. SR–CSE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to an Extension of an Existing Pilot Amending CSE Rule 12.6, Customer Priority, To Require Designated Dealers to Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on November 21, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change for a pilot period. through May 31, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of the pilot that amends CSE rule 12.6, Customer Priority, by adding new Interpretation .02, which requires a CSE Designated Dealer ("Specialist") to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[3] Under the pilot rule, the Specialist is required to better a customer limit order at the NBBO by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. The Exchange is requesting an extension of the pilot, and the exemption letters associated therewith.[4] The proposed extension of the pilot requires no changes to the Initial Pilot rule text, which is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange rule 12.6[5] by adding an interpretation to the rule covering the trading of securities in subpenny increments.[6] New Interpretation .02 to the rule will require a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or by at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[7]

The purpose of the new Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange requests that this rule be approved on a pilot basis through May 31, 2003, to be co-extensive with the conditional temporary exemptive relief granted concurrently by the Commission in the Instant Exemption Letter.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements

[3] *See* Securities Exchange Act Release No. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (File No.SR–CSE–2001–06) ("Initial Pilot"). *See also* Securities Exchange Act Release No. 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002) ("Pilot Extension").

[4] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), Commission, to Jeffrey T. Brown, General Counsel, CSE (July 26, 2002) ("Initial Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (November 27, 2001) ("Initial Exemption Request"). *See also* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to Jeffrey T. Brown, General Counsel, CSE (September 25, 2002) (amending and extending the Initial Exemption Letter) ("Amended Exemption Letter") and letter from Jeffrey T. Brown, General Counsel, CSE, to Annette Nazareth, Director, Division, Commission (September 18, 2002) ("Amended Exemption Request").

[5] CSE rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such a member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[6] In conjunction with this proposed rule change, the CSE has requested that the Commission extend the relief provided by the Initial Exemption Letter and the Amended Exemption Letter pursuant to rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* Letter to Annette Nazareth, Director, Division, Commission, from Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 20, 2002) ("Instant Exemption Request"). Concurrent with the instant accelerated approval, the Commission has granted the Instant Exemption Request. *See* letter from Alden S. Adkins, Associate Director, Division, Commission, to Jeffrey T. Brown, Senior Vice President & General Counsel, CSE (November 27, 2002) ("Instant Exemption Letter").

[7] Interpretation .01 to rule 12.6 provides that "[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer."

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–17 and should be submitted by December 27, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular section 6(b)(5) of the Act.[11] As discussed above, through the Instant Exemption Letter, the Division has extended the relief granted by the Amended Exemption Letter. The Commission believes that the proposed rule change should provide protection to customer limit orders in the subpenny trading environment by helping to ensure that such orders will continue to have access to market liquidity ahead of Exchange Specialists in appropriate circumstances.

The Commission finds good cause for approving the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to provide uninterrupted protection to customer limit orders in subpenny increments in Nasdaq securities and expedite the protection of customer limit orders in subpenny increments in listed securities.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CSE–2002–17) is hereby approved on an accelerated basis for a pilot period through May 31, 2003.

[10] In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30887 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46930; File No. SR–DTC–2002–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Unitary Action Procedures

November 27, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 13, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–2002–08) as described in Items I, II, III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to adopt procedures to enable its nominee, Cede & Co., to exercise certain rights as the recordholder of securities on deposit at DTC where Cede & Co. is permitted to act with respect to 100% of the securities on deposit or not act at all under applicable law. (This is known as a "Unitary Action" situation.) When involved in a situation that purports to require a Unitary Action under applicable law, DTC would still attempt to follow the procedures it applies when exercising rights that do not purport to require a Unitary Action.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries set forth in sections A, B, and C below of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Under DTC's current procedures in situations not involving Unitary Actions for solicitations when an issuer has announced an annual or special shareholders meeting or consent solicitation and where a record date has been established, DTC assigns applicable Cede & Co. voting rights or consenting rights to its participants that have securities credited to their accounts on the record date and issues an omnibus proxy and forwards it to the issuer or trustee. DTC also assists its participants in exercising other rights available to Cede & Co. as the recordholder of securities on deposit at DTC. Examples of the rights that participants may exercise through DTC are the right to dissent and seek an appraisal of stock, the right to inspect a stock ledger, and the right to accelerate a bond. Participants may seek DTC's assistance in exercising such rights on their own behalf or on behalf of their customers. DTC will act in these matters only upon written instructions from participants with securities credited in their DTC free accounts.

When involved in a situation that purports to require a Unitary Action under applicable law, DTC would nevertheless attempt to follow the procedures described in the preceding paragraph. If, for example, a foreign bankruptcy court stated that it would accept votes for approval of a plan of bankruptcy from bondholders holding through DTC from Cede & Co. but only in the form of a 100% yes or no vote or not at all, DTC would attempt to assign its voting rights to its participants or otherwise act in accordance with its participants' instructions.

DTC will not be liable for any losses arising from actions it takes or fails to take in connection with Unitary Actions other than those losses that are directly caused by DTC's gross negligence or willful misconduct.

In Unitary Action situations, DTC may incur unusual expenses (*e.g.*, hiring outside counsel) that are specifically attributable to the securities that are subject to the Unitary Action. Under DTC Rule 20, DTC may charge back to each participant holding a position in Unitary Action security such participant's pro rata share (based on the number of shares or the principal

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will clarify the procedures that DTC will follow in situations calling for Unitary Actions and thereby promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–2002–08 and should be submitted by December 27, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30889 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Previously, DTC had filed another proposed rule change to establish procedures for Unitary Actions. Securities Exchange Act Release No. 34–45316 (Jan. 18, 2002), 67 FR 4299 (Jan. 29, 2002) (File No. SR–DTC–2001–05). In response to a comment letter from the Corporate Actions Division of the Securities Industry Association (Mar. 25, 2002) and conversations with Board members of that Division, DTC withdrew that proposed rule change and submitted the present filing.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46933; File No. SR–ISE–2002–22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. ("ISE") Relating to Pilot Fee Waivers

December 2, 2002.

On October 3, 2002, the International Securities Exchange, Inc. ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to waive certain fees on a pilot basis. The proposed rule change, as amended, would waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the $.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund. The ISE filed an amendment to the proposed rule change on October 9, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on October 28, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes that the proposed fee waivers, to be effective until May 31, 2003, are reasonable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7], that the proposed rule change, as amended (SR–ISE–2002–22), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30915 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

[4] Securities Exchange Act Release No. 46698 (October 21, 2002), 67 FR 65818.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46931; File No. SR–NSCC–2002–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating To Clearing Fund Requirements and Letters of Credit Collateralization

November 27, 2002.

I. Introduction

On July 16, 2002, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, and November 25, 2002, amended a proposed rule change File No. SR–NSCC–2002–05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the

[1] 15 U.S.C. 78s(b)(1).

Federal Register on August 27, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Under NSCC's current rules, each member, except for a Mutual Fund/Insurance Services Member, is required to maintain a minimum contribution to the clearing fund of $10,000. The first $10,000 of a member's contribution must be in cash, and if all or a part of the member's contribution is collateralized with letters of credit, the greater of $50,000 or ten percent of the member's contribution up to a maximum of $1,000,000 is required to be in cash.

To assure NSCC of more cash to meet any liquidity needs, NSCC is modifying rule 4 (Clearing Fund) and procedure XV (Clearing Fund Formula and Other Matters) of its rules and procedures to require that, except with respect to a Mutual Fund/Insurance Services Member: (1) The first 40%, but no less than $10,000, of a member's required deposit to the clearing fund must be in cash and (2) with respect to the remaining amount, no more than 25% of the required deposit may be collateralized with a letter of credit. Mutual Fund/Insurance Services Members' clearing fund requirements will remain unchanged.

Based on NSCC's current calculations, increasing the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. Reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post letters of credit. NSCC will implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. [3] By increasing the minimum percentage of cash that NSCC members must deposit to meet their required deposits to the clearing fund and by lowering the maximum percentage of their required clearing fund deposit that may be collateralized with letters of credit, the rule change will result in NSCC maintaining a higher percentage of cash in its clearing fund which will make the clearing fund more liquid. This will result in NSCC being in a better position to address any situation in which the clearing fund is called into play. As a consequence, NSCC will be better able to provide for the safeguarding of funds and securities under its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC–2002–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30888 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

[2] Securities Exchange Act Release No. 46389, (August 21, 2002), 67 FR 55053 (August 27, 2002).

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46924; File No. SR–NASD–2002–170]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 26, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and subparagraph (f)(2) of rule 19b–5.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System, pursuant to rule 19b–5 of the Act,[5] until January 15, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of rule 19b–5,[6] Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in paragraph (c)(2) of rule 19b–5 of the Act.[7] As such, Nasdaq was not required to file a proposed rule change under rule 19b–4 of the Act [8] as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 19b–5, a system must comply with three criteria to maintain its status as a PTS.[9] One such

[5] 17 CFR 240.19b–5.

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 240.19b–5(c)(2).

[8] 17 CFR 240.19b–4.

[9] Pursuant to rule 19b–5(c)(2), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least

Continued

criteria is that, for each security traded in the PTS, the PTS cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore, Nasdaq filed a proposed rule change seeking permanent approval of Primex.[10] Nasdaq also filed a proposed rule change to continue operating the System for up to six months while the Commission considered granting permanent approval.[11] This six-month period expired on October 31, 2002. On October 31, 2002, Nasdaq filed a proposed rule change, which was effective upon filing, to continue to operate Primex as a PTS until November 30, 2002.[12] The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until January 15, 2003, or until the Commission grants permanent approval, whichever period is shorter. Primex continues to operate in the manner described in the form PILOT filing, as amended.[13]

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A(b)(6)[14] and 11A(a)(1) of the Act.[15] Section 15A(b)(6) of the Act [16] requires the rules of the NASD to 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act [17] sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[18] and subparagraph (f)(2) of rule 19b–5 thereunder,[19] because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[20] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–170 and should be submitted by December 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–30886 Filed 12–5–02; 8:45 am]

BILLING CODE 8010–01–P

two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

[10] Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

[11] Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

[12] Securities Exchange Act Release No. 46756 (October 31, 2002), 67 FR 68221 (November 8, 2002).

[13] Form PILOT-NASD–2001–01.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78k–1(a)(1).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78k–1(a)(1).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before February 4, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home/Business Loan Inquiry Record.
Form No: 700.
Description of Respondents: Victims in Presidential declared disaster.
Annual Responses: 53,478.
Annual Burden: 13,370.
Title: Governor's Request for Disaster Declaration.
Form No: N/A.
Description of Respondents: Victims in Presidential declared disaster.
Annual Responses: 57.
Annual Burden: 1,140.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–30893 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service, Performance Review Board Members

ACTION: Notice of members of the FY 2002 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2002 Performance Review Boards for the U.S. Small Business Administration:

1. John Whitmore, Chief of Staff;
2. Michael Barrera, National Ombudsman;
3. Lloyd Blanchard, Chief Operating Officer;
4. Richard Spence, Assistant Administrator for Congressional and Legislative Affairs;
5. Kaaren Street, Associate Deputy Administrator for Entrepreneurial Development;
6. Monika Edwards Harrison, Assistant Administrator for Human Resources;
7. James Rivera, Associate Administrator for Financial Assistance;
8. Francisco Marrero, District Director, South Florida;
9. Alberto Alvarado, District Director, Los Angeles;
10. Linda Williams, Associate Administrator for Government Contracting;
11. Eric Benderson, Associate General Counsel for Litigation.

Dated: December 2, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–30904 Filed 12–5–02; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13962]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0086 and 2115–0551

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Application for Measurement of Vessels for Tonnage and (2) Vessel Reporting Requirements. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 4, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–13962] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2002–13962], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Application for Measurement of Vessels for Tonnage.
OMB Control Number: 2115–0086.
Summary: The information for this collection is used to determine a vessel's tonnage. Tonnage is used as a basis for licensing, inspection, safety requirements, and operating fees.
Need: 46 U.S.C 14104 requires the measurement of certain vessels for tonnage. 46 CFR part 69 prescribes the rules for this measurement.
Respondents: Owners of vessels.
Frequency: On occasion.
Burden: The estimated burden is 33,000 hours a year.

2. *Title:* Vessel Reporting Requirements.
OMB Control Number: 2115–0551.
Summary: The collection of information requires the owner, charterer, managing operator, or agent of a U.S.-flagged vessel to immediately notify the Coast Guard if there is reason to believe the vessel is in distress or lost. The report must be followed up with written confirmation within 24 hours to the Coast Guard.
Need: 46 U.S.C. 2306 authorizes the Coast Guard to implement the reporting requirements necessary to determine whether a vessel is in distress or lost and to take appropriate action to provide needed assistance.
Respondents: Owners, charterers, managing operators, or agents.

Frequency: On occasion.

Burden: The estimated burden is 137 hours a year.

Dated: November 27, 2002.

C.I. Pearson,

Director of Information and Technology.

[FR Doc. 02–30929 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number 2002–11809]

Notice of Public Hearing; The North County Transit District

The North County Transit District (NCTD), located in Oceanside, California, has sought a permanent waiver of compliance from certain parts of Title 49 of the Code of Federal Regulations, including Part 210 (Railroad Noise Emission Compliance Regulations), Part 217 (Railroad Operating Rules), Part 218 (Railroad Operating Practices), Part 219 (Control of Alcohol and Drug Use), Part 221 (Rear End Marking Devices), Part 223 (Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses), Part 225 (Railroad Accidents/Incidents—Report Classification, and Investigations), Part 229 (Railroad Locomotive Safety Standards), Part 231 (Railroad Safety Appliance Standards), Part 238 (Passenger Equipment Safety Standards), Part 239 (Passenger Train Emergency Preparedness), and Part 240 (Qualification and Certification of Locomotive Engineers).

NCTD seeks approval of shared track usage and waiver of certain FRA regulations involving planned light rail passenger operations on the same track with freight trains between Oceanside and Escondido, California (Oceanside-Escondido Rail Project). FRA has jurisdiction over the 22-mile portion of the Oceanside-Escondido Rail Project that is also used for freight rail carrier service. The freight operator on the Oceanside-Escondido Rail Project is the Burlington Northern and Santa Fe Railway Company (BNSF), which currently conducts operations over this trackage. NCTD proposes to operate light rail vehicles on the same track as BNSF freight trains using temporal separation under which freight operations and passenger operations will not be conducted during the same part of the day. For further information about freight and passenger shared track usage, see "Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment," 65 FR 42529 (July 10, 2000). See also "Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems," 65 FR 42626 (July 10, 2000).

The Federal Railroad Administration (FRA) issued a public notice of the NCTD waiver petition and sought comments from interested parties (67 FR 14768, March 27, 2002). All documents pertaining to this petition are in the public docket, including NCTD's detailed waiver request, and are available for inspection and copying. The documents are also available on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal. The purpose of this public hearing is to afford the Railroad Safety Board the opportunity to gather additional information from all interested parties and to explore all available options and concerns before making a final decision on the NCTD petition. FRA will deliberate all of its options, which may include denial, approval, conditional approval, or approval in part and denial in part.

The public hearing is set for 10 a.m. (PST), on Thursday, January 23, 2002, North County Transit District Office, 810 Mission Avenue, Oceanside, California, 92054–2825. Interested parties are invited to present oral statements at the hearing. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25) by a representative designated by the FRA.

The hearing will be a nonadversarial proceeding and will include no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 2, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–30927 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34079]

San Jacinto Rail Limited—Construction Exemption—and the Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX

AGENCIES: *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

ACTION: Notice of availability of Draft Environmental Impact Statement and notice of public meetings.

SUMMARY: On August 30, 2001, San Jacinto Rail Limited (SJRL) and the Burlington Northern and Santa Fe Railway (BNSF) (referred to collectively as the Applicants) filed a petition with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction by SJRL and operation by BNSF of a new rail line near Houston, Harris County, Texas. The project, known as the Bayport Loop Build-Out, would involve construction of approximately 12.8 miles of new rail line to serve the petro-chemical industries in the Bayport Industrial District (Bayport Loop). The Proposed Action includes rail operations to and from the new rail line near Ellington Field over trackage rights on Union Pacific Railroad Company's (UP's) GH&H line and UP's East Belt, Terminal, Lafayette, and Baytown Subdivisions to the storage yard operated by CMC Railroad at Dayton, approximately 30 miles east of Houston. The project would require actions by several Federal agencies, including the Board, the U.S. Coast Guard (USCG), and the National Aeronautics and Space Administration (NASA), and may require actions by the Federal Aviation Administration (FAA).

The Board, through its Section of Environmental Analysis (SEA) and in cooperation with USCG, FAA, and NASA, has published a Draft Environmental Impact Statement (Draft EIS) for the Bayport Loop Build-Out Project. This Draft EIS is an analysis of

the potential environmental impacts of the Applicants' proposal and its reasonable and feasible alternatives, including the No-Action Alternative. The Build Alternatives, which are the Alternatives involving construction, would cause moderate wetland, surface water, and biological impacts. SEA recommends that the Board impose the Applicants' proposed voluntary mitigation measures as a condition of petition approval. The mitigation measures address these moderate impacts as well as a range of additional issues of interest to the community. The Proposed Action and Alternatives would cause negligible effects on all other impact areas. SEA invites public and agency comments on all aspects of the Draft EIS. Comments must be faxed or postmarked by the close of the comment period, which is January 27, 2003. Information on how to submit comments is set forth below.

SEA, working with the three cooperating agencies, will make its final recommendations on the project, including environmentally preferable alternative(s) and environmental mitigation, to the Board in the Final EIS, after considering all public comments on the Draft EIS. The Final EIS will be issued after public comments have been received, reviewed, and fully evaluated. Notice of availability of the Final EIS will be published in the **Federal Register**.

Following issuance of the Final EIS, the Board will make its final decision regarding this project and any environmental conditions it might impose. In reaching its final decision in this proceeding, the Board will take into account the full environmental record, including the Draft EIS, the Final EIS, and all public and agency comments received. The cooperating agencies will issue their decisions based on the same environmental record.

FOR FURTHER INFORMATION CONTACT: Ms. Dana White, SEA Project Manager, toll-free at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339). The Web site for the Surface Transportation Board is *www.stb.dot.gov*.

Mr. Phil Johnson, U.S. Coast Guard, (504) 589–2965.

Ms. Nan Terry, Federal Aviation Administration, (817) 222–5607.

Ms. Perri Fox, National Aeronautics and Space Administration, (281) 483–3157.

SUPPLEMENTARY INFORMATION:

Floodplains Notification: As required by Executive Order 11988 (Floodplain Management), SEA is providing Notice that the Proposed Action would involve new construction in a floodplain. SEA's preliminary determination is that floodplains along Horsepen Bayou, Armand Bayou, Spring Gully, Big Island Slough, and Taylor Bayou and various unnamed tributaries and flood control channels could not be avoided by the Proposed Action or the other Build Alternatives because of the linear nature of the proposed project. SEA has also determined that the floodplain impacts would be similar for the Proposed Action and the other Build Alternatives.

The Proposed Action would not cause an adverse effect or incompatible development in a floodplain because the facility would be designed, constructed, and maintained to accommodate flood flows and minimize impacts to floodplains. The proposed design would include properly sized, sited, constructed, and maintained bridges and culverts, and new drainage ditches on both sides of the rail bed along most of the alignment. The floodways along Horsepen Bayou, Armand Bayou, Big Island Slough, and Spring Gully and the main channel of Taylor Bayou would be spanned by bridges. In addition, the design and specifications for bridges, culverts, channels, and related structures would satisfy Harris County Flood Control District requirements. All bridge crossings would accommodate flood flows from the 24-hour, one-percent probability storm and would conform to all applicable design standards required by the National Flood Insurance Program. The design of crossings of flood control channels or connections to drainage channels would require approval from the Engineering Division and the Flood Control Division of the Harris County Public Infrastructure Department.

Wetlands Finding and Notification: As required by Executive Order 11990 (Protection of Wetlands), the FAA and NASA are providing Notice that the Proposed Action and the other Build Alternatives would involve new construction in wetlands. The FAA and NASA have reached a preliminary determination that construction in wetlands could not be avoided because of the linear nature of the proposed project. The Proposed Action and the other Build Alternatives include all practicable measures to avoid and minimize harm to wetlands. In addition, the Applicants have proposed a conceptual mitigation plan to compensate for the unavoidable impacts to wetlands, which includes restoration, creation, and preservation of wetlands.

Joint 404/401 Permit Application: The Applicants have submitted a Joint Permit Application under Section 404/401 of the Clean Water Act to the U.S. Army Corps of Engineers (USACE). The USACE will issue a Public Notice on the Joint Permit Application. For information on the Applicants' Joint Permit Application contact: John Machol, U.S. Army Corps of Engineers, Regulatory Branch, CESWG–PE–R, Jadwin Building, 2000 Fort Point Road, Galveston, TX 77550.

Public Availability: The entire Draft EIS is available on the Board's Web site (*http://www.stb.dot.gov*) in a downloadable format by clicking on the "Decisions & Notices" button and searching by Service date or Docket Number. The Draft EIS will be listed as an Environmental Review under the "TYPE" category. Because of the size of the document, distribution of the entire Draft EIS has been limited to governmental agencies, elected officials, community groups, and parties of record. This Notice of Availability has been distributed to over 1,000 other interested parties, including private citizens.

SEA has also distributed the Draft EIS to the repositories listed below and asked that the entire Draft EIS be made publicly available in their reference section. A Spanish translation of the Executive Summary of the Draft EIS will also be available at the repositories. Copies of the Draft EIS in hardcopy or on CD-ROM and the Executive Summary translation are also available by calling the toll-free number at 1–888–229–7857.

San Jacinto College, Central Campus Library

8060 Spencer Highway, Pasadena, TX 77505, (281) 476–1850.

San Jacinto College, North Campus Library

5800 Uvalde Street, Houston, TX 77015, (281) 459–7116.

San Jacinto College, South Campus

13735 Beamer Road, Houston, TX 77089, (281) 922–3416.

University of Houston, Clear Lake Campus, Alfred Neumann Library

2700 Bay Area Boulevard, Houston, TX 77058, (281) 283–3930.

Freeman Memorial Branch Library

16602 Diana Lane, Houston, TX 77062, (281) 488–1906.

Harris County Public Library, Evelyn Meador Branch

2400 N. Meyer Road, Seabrook, TX 77586, (281) 474–9142.

Harris County Public Library, South Houston Branch

607 Avenue A, South Houston, TX 77587, (713) 941–2385.

Pasadena Public Library, Fairmont Branch

4330 Fairmont Parkway, Pasadena, TX 77504, (713) 998–1095.

Pasadena Public Library, Main Branch

1201 Jeff Ginn Memorial, Pasadena, TX 77506, (713) 477–0276.

Deer Park Public Library

3009 Center Street, Deer Park, TX 77536–7099, (281) 478–7208.

Houston

500 McKinney Avenue, Houston, TX 77002, (713) 247–2222.Public Library

Park Place Regional Library

8145 Park Place Boulevard, Houston, TX 77017, (832) 393–1970.

Patricio Flores Library

110 North Milby Street, Houston, TX 77003, (832) 393–1780.

Melcher Branch Library

7200 Keller, Houston, Texas 77012, (832) 393–2480.

Bracewell Branch Library

10115 Kleckley, Houston, Texas 77075, (832) 393–2580.

Tuttle Branch Library

702 Kress, Houston, Texas 77020, (832) 393–2100.

Stanaker Branch Library

611 S/Sgt. Macario Garcia, Houston, Texas 77011, (832) 393–2080.

Liberty Municipal Library

Geraldine D. Humphreys Cultural Center, 1710 Sam Houston Avenue, Liberty, TX 77575, (936) 336–8091.

Sam Houston Regional Library

Archives & Information Services, FM 1011, Liberty, TX 77575, (936) 336–9921.

Dayton Library

307 West Houston, Dayton, TX 77535, (936) 258–7060.

Crosby Branch Library

135 Hare Road, Crosby, TX 77532–8895, (281) 328–3535.

Lee College Library

15010 FM 2100 Road, Crosby, TX 77532, (281) 328–1111.

Austin Memorial Library

220 South Bonham, Cleveland, TX 77327, (281) 592–3920.

Kingwood Branch Library

4102 Rustic Woods Drive, Kingwood, TX 77345, (281) 360–6804.

Kingwood College Library

20000 Kingwood Drive, Kingwood, TX 77339, (281) 312–1693.

Public Comment: Written comments on the Draft EIS must be postmarked or faxed by January 27, 2003. The public and any interested parties are encouraged to make written comments on all aspects of this Draft EIS. SEA will consider all comments in preparing the Final EIS and the Final EIS will respond to all substantive comments. When submitting comments on the Draft EIS, please be as specific as possible and substantiate your concerns and recommendations. Please mail written comments to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001,

To ensure proper handling of your comments, please mark your submission: *Attention:* Dana White, Section of Environmental Analysis, Environmental Filing FD No. 34079.

Due to delays in the delivery of mail currently being experienced by Federal agencies in Washington, DC, SEA encourages that comments be faxed to 1–866–293–4979. Faxed comments will be given the same weight as mailed comments; therefore, persons submitting comments by fax do not have to also send comments by mail.

Further information about the project can be obtained by calling SEA's toll-free number at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339).

Public Meetings: In addition to receiving written comments, SEA will host two public meetings on the Draft EIS. At each meeting, SEA will give a brief presentation and interested parties will be invited to make oral comments. SEA will have a transcriber present to record the oral comments in either English or Spanish. Written comments may also be submitted at the meetings. Meetings will be held at the following locations, dates, and times:

Pasadena Convention Center, 7902 Fairmont Parkway, Pasadena, TX, January 14, 2003, 7—9 p.m.

Cesar E. Chavez High School, 8501 Howard Drive, Houston, TX, January 15, 2003, 7—9 p.m.

Both meetings will follow the same format and agenda; it is not necessary to attend both meetings.

Pre-Registration for Public Meetings: Persons wanting to speak at a public meeting are strongly urged to pre-register by calling the toll-free Environmental Hotline for this project at 1–888–229–7857 (TDD for the hearing impaired 1–800–877–8339) and leaving their name, telephone number, the name of any group, business, or agency affiliation, if applicable, and the date of the meeting at which they wish to speak. The deadline for pre-registration for all meetings is January 7, 2003.

Persons will be called to speak at each meeting in the order in which they pre-registered. Those wishing to speak who did not pre-register will be accommodated at each meeting as time allows. Those wishing to speak at more than one meeting will also be accommodated as time allows and after all others have had an opportunity to participate. As SEA would like as many persons as possible to participate and given that there will be a limited amount of time at each meeting, all speakers are strongly encouraged to prepare summary oral comments, and submit detailed comments in writing. SEA also encourages groups of individuals with similar comments to designate a representative to speak for them. A translator will be available at both meetings for Spanish-speakers wishing to speak.

The Web site for the Surface Transportation Board is *www.stb.dot.gov.*

Decided: November 20, 2002.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30907 Filed 12–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the TSA invites public comment on one currently approved public information collection, which will be submitted to OMB for renewal.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Comments may be mailed or delivered to the TSA at the following address: Office of Security, TSA–14, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Ferris, Office of Security, TSA–14, Transportation Security

Administration, 400 7th Street, SW., Washington, DC 20590, (202) 385–1190.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the TSA solicits comments on this current collection of information to evaluate the necessity of the collection; the accuracy of the agency's estimate of the burden; the quality, utility, and clarity of the information to be collected; and possible ways to minimize the burden of the collection. These comments are solicited in preparation for submission to renew the clearance of the following information collection:

1.2110–0007, Employment Standards-Parts 107 and 108 of the Federal Aviation Regulations. Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directed the FAA to prescribe standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. These standards were developed and implemented at 14 CFR parts 107 and 108. The Aviation and Transportation Security Act of 2001, Public Law 107–71, transferred to TSA the responsibility for civil aviation security, including the prescribing of employment standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. In February 2002, TSA implemented regulations at 49 CFR parts 1542 and 1544 prescribing employment standards and the FAA regulations in 14 CFR parts 107 and 108 were repealed. Airport operators will maintain at their principal business office at least one copy of evidence of compliance with training requirement for all employees having unescorted access privileges to security areas. This is a record-keeping burden and the affected public is estimated at 1,300 airport operators and air carrier checkpoints. The estimated annual record-keeping burden is 16,300 hours.

Issued in Washington, DC, on December 2, 2002.

Susan L. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 02–30932 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 27, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 6, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1511.

Regulation Project Number: REG–209828–96 NPRM.

Type of Review: Extension.

Title: Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.

Description: The regulations revise the requirements for requesting a schedule of ruling amounts based on a formula or method.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 5 hours.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1514.

Regulation Project Number: REG–209040–88 NPRM.

Type of Review: Extension.

Title: Qualified Electing Fund Elections.

Description: The regulations permit certain shareholders to make a special section 1295 election with respect to certain prepared shares of a PFIC. Taxpayers must indicate on a Form 8621 and attach a statement containing certain information and representations. Form 8621 must be filed annually. The shareholder also must obtain, and retain a copy of, a statement from the corporation as to its status as a PFIC.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,030.

Estimated Burden Hours Per Respondent/Recordkeeper: Varies.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 600 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–30875 Filed 12–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment of system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new routine use to a VA system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26). The routine use will clarify the circumstances under which VA will provide individually identified information on veterans having active VA-guaranteed loans. VA will provide this information upon request, to individuals and entities that issue Interest Rate Reduction Refinancing Loans (IRRRL) where the requester has a pending IRRRL application from an individual who has an active VA-guaranteed loan. VA is also updating the Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records because VA is initiating a new, web-based application that will allow IRRRL lenders to obtain this information directly from the VA system.

DATES: Comments must be received on or before January 6, 2003. If no public comment is received during the 30 day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, this routine use is effective January 6, 2003.

ADDRESSES: You may mail or hand deliver written comments concerning the proposed new routine use to the

Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. All relevant material received before January 6, 2003, will be considered. Comments will be available for public inspection at the above address 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: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: In the course of administering the VA loan guaranty program, VA must provide information to the lenders who make loans to veterans which VA guarantees. In the case of an IRRRL, a lender who is considering making such a loan to a loan applicant would need to know whether the veteran currently has an active VA loan on the books. Data concerning a veteran's use of the loan guaranty benefit is contained in the VA system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA" (55VA26).

VA has developed a new routine use for 55VA26 to permit VA to disclose individually identified veteran loan guaranty information from that system of records to an active VA lender, lender's agent, mortgage broker, or other program participant, as necessary to originate a VA IRRRL to that veteran.

The proposed routine use will provide Privacy Act authority for VA to disclose this identified information to lenders only for the purpose of originating IRRRLs. Lenders must still comply with any applicable confidentiality requirements before disclosing any information to VA in order to learn whether the loan applicant has a current VA loan. Examples of confidentiality requirements are the rules providing for the protection of non-public personal information published by various Federal entities under 15 U.S.C. 6801–6809. See, *e.g.*, 16 CFR part 313, 12 CFR part 716.

Currently lenders needing information to originate IRRRLs contact a VA facility either by telephone or e-mail. VA personnel then access internal VA records and obtain the requested information. VA personnel then communicate the necessary information to the requesting lenders by telephone or e-mail. Under the new procedure, recognized program participants will be able to use a VA-developed, Internet-based application to retrieve the data directly from VA records without the need of VA personnel. This will allow the lender almost instant access to the information required and eliminate the need for VA personnel to research and reply to the lender. This change is being made for reasons of improved efficiency. Of the approximately 15,000 VA-approved lenders, about 5,000 make VA-guaranteed home loans in a given year and could potentially need to request information from VA to originate a refinancing loan.

VA takes very seriously its responsibility to securely maintain the privacy data maintained on veterans in VA systems of records and does not intend to release any information under this routine use that is not necessary to the processing of a particular transaction. Releases of information pursuant to this use will be limited to the case of a veteran applying for an IRRRL. The information provided will be limited to the VA loan number, veteran's name, entitlement code, original loan amount, guaranty amount, and status of the loan (*i.e.*, active or paid in full).

In order to obtain information from the VA system, the party requesting the information must establish the fact that it is a participant in the VA home loan program, through the use of the VA lender identification number assigned by VA Loan Guaranty Service to that party. The requester will log on to the application through the Internet using the requester's 10-digit VA lender ID and a password unique to the requester. Lending entities are required to keep the assigned passwords confidential in accordance with established VBA procedures, and to promptly report any compromise of their assigned passwords. The requester must also provide the veteran's name and social security number and such other information as may be necessary to identify the record or records in question.

As a precaution, to ensure that the information is in fact being requested on behalf of the veteran to whom the record pertains, and in order to process a pending transaction with, or application of, a VA beneficiary, rather than for commercial solicitation purposes, the lender will have to supply either the 12-digit VA loan number or the month and year of the loan being refinanced. IRRRL lenders currently provide this information either orally or by e-mail when requesting information under the current system described above.

VA is amending the Safeguards portion of the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of the Records in the System by adding a paragraph at the end of that portion to reflect the safeguards applicable to lender IRRRL access to the VA system.

VA has determined that release of information under the circumstances described above is a necessary and proper use of information in this system of records and that the specific routine use proposed for the transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18, July 25, 1994.)

The proposed routine use will be added to the system of records entitled "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA" (55VA26) as published at 40 FR 38095, August 26, 1975, and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993 and 62 FR 35545 (July 1, 1997).

Approved: November 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

Notice of Amendment to System of Records

The system of records identified as "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA" (55VA26), published at 40 FR 38095, August 26, 1975 and amended at 48 FR 49961, October 28, 1983; 51 FR 24781, July 8, 1986; 51 FR 28289, August 6, 1986; 52 FR 721, January 8, 1987; 53 FR 49818, December 9, 1988; 56 FR 2064, January 18, 1991; 56 FR 15666, April 17, 1991; 58 FR 50629, September 28, 1993; and 62 FR 35545 (July 1, 1997), is

revised to add a new routine use number 34 as follows:

55VA26

SYSTEM NAME:

Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

34. Any information in this system may be disclosed to an active VA lender, lender's agent, mortgage broker, or other program participant in response to a request from that individual or entity if that information is necessary in connection with the origination of a VA-guaranteed Interest Rate Reduction Refinancing Loan (IRRRL). In order to obtain information under this routine use, the party requesting the information must establish the fact that it is a participant in the VA home loan program through the use of a VA lender identification number. The requester must also provide the veteran's name and social security number and the month and year of the loan being refinanced or the 12-digit VA loan number.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

* * * * *

A VA-approved, active VA lender, lender's agent, mortgage broker, or other program participant may obtain access to the computerized VA system maintaining this system of records for the purpose of learning whether an applicant for a VA-guaranteed IRRRL has a current VA-guaranteed loan under the following circumstances. The lender must log on to the system using the unique 10-digit lender identification number assigned by VA and a unique password. The lender also must enter information identifying the specific veteran for whom the IRRRL lender seeks information, including the veteran's name, social security number and other identifying information, such as the 12-digit loan number for the veteran's current VA-guaranteed loan or the month and year of the loan.

[FR Doc. 02–30780 Filed 12–5–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 235
Friday, December 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850, A–583–826]

Collated Roofing Nails from the People's Republic of China and Taiwan: Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders

Correction

In notice document 02–29915 beginning on page 70578 in the issue of Monday, November 25, 2002, make the following correction:

On page 70578, in the third column, under the **EFFECTIVE DATE** heading, in the first line, "November 25, 2002" should read, "November 19, 2002".

[FR Doc. C2–29915 Filed 12–5–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Hybrid Inhalation System for Precious Materials

Correction

In notice document 02–30569 appearing on page 71942 in the issue of Tuesday, December 3, 2002, make the following correction:

On page 71942, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in the fifth line, "sued" should read, "used".

[FR Doc. C2–30569 Filed 12–5–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1065

[AMS–FRL–7380–2]

RIN 2060–AI11

Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)

Correction

In rule document 02–23801 beginning on page 68242 in the issue of Friday, November 8, 2002, make the following correction:

§1065.210 [Corrected]

1. On page 68415, in § 1065.210, in Table 1, in the third column, the heading "Value[1]" should read, "Value".

2. On page 68416, in § 1065.210, in Table 1, in the third column, the heading "Value[1]" should read, "Value".

3. On the same page, in the same section, in Table 2, in the third column, the heading "Value[1]" should read, "Value".

[FR Doc. C2–23801 Filed 12–5–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 6, 2002

Part II

Department of Transporation

Federal Aviation Administration

14 CFR Parts 119 et al.
Aging Airplane Safety; Final Rule and Notices

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 129, 135, and 183

[Docket No. FAA–1999–5401; Amdt. Nos. 119–6, 121–284, 129–34, 135–81, and 183–11]

RIN 2120–AE42

Aging Airplane Safety

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This final rule requires airplanes operated under title 14, Code of Federal Regulations (14 CFR) part 121, U.S.-registered multiengine airplanes operated under 14 CFR part 129, and multiengine airplanes used in scheduled operations under 14 CFR part 135 to undergo inspections and records reviews by the Administrator or a designated representative after their 14th year in service and at specified intervals thereafter. These inspections and records reviews will ensure that the maintenance of these airplanes' age-sensitive parts and components has been adequate and timely.

The final rule also prohibits operation of these airplanes after specified deadlines unless damage-tolerance-based inspections and procedures are included in their maintenance or inspection programs. Operators of airplanes initially certificated with nine or fewer passenger seats, however, may incorporate service-history-based inspections instead of damage-tolerance-based inspections and procedures in those airplanes' maintenance or inspection programs. This final rule does not apply to airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991 and helps to ensure the continuing airworthiness of aging airplanes operating in scheduled service.

DATES: This interim final rule is effective December 8, 2003. Comments must be received on or before February 4, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–1999–5401 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to this interim final rule in person in the Dockets Office between 9 a.m. and 5 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 above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, Airplane Maintenance Division, AFS–304, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7355; facsimile (202) 267–5115.

SUPPLEMENTARY INFORMATION:

Comments Invited

This interim final rule is based on comments received on notice no. 99–02 entitled "Aging Airplane Safety." The final rule is significantly different from the proposed action due largely in response to the comments received. In some instances, the FAA agreed in total or in part with many comments. In other instances, we did not agree with the commenters' suggestions citing the need and providing further justification and rationale for certain requirements, as proposed.

The FAA believes it has developed a rule that fulfills its regulatory responsibility to meet the requirements of the Aging Aircraft Safety Act, and considers the impact on those affected and the recommendations and alternatives received in response to comments received. However, the FAA continually seeks to find ways to implement its rules at lower cost without compromising safety. To this end, we solicit comments from interested parties on how implementation costs for this rule could be further reduced. Substantive comments should be accompanied by cost estimates to the extent possible. Any recommendations for alternatives to the final rule adopted here should demonstrate that the alternative would provide a level of safety equivalent to this rule.

In particular, the FAA invites commenters to focus on alternatives posed by the Air Transport Association. For example, the ATA suggested that the proposal be framed as an Airworthiness Directive. As explained herein, the FAA does not agree that ADs should be used to implement the new requirements. Airworthiness Directives are used to address unsafe conditions that have already been identified. This rule is to ensure the continuing structural airworthiness of aircraft as they continue in service.

Further, the ATA believes the requirements of this rule exceed the requirements of the Aging Aircraft Safety Act (AASA) by requiring an unsegmented simultaneous review of each affected airplane and its records. The FAA has revised the inspection requirements to enable operators who have segmented maintenance programs, for example, to work with their principal maintenance inspector to agree on which inspection examines the largest portion of the airplane. The operator can make the airplane available to the FAA during that inspection to ensure the inspection and records review is complied with in a comprehensive, efficient, and cost effective manner.

However, an operator who uses segmented maintenance programs may still be required under the rule adopted here to open and make available for inspection additional areas of the airplane to fulfill the requirements of the AASA. As explained in this preamble, we believe that opening additional areas may be necessary to ensure adequate inspections. However, we are sensitive to the additional cost that operators may incur when opening the aircraft more than originally planned. Therefore, commenters are invited to revisit this issue. If an inspection regime can be developed that would provide an equivalent level of safety by limiting the amount of the aircraft opened at any one time, the FAA will consider revising the rule.

The FAA appreciates the significant contributions industry and the public has played in developing this significant and controversial rulemaking action. The comments have helped considerably to ensure the continuing airworthiness of aging airplanes.

The FAA has summarized in the preamble the comments received on the notice of proposed rulemaking along with the FAA's decision on each comment. Individual comments can be viewed in the docket (FAA–1999–5401)

established for this rulemaking action. We invite you to provide additional comment on the interim final rule. We will consider all comments received on or before the closing date for comments. This final rule may be amended in light of comments received.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation (DOT)'s electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page, type in the last four digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9–AWA–SBREFA@faa.gov*.

Background

Statutory Requirements

In October 1991, Congress enacted title IV of Public Law 102–143, the "Aging Aircraft Safety Act of 1991" (AASA), (subsequently codified as section 44717 of title 49, United States Code (49 U.S.C.)) to address aging aircraft concerns that arose from an accident involving a Boeing 737 in April 1988. That airplane experienced explosive decompression as a result of structural failure, after being subjected to a high number of pressurization cycles. Section 402 of the AASA instructed the Administrator to "initiate a rulemaking proceeding for the purpose of issuing a rule to assure the continuing airworthiness of aging aircraft." Section 402 also required "the Administrator to make such inspections and conduct such reviews of maintenance and other records of each aircraft used by an air carrier to provide air transportation as may be necessary to determine that such is in a safe condition and is properly maintained for operation in air transportation."

The AASA specified that these inspections and records reviews should be carried out "as part of each heavy maintenance check (HMC) of the aircraft conducted on or after the 14th year in which the aircraft has been in service." The statute also specified that an air carrier must be able to demonstrate as part of the inspection "that maintenance of the aircraft's structure, skin, and other age-sensitive parts and components have been adequate and timely enough to ensure the highest degree of safety."

The AASA further instructed the Administrator to issue a rule requiring that an air carrier make its aircraft available for inspection as may be necessary to comply with the rule.

History

The FAA's efforts to address the safety of older airplanes is known collectively as the "Aging Airplane Program." That program addresses transport category airplanes, commuter category airplanes, engines, maintenance, and research. Through the program, the FAA determined that the Airbus A300; Boeing 707, 720, 727, 737, and 747; British Aerospace (BAe) BAC 1–11; Fokker F–28; Lockheed L–1011; and McDonnell Douglas DC–8, DC–9/MD–80, and DC–10 airplanes were approaching design-life goals established by each airplane's type certificate holder. To permit the continued safe operation of these airplanes the FAA adopted a policy of mandated structural modifications and inspections through a series of airworthiness directives (ADs) that address specific design deficiencies that could lead to airplane structural damage.

Type certificate holders also established recommended Corrosion Prevention and Control Programs (CPCPs) for a number of aging transport category airplanes. Corrosion can progressively degrade an airplane's strength until its structure can no longer sustain its designed load. These CPCPs serve as a supplement to existing maintenance requirements.

Additionally, the FAA (1) evaluated methodologies to assess airplane structural repairs, (2) revised Supplemental Structural Inspection Documents (SSIDs), and (3) evaluated the revised Structural Maintenance Program General Guidelines Document, for older airplanes.

On April 2, 1999, the FAA issued a notice of proposed rulemaking (NPRM) entitled "Aging Airplane Safety" (64 FR 16298, notice No. 99–02). The comment period for notice No. 99–02 closed on August 2, 1999; however, the FAA reopened the comment period (64 FR 45090) and that comment period closed on October 18, 1999. The FAA issued this NPRM primarily to expand the use of damage-tolerance-based supplemental structural inspection programs (SSIPs) to a larger proportion of the airplanes used in air transportation and mandate the inspections and records reviews required by the AASA.

Related Activity

Based on the comments received to that NPRM and the related proposed advisory circulars simultaneously made available for comment, the FAA decided not to publish Advisory Circular (AC) 91–MA, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures. However, draft AC 120–XX "Aging Airplanes Records Reviews and Inspections," now retitled "Aging Airplane Inspections and Records Reviews" and revised to reflect the final rule, is being made available for additional comment. This revised draft AC will provide guidance pertaining to aging airplane inspections and records reviews to be accomplished to satisfy the requirements of the final rule "Aging Airplane Safety". The FAA has issued concurrently with this final rule a notice of availability for draft AC 120–XX seeking substantive comments.

Additionally, the FAA considers that draft AC 91–56B, "Continuing Structural Integrity Program for Airplanes," and draft AC 91–60A, "The Continued Airworthiness of Older Airplanes," are appropriate to the requirements of this final rule. The FAA therefore also has issued concurrently with this final rule notices of availability for proposed AC 91–56B and AC 91–60A. The public will be

afforded the opportunity to comment on the revisions contained in these proposed ACs.

The FAA revised AC 91–56A, "Continuing Structural Integrity Program for Large Transport Category Airplanes," to AC 91–56B, "Continuing Structural Integrity Program for Airplanes." This revised AC will provide guidance for operators of the airplanes affected by this final rule on how to incorporate an FAA-approved Aging Aircraft Program into their FAA-approved maintenance or inspection program.

Traditionally, AC 91–56 and AC 91–56A have provided guidance to operators of large transport category airplanes on how to develop a damage-tolerance-based SSIP, which was contained in appendix 1 to the AC. The FAA determined that the guidance provided in appendix 1 to AC 91–56A is applicable to small transport category airplanes as well as to large transport category airplanes.

AC 91–56B

Advisory Circular 91–56 and AC 91–56A only considered the effects of repairs and modifications approved by the type certificate holder, and the effects of repairs and modifications performed by operators on individual airplanes. Appendix 1 to AC 91–56B has been expanded to take into consideration the effect of all major repairs, major alterations, and modifications approved by the type certificate holder.

In addition, proposed appendix 1 to AC 91–56B includes an expanded discussion on repairs, alterations, and modifications to take into consideration all major repairs and operator-approved alterations and modifications on individual airplanes.

AC 91–56B also gives a brief description of the current Mandatory Modifications Program, CPCP, and Repair Assessment Program. The AC also states that the "Evaluation for Widespread Fatigue Damage" will be the subject of a future rulemaking activity.

AC 91–60A

Like AC 91–56A, AC 91–60 provides guidance for operators of the airplanes affected by this final rule on how to develop a service-history-based maintenance or inspection program. AC 91–60 has been updated in AC 91–60A to reflect current maintenance and inspection practices and to be consistent with the acceptable methods of compliance for this final rule.

Other Guidance

The FAA also will develop additional guidance and training material for FAA Aviation Safety Inspectors (ASIs), and representatives of the Administrator authorized to conduct the inspections and records reviews specified in this rule prior to the conduct of those inspections and reviews.

Significant Changes

Based on the comments received the FAA made several significant changes to the proposed rule language in notice No. 99–02. The revised rule language is part of this final rule.

The FAA extended the repeat inspection and records review interval from 5 years to 7 years to allow operators to align inspection and records review intervals more closely with scheduled HMC intervals.

Also, while notice No. 99–02 specified that inspections should be established for affected airplanes using damage tolerance techniques, this final rule adds an exception for multiengine airplanes initially certificated with nine or fewer passenger seats and operated under part 129 and part 135 scheduled operations. The requirement to keep flight cycles has been removed. Those airplanes can have a service-history-based SSIP instead of a damage-tolerance-based SSIP.

In addition, the FAA extended the 3-year requirement for initial inspections on airplanes over 24 years old to 4 years. This will provide the FAA with additional time to develop guidance and training material for designees and FAA inspectors.

Finally, the FAA has decided not to apply this final rule to airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

Discussion of Comments

A total of 63 commenters submitted 247 comments to Docket No. FAA–1999–5401. Commenters generally opposed the proposal; they submitted 131 comments against the proposed rule and 16 comments in support of the changes. In addition, 100 comments either included supplementary information or did not clearly argue for or against the proposed rule. A discussion of comments submitted, organized by issue, follows.

Statutory Requirements

Section 44717 of 49 U.S.C. requires the following actions:

- The Administrator must "prescribe regulations that ensure the continuing airworthiness of aging aircraft."
- The Administrator must "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation." These inspections and reviews "shall be carried out as part of each HMC of the aircraft conducted after the 14th year in which the aircraft has been in service."
- Each air carrier must "demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."
- Each air carrier must make its aircraft, as well as any records about the aircraft that the Administrator may require to carry out the review, available for inspection as necessary to comply with the rule issued by the Administrator.
- The regulations must establish procedures to be followed for carrying out such an inspection.

Applicable Airplane Types

Comments: Some commenters indicate the NPRM addresses more airplane types than the AASA intended to address. Because the AASA specifies inspections and reviews must be carried out as part of each HMC of an airplane and light airplanes do not undergo HMCs, the National Air Transportation Association (NATA) asserts the AASA was not intended to address light airplanes. The NATA further contends the proposal disregards the unique inspection programs of light airplanes, and claims the FAA has not found deficiencies in those programs. Also according to the NATA, the FAA has not proven through inspections, maintenance reviews, or research that light airplanes are unsafe. Accordingly, the NATA states that the FAA is not justified in requiring small businesses that operate light airplanes to invest large sums of money in developing and implementing an inspection program intended for larger airplanes. The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) agrees with the NATA's position.

FAA Response: The FAA disagrees. The AASA does not specifically address types of aircraft. It applies to "each aircraft an air carrier uses to provide air transportation." This includes all air carriers, including smaller operators who conduct commuter operations, regardless of the size of the airplane. However, in response to commenters' concerns, the FAA is revising the provisions of the rule pertaining to the imposition of requirements for supplemental inspection programs. The

final rule permits relief from the requirement for all affected airplanes to have damage-tolerance-based inspections and procedures in their aircraft maintenance and inspection programs. All multiengine airplanes initially certificated with nine or fewer passenger seats may have service-history-based SSIPs instead of damage-tolerance-based inspections and procedures. These regulations will be implemented in 2010. Service-history-based SSIPs are estimated to cost significantly less than damage-tolerance-based SSIPs to develop and implement. In addition, airplanes operating between any point within the State of Alaska and any other point within the State of Alaska are exempt from the requirements of this final rule.

U.S. Military Airplanes

Comments: Many commenters question which types of airplanes or operations would be affected by the proposal. One commenter asks whether the proposal would apply to U.S. Air Force commercial derivative airplanes (that is, Boeing 737 airplanes operated by the U.S. Air Force). The commenter notes the Air Force requires Boeing to comply with FAA directives and rules on those derivative airplanes. Another commenter asks whether the proposal would apply to Boeing 757 executive airplanes (military C–32 program).

FAA Response: This final rule only applies to specified airplanes operating under parts 121, 129, and 135. Aircraft that are not U.S.-registered and operated by the U.S. military are not required to comply with the provisions of this rule. However, any U.S.-registered aircraft operating under part 121, 129, or 135 is subject to the requirements of the rule, regardless of the status of its operator.

Imported Older Airplanes

Comments: One commenter questions how the proposal would affect requirements for imported airplanes older than 14 years. The commenter notes 44 countries have safety standards for imported airplanes and the United States is not among those countries. According to the commenter, the 100-hour inspection (appendix D to 14 CFR part 43) is the closest the United States comes to having such a requirement, but most DARs and many FAA regions ignore this requirement.

FAA Response: The FAA disagrees. The proposal was intended to bring airplanes under the Aging Airplane Program after the effective date of the rule. Therefore, with respect to the requirements of this rule, an imported airplane brought into operation under part 121, 129, or 135 will not differ from an airplane used domestically under 14 CFR part 91 and brought into operation under parts 121, 129, or 135; each airplane will have to be brought under the appropriate maintenance or inspection program and undergo the applicable aging airplane inspections and records reviews prior to being operated under those parts. Additionally, any airplane, domestic or imported, that does not have a supplemental inspection program that meets the requirements of this rule will not be eligible for air carrier operations after the dates specified in this rule.

Applicable Operations

Comments: The Alaska Air Carriers Association (AACA) opposes the proposal and states it should be withdrawn. According to the AACA, the NPRM could lead to the end of scheduled turbopropeller commuter airline growth in Alaska and force a return to the use of out-of-production, piston-powered, single-engine airplane operations in rural Alaska. The AACA contends this proposal would force air carriers that have reached the financial and operational thresholds of using larger, turbine-powered equipment to pay a "compliance penalty" to operate that equipment. Additionally, the AACA contends many of Alaska's rural communities would experience decreased air service and increased costs of living, and be forced to accept travel in smaller airplanes known to have six times more accidents than twin-engine airplanes used currently.

The AACA notes the FAA has implemented numerous significant regulatory changes during the past 15 years (for example, the "Commuter Rule"), but the aviation safety record in Alaska has not changed significantly, despite the high costs.

According to the AACA, some additional safety measures are necessary. However, the AACA states measures in Alaska should include (1) restoring the previous high levels of service from Flight Service Stations; (2) improving aviation weather reporting, forecasting, information distribution, and air-to-ground communications facilities; and (3) developing additional navigational aids and approach procedures to allow instrument flight rules flight and airport runway, ramp, and apron improvements.

As an alternative to the proposal, the AACA states it would develop an FAA-approved program to accommodate the additional safety intent of the rule, addressing safety as well as the operational limitations unique to Alaska. The program would provide guidance, through development of a customized and comprehensive training program for regularly scheduled maintenance and inspection procedures. To ensure compliance with this initiative, the program would include an independent audit element and be made available to all members of the AACA, as a function of the AACA Safety and Resource Center.

The State of Alaska Department of Transportation and Public Facilities (ADOT&PF) noted that "this NPRM, over the next ten years has the potential to effectively economically shut down multiple aircraft operators in Alaska." The ADOT&PF further stated that the number of aircraft impacted is nearly 100 percent of the twin-engine aircraft fleet servicing Alaska aviation needs. These comments were echoed by a number of Alaska operators that stated that implementation of the NPRM would result in the "termination" of their operations and that "the nature of the rural transportation infrastructure in Alaska requires relief from these requirements."

According to the NATA, the proposal would substantially affect interstate commerce in many areas, including Nevada, Arizona, New England, and the southeastern United States. Also, the NATA asserts this proposal may cripple the majority of the State of Alaska's transportation network.

FAA Response: The FAA has received numerous comments noting the possible effect of the proposal on intrastate aviation in Alaska. The FAA notes however that the proposal would not apply to aircraft operated by a certificate holder in on-demand or cargo-only operations conducted under part 135. This exclusion remains in the final rule.

The FAA also recognizes that the AASA does not specifically mandate the supplemental inspections proposed in notice 99–02 and set forth in this rule. However, the FAA clearly is within its authority to require such inspection programs under its broad mandate to promote safety as set forth in 49 U.S.C. 44701.

The FAA also notes that Congress, both in the Federal Aviation Reauthorization Act of 1996 (Public Law 104–264) and in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Public Law 106–181), required the Administrator "in amending title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska * * * to consider the extent to which Alaska is not served by transportation modes other than aviation and * * * establish such regulatory distinctions the Administrator considers appropriate."

Section 40113 of 49 U.S.C. was amended to effectuate this provision.

In view of the clear Congressional mandate for the FAA to consider the unique role of aviation in providing transportation within the State of Alaska and the possible loss of critical air services to rural communities within the State, the FAA has revised the proposal. The final rule will not apply to aircraft operated by certificate holders between any point within the State of Alaska and any other point within the State of Alaska.

Regulatory Activity Since 1991 and Recordkeeping

Comments: One commenter states that the proposal seems to disregard all regulatory activity since 1991 that addresses aging airplanes, as well as existing recordkeeping requirements to show compliance with such aging airplane activity.

FAA Response: The FAA disagrees. The FAA has taken into account relevant regulatory activity since 1991 in the development of this rule, such as CPCPs, structural modification programs, the repair assessment rule, and SSIPs. In spite of these regulatory activities, we continue to believe the additional inspections and records reviews are warranted to ensure age-sensitive parts and components are maintained.

Inspections and Records Reviews

Comments: Some commenters state the proposal does not meet the intent of the AASA. According to the Air Transport Association of America (ATA), FAA requirements exceed AASA requirements in the proposal by requiring an unsegmented simultaneous review of each affected airplane and its records. The ATA also notes the AASA does not require the FAA to establish how often airplane inspections and records reviews must be conducted. The Regional Airline Association (RAA) agrees with the ATA and further asserts that the AASA is not intended to disrupt an air carrier's maintenance program, but the FAA proposal certainly would force air carriers to change their programs at considerable cost.

FAA Response: To minimize cost, operators who have segmented maintenance programs, progressive inspection programs, or approved aircraft inspection programs (AAIPs) should work with their principal maintenance inspector (PMI) or DAR to agree on which inspection examines the largest portion of the airplane. The operator can make the airplane available to the FAA during that inspection to ensure the inspection and records review required by this rule is complied with in a comprehensive, efficient, and cost effective manner. However, the operator using a segmented maintenance program, progressive inspection program, or AAIP must recognize that the PMI or DAR conducting the inspection may require additional areas of the airplane to be open and available for inspection at the discretion of the FAA.

As mentioned previously, the FAA has changed the inspection and records review interval from 5 years to 7 years to allow operators to align their aircraft inspection and records review intervals more closely with scheduled HMC intervals.

Damage-Tolerance-Based Inspection Techniques

Comments: The General Aviation Manufacturer's Association (GAMA) contends that the AASA does not direct the FAA to specify damage tolerance analysis and inspection techniques as the only acceptable method for ensuring the continued airworthiness of aging airplane structural designs certificated before such techniques were available. The GAMA states there are other methods that have been developed in conjunction with the FAA and industry that are based on structural fatigue analysis, fatigue tests, and field experience correlation, where applicable.

FAA Response: The FAA agrees that the AASA does not specifically require the FAA to mandate the use of damage-tolerance-based inspection techniques. However, 49 U.S.C. 44717 states that the Administrator "shall prescribe regulations that ensure the continuing airworthiness of aging aircraft" and that the Administrator shall make the necessary inspections "that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition."

The FAA recognizes that there was a collaborative effort based on the use of structural fatigue analysis, fatigue tests, and field experience correlation to develop appropriate inspections and procedures to ensure the continuing airworthiness of aging aircraft. The FAA, however, has determined that except for those multiengine airplanes initially certificated with nine or fewer passenger seats operated under part 129 or used in scheduled operations under part 135, these inspections and procedures should be established using damage-tolerance-based techniques. Those multiengine airplanes initially certificated with nine or fewer passenger seats can use inspection programs that include service-history-based inspections and procedures instead of damage-tolerance-based inspections and procedures.

Requirements Beyond the Scope of the AASA

Comments: The ATA states the proposal goes beyond inspections and records reviews by supplementing airplane type design and requiring that airplanes meet certification requirements developed quite recently. According to the ATA, if necessary, the proposal should be framed as an AD, and "manufacturers" should be required to adapt their maintenance programs. According to the ATA, "manufacturers" are in a better position than operators to have the design data and service history required to modify their programs.

FAA Response: The FAA agrees that the rule, in certain aspects, exceeds the AASA's mandate to conduct inspections and records reviews. The AASA requires an initial inspection as part of each HMC of the aircraft conducted after the beginning of an airplane's 14th year in service, and thereafter at each HMC. It does not establish specific inspection intervals based on calendar time nor does it mandate the requirement for an operator to include specific supplemental inspection procedures in an aircraft's maintenance program.

Yet, as stated in the preamble to the NPRM and in keeping with the AASA's mandate to ensure the continuing airworthiness of aging aircraft, the FAA considered options for setting repeat inspection intervals. The FAA reviewed the variables used in establishing the parameters used by operators to carry out scheduled maintenance requirements such as flight hours, calendar time, or a combination of both. The FAA also considered the phasing and segmenting of HMCs and found that the intervals varied from 1 to 27 years. Therefore, the FAA chose to establish a fixed repeat inspection interval.

The FAA realizes that the repeat inspections established in this final rule may not be consistent with current operator maintenance schedules. However, the FAA notes that the ATA itself, in memorandum 96–AE–014, dated March 11, 1996, recommended that "a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons." The FAA, in keeping with the AASA's mandate, established a repeat inspection interval as part of this final rule.

The FAA does not agree that ADs should be used to implement the new requirements. The FAA is not issuing

this rule to address an unsafe condition. This rule is to ensure the continuing structural airworthiness of air carrier aircraft as they continue in service. Also, this rule will allow operators the flexibility to adjust their maintenance or inspection program based on service history and design review.

Furthermore, applying the AASA requirements to all airplanes, regardless of operation, would go significantly beyond the mandate of the act, which requires the Administrator to issue a rule requiring an inspection and records review of each aircraft used in air transportation for compliance with aging aircraft requirements.

Using operational rules (parts 121, 129, and 135) to mandate inspections, supplemental inspections, and records reviews is compatible with what the FAA has done with other maintenance and inspection programs, such as those specified in the final rule entitled, "Repair Assessments for Pressurized Fuselages," which was published in the **Federal Register** on April 25, 2000 (65 FR 24108). It also corresponds more closely to the intent Congress specified in the applicability of the AASA.

Inspections

Summary of Proposal/Issue: The purpose of the proposal was to verify that each operator can demonstrate it has accomplished all required maintenance tasks, including the damage-tolerance-based SSIPs proposed in the NPRM. The AASA specifies that the inspections and records reviews be carried out as part of each airplane's HMC after the 14th year in service. The NPRM divides airplanes into three categories for these inspections to ensure the oldest airplanes are inspected first. The NPRM also proposes that all aging airplane inspections and records reviews be repeated at specified intervals. However, the proposal includes a provision for extending the thresholds and intervals to accommodate unforeseen scheduling conflicts.

The NPRM also requires operators to notify the FAA within a specific time period before an airplane is available for an inspection and records review.

Existing Maintenance Programs Make the Rule Redundant

Comments: Most commenters believe the requirement to accomplish inspections and records reviews is redundant. One operator asserts "every air carrier" already has a continuous airworthiness program and an FAA-approved maintenance program, which include corrosion prevention, corrosion control, and damage-tolerance-based SSIPs. Also, that operator believes "every" carrier also must have a Continuing Analysis and Surveillance System (CASS) and must analyze structural defects for their approved maintenance reliability programs for principal structural elements. The commenter notes the regulation and oversight of maintenance programs is a daily FAA requirement. The ATA notes FAA Certificate Management Offices are responsible for overseeing an air carrier's Continuous Airworthiness Maintenance Program (CAMP) and CASS and ensuring an air carrier's airplanes are operated and maintained according to FAA regulations and the air carrier's operations specifications. The ATA notes these responsibilities do not begin only after an airplane has been in service for 14 years. Furthermore, the RAA emphasizes that the FAA has complete authority to determine whether an operator has deficiencies in its maintenance program.

One commenter states that the FAA should revise the proposal to compensate for existing maintenance programs that address aging airplane concerns. For example, the 14-year in-service threshold should be increased to 20 years to coincide with the Aging System Task Force definition, which established "20 years since an airplane's certification" as the nominal age threshold. Another commenter states that the FAA should provide special consideration for low-utilization airplanes that may have more than 14 years of total service. A third commenter states the proposed inspections should be associated with the renewal or continued effectiveness of "an airline's standard airworthiness certificate" and should include all phases of continued airworthiness in addition to aging airplane considerations. However, that commenter questions the reason for a 14-year time period. The Air Line Pilots Association (ALPA), however, supports proposed inspections for airplanes after 14 years in service.

FAA Response: The requirements to accomplish inspections and records reviews stem directly from the AASA, which states, in part, that the FAA shall prescribe regulations that "at a minimum, require the Administrator to make such inspections, and conduct such reviews of maintenance and other records, of each aircraft used by an air carrier to provide air transportation as may be necessary to enable the Administrator to determine that such aircraft is in safe condition and properly maintained for operation in air transportation."

In addition, the AASA specifies that inspections and records reviews "shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service."

Differences Between Current and New Inspections and Records Reviews

Comments: Several commenters are uncertain how the proposed inspections and records reviews would differ from those currently conducted by ASIs. The ATA notes that § 121.153(a) currently requires airplanes to be maintained in an airworthy condition, which would include compliance with any mandated aging airplane requirements. Also, some commenters contend this proposal represents a shift of responsibility from air carriers to the FAA in ensuring airplane airworthiness. These commenters state they are uncertain why the FAA desires such a shift.

Another commenter recommends that the FAA allow an air carrier's quality assurance department to conduct the proposed inspections and records reviews when an FAA representative is unavailable. ALPA supports the proposal, which would permit certain representatives of the Administrator to conduct inspections.

FAA Response: Section 44717(b)(2) 49 U.S.C. states that the aging aircraft inspections "*shall* be carried out as provided under [49 U.S.C.] § 44701(a)(2)(B) and (C) * * *" (emphasis added). Section 44701(a) reads as follows:

> (a) The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing * * *
>
> (2) Regulations and minimum standards in the interest of safety for * * *
>
> (B) Equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling (of aircraft, aircraft engines, propellers, and appliances); and
>
> (C) A qualified private person, instead of an officer or employee of the Administrator, to examine and report on the inspecting, servicing and overhauling.

Section 44717(b)(2) was added in 1994 as part of the recodification of the FAA's enabling legislation. The AASA and the recodified § 44717(a)(1) require the Administrator to make the aging airplane inspections.

The rules prescribed by the Administrator under § 44701(a)(2)(B) establish regulations and minimum standards for many different activities by nongovernment persons, including air carrier maintenance organizations and repair stations. Section 44701(a)(2)(C) requires the

Administrator to establish regulations and minimum standards for qualified private persons who examine and report on inspecting, servicing, and overhauling. It does not address the delegation of authority to act on behalf of the Administrator nor does it describe persons who act on behalf of the Administrator. A certificate holder and its employees are not employees of the Administrator, nor are they necessarily representatives of the Administrator in accordance with § 44702(d).

Congress clearly intended that the Administrator would determine "whether an aircraft is in safe condition and maintained properly for operation in air transportation." This is evident in § 44717(a)(1), which requires the Administrator to perform the inspections and records reviews. It also is consistent with the legislative history of the AASA. The FAA notes, however, the AASA was never intended to relieve the operator from the responsibility for the airworthiness of the aircraft as described in current § 121.363, § 129.14 (ICAO Annex 6, chapter 8), or § 135.413. there is no language in § 44717 that implies that operators are to be relieved of compliance with regulations issued under § 44701.

Furthermore, the FAA notes that the text of the AASA, and the recodification thereof, instructs the Administrator to establish a program to provide FAA inspectors and engineers with the necessary training to conduct auditing inspections of airplanes operated by air carriers for corrosion and metal fatigue (see § 44717(c)(2)(A)). If it had been the intent of Congress to have private persons make those inspections instead of FAA employees (or perhaps designees), that text would have been changed.

The above interpretation is also consistent with the general position that the recodification of the FAA's enabling act was not intended to change the substantive law.

Given the extensiveness of the scope and quantity of airplane inspections required by § 44717(a)(1), the Administrator could still elect to use "a qualified private person" to conduct those inspections and records reviews under a delegation of authority. Hence, the FAA intends to use DARs to help in conducting the inspections and records reviews required by § 44717(a)(1). Such action is consistent with the act and gives meaning to the provisions of 49 U.S.C. 44717(b)(2) in its context. This interpretation also gives meaning to "qualified private person" in the context of implementing the Aging Airplane Program.

Incompatibilities Between Current Practices and the Proposal

Comments: One commenter emphasizes that current regulations do not allow a used airplane to be placed on an operator's certificate until its records have been reviewed by the Administrator. Another commenter notes a complete records review is not possible for some airplanes because the history of those airplanes has not been maintained. Yet another commenter asserts compliance with current FAA-scheduled maintenance program requirements along with FAA verification of records accuracy on a routine interval is a more logical approach than that presented in the proposal.

FAA Response: The FAA disagrees. Section 44717, 49 U.S.C. states that the FAA—

> shall prescribe regulations that ensure the continuing airworthiness of aging aircraft and that the Administrator shall make the inspections, and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition.

The statute further specifies that these regulations shall—

> require an air carrier to demonstrate to the Administrator, as part of the inspection, that maintenance of the airplane's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety.

The alternate courses of action described by commenters, including existing practices, do not relieve the FAA of its obligations under the statute.

Burdens of Proposed Inspection Intervals

Comments: Many commenters assert the proposal is burdensome to operators and the FAA. The ATA states the proposal for inspections at 5-year intervals is contrary to the intent of the AASA and would require air carriers to redefine their maintenance programs to match the 5-year intervals. According to the ATA, the FAA may be exceeding its mandate if this requirement is implemented. Several commenters support the ATA's position stating that the FAA should revise the proposal so inspection intervals align with operator maintenance programs. One commenter asserts the first inspection after the rule becomes effective should be required 5 years from the rule's effective date or during the next HMC, whichever is later, regardless of the age of the airplane.

The ATA asserts that the inspection interval requirement would subject carriers to disruptions if the FAA fails to provide the air carrier with timely notice that the aging airplane inspections and records reviews have been completed. The proposal states that the FAA may take an airplane out of service before analyzing the results of an aging airplane inspection and records review.

FAA Response: The FAA recognizes that the AASA does not establish specific repeat inspection intervals based on calendar time. However, because of the wide variances in HMC intervals and maintenance programs, the FAA chose to establish a fixed repeat interval. The FAA notes that HMC intervals vary greatly among operators. Operators have segmented maintenance programs, progressive inspection programs, or approved aircraft inspection programs that do not easily lend themselves to the use of HMC intervals for the conduct of the mandated inspections and records reviews.

Even though the AASA requires an initial inspection as part of each HMC after the beginning of an airplane's 14th year in service, and thereafter at each HMC, the FAA believes that an inspection interval based on calendar time is consistent with the AASA. A fixed repeat interval is consistent with the intent of the AASA that requires the Administrator to "assure the continuing airworthiness of aging aircraft." The repeat intervals established in the rule will allow the Administrator to ensure that "each aircraft used by an air carrier to provide air transportation is in a safe condition and properly maintained for operation in air transportation."

As previously noted, the ATA recommended, in memorandum 96–AE–014, dated March 11, 1996, that "a 'C' check compliance period (18 months) or 'D' check period (5 years) be adopted for all rules unless it can be shown that a shorter time interval is required for safety reasons." The FAA, in keeping with the AASA's mandate, established a repeat inspection interval as part of this final rule that is consistent with this recommendation.

The FAA realizes that the repeat inspection intervals established in this final rule may not be consistent with current operator maintenance schedules. Therefore, based on the comments received, the FAA has changed the proposed 5-year repeat interval to a 7-year interval to be more compatible with air carriers' HMCs.

In addition, the FAA extended the 3-year requirement for initial inspections on airplanes over 24 years old to 4 years to provide the FAA with additional time to develop guidance and training

material for designees and FAA inspectors.

Ninety-Day Reporting Requirement

Comments: The ATA believes the FAA should modify the proposal to allow 90 days for an operator to provide a report to the Administrator on findings and conclusions related to aging airplane effects from an HMC and the maintenance activities in the interval since that HMC. Additionally, the ATA recommends the FAA provide a similar 90-day timeframe during which the FAA would be required to provide an operator with written acknowledgment of such a report and a determination of the FAA's acceptability.

One ATA member suggests that an operator submit a summary report, for like airplanes in the air carrier's fleet, of findings and conclusions related to aging airplane effects from the HMC and the maintenance activities in the interval since that HMC within 60 days of each 90-day period. According to this ATA member, quarterly summary reports can depict trends more easily than individual airplane check reports.

FAA Response: The FAA agrees that submission of a 90-day inspection and records review report would be a beneficial practice. This should be agreed to between each operator and its PMI. However, because this would add a burden to operators and was not required by the AASA, such a report will not be added to the final rule but will be an acceptable option to assist operators in demonstrating compliance with the provisions of this rule.

Accomplishment of Records Reviews and Inspections

Comments: One commenter asserts the proposal could result in enormous costs to operators if ASIs or DARs fail to make inspections and reviews in a timely manner. Also, the RAA states that the proposal that an air carrier cannot operate its airplanes until inspections and records reviews are completed is excessive. The RAA is particularly concerned about such a case in which the lack of personnel to conduct an inspection and records review causes grounding of an airplane. Other commenters question the FAA's ability to conduct or train representatives to perform the proposed inspections and reviews. One commenter states that the FAA should consider an alternative to the inspections and records reviews that would have an ASI or DAR at an air carrier's facility each night a carrier conducts a scheduled segmented inspection.

FAA Response: The FAA acknowledges the commenter's concerns. To ensure rapid implementation of the inspections and records reviews, this final rule includes provisions to allow for DARs to perform those required inspections and reviews. The FAA anticipates that there will be an increased demand for DARs as a result. In the short run, this may create problems with the availability of DARs, given their current supply and the time it takes for an individual to become a DAR. Over time, it will be possible for qualified individuals to become DARs and fill the demand. Additionally, the FAA will not require operators of affected aircraft to immediately comply with the inspections and records reviews after the effective date of the rule. Significant multi-year implementation periods have been provided in the rule to ensure sufficient trained personnel will be available to accomplish the inspections and reviews without disruption to certificate holders' operations. As a result, the industry's needs will be met and operators will be able to comply with the requirements of the AASA in a timely manner.

Also, operators should be aware that while this final rule imposes restrictions on airplanes operating under parts 121, 129, and 135 until the required inspections and records reviews have been accomplished, it does not affect any part 91 operations conducted by part 121, 129, and 135 air carriers, such as training or positioning flights.

Regarding the comment on the effects of the rule and the FAA's workload, the FAA is committed to train a group of inspectors and DARs to perform the inspections and records reviews required by this final rule. The FAA will also monitor the performance of those inspectors and DARs.

Each operator should plan each inspection and records review and schedule it with the appropriate ASI or DAR. The ASI/DAR inspection and records review should normally follow the inspection by maintenance personnel. However, if an unforeseen scheduling conflict occurs, the final rule permits a 90-day extension to accomplish the inspection and records review. An unforeseen scheduling conflict may arise, for example, if an operator finds that the hangar space dedicated for the incoming aircraft is not available because of additional work required on the aircraft currently in the hangar. The Administrator may approve an extension of up to 90 days, provided the operator presents to the PMI written justification for the scheduling conflict. Also, the FAA will accept electronic, facsimile, or other forms of notification. The request for an extension should provide the PMI ample opportunity to respond to the operator's request.

Single Airplane Versus Fleets

Comments: Several operators note the proposal would require review of airplanes on an individual basis rather than as a fleet. These operators strongly oppose the proposal, indicating the process would be too expensive, time-consuming, and unlikely to increase airplane safety. According to these operators, most audit programs sample the fleet and require additional review only when problems are discovered. One commenter recommends that the FAA implement a fleet sampling program beginning with the oldest airplanes in a fleet type, with inspections every 5 years on a different airplane within that fleet. Another commenter recommends the FAA allow air carriers to complete these remaining airplane inspections and records reviews.

FAA Response: The FAA disagrees. The AASA states that each airplane that has exceeded its 14th year in service should have an inspection and records review to determine the adequacy and timeliness of the maintenance of the aircraft's age-sensitive parts and components. Therefore, fleet audit programs do not meet the Congressional mandate and are not suitable.

The FAA again notes that the proposed 5-year interval has been changed to a 7-year interval to be more compatible with the air carriers' HMCs. However, with respect to air carriers completing inspections and records reviews, the AASA states specifically that the Administrator must accomplish the required inspections and records reviews.

The FAA recognizes that operators will incur additional expenses as a result of this rule. The FAA has therefore worked to minimize the cost. Affected airplanes initially certificated with nine or fewer passenger seats have been allowed to have incorporated into their inspection program service-history-based SSIPs instead of damage-tolerance-based SSIPs. Additionally, provisions that allow for delayed compliance until 2010 of certain airplanes with damage-tolerance-based and service-history-based inspection programs have also been included in the rule.

Limiting Inspection Scope

Comments: The ATA recommends requiring only that portion of an airplane scheduled for detailed maintenance and repair at an HMC after

the 14th year of service be made available along with corresponding records. According to the ATA, this revision of the proposal would allow the air carrier to demonstrate the adequacy and timeliness of its continuous maintenance and surveillance programs and other aging airplane programs without having to examine every part, component, or record of an airplane.

FAA Response: The FAA agrees in part. As stated in the NPRM—

> Although it is the FAA's intent to carry out records reviews and inspections to the extent that the aircraft structure is accessible during the HMC maintenance visit, the FAA may require additional access to determine that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely.

The FAA expects the air carrier to identify the most comprehensive HMC within the interval identified in the rule as the time for the conduct of the inspections and records reviews.

The intent of the final rule is that aging airplane inspection and records reviews should be concurrent with the HMC maintenance being accomplished on each airplane and the FAA has revised the rule to facilitate this action.

Access to Airplane Structure

Comments: Many commenters express concern about allowing an ASI or DAR access to areas of inspected airplanes that may not be opened during HMCs to determine whether the airplanes meet the requirements of the NPRM. These commenters question what criteria would be used to determine whether such additional access is required. The ATA contends if additional access is required, it should be negotiated in advance with the air carrier or mandated under existing authority without signaling ASIs or DARs that they should be opening additional areas at all HMCs.

FAA Response: The FAA disagrees. It is not the FAA's intent to disrupt operators' scheduled maintenance in such a way that it would impact their schedules. However, each airplane subject to the final rule cannot be returned to service until the Administrator or a designee has completed its inspection and records review and notifies the operator accordingly. The FAA agrees that it would behoove the operator to schedule these inspections with the ASI or DAR well in advance of scheduled maintenance visits; however, the FAA does not intend to limit its access to those areas inspected under the provisions of the operator's appropriate maintenance or inspection program.

Although it is the FAA's intent to carry out the inspections and records reviews to the extent that the airplane structure is accessible during the maintenance visit, at the discretion of the ASI or DAR, the FAA may require additional access to confirm that the maintenance of the airplane's age-sensitive parts and components has been adequate and timely as required by the AASA.

Acceptable Records

Comments: The ATA states that conflicts would undoubtedly arise when an airplane is inspected and the records for that airplane are located elsewhere. The ATA asserts an air carrier should not be required to move the airplane or its records in such cases. Several commenters agree with the ATA's position. According to the ATA, the FAA should allow for the use of electronic or other copies of records. Also, the ATA states that the FAA should allow for the use of a summary of maintenance actions in place of original airplane records, to focus on aging effects rather than recordkeeping compliance. The Aerospace Industries Association of America, Inc. (AIAA), opposes the potential need to maintain a duplicate set of records. The AIAA further contends that reliance on automated records is inadequate, even though it may help ensure consistency in format.

FAA Response: The FAA agrees with commenters that these are legitimate issues related to airplane records. The FAA recognizes that airplanes subject to this rule are maintained at FAA-approved repair stations throughout the world. It would place an undue burden on the air carrier or operator to provide original maintenance records that are kept at their main base. Therefore, the FAA will accept a status summary of maintenance actions in lieu of original airplane records provided the status summary meets the requirements of the rule. Also, the FAA will accept electronic, facsimile, or other copies of airplane records as long as the information is accurate and complete. These details should be coordinated individually with each ASI or DAR.

Sixty-Day Notification Requirement

Comments: Several commenters object to the requirement that an air carrier must notify the Administrator 60 days before an airplane and its records are available for review. According to one commenter, although the current proposal increases the advanced notification requirement from 30 days (as set forth in the Aging Airplane Safety NPRM published October 5, 1993 (58 FR 51944)) to 60 days, it does not respond to the original complaints by several commenters that normal surveillance of an operator's fleet would provide the FAA with ample time to find out the details of a carrier's heavy maintenance schedule.

FAA Response: The FAA disagrees. In 1993, the FAA proposed in its Aging Airplane Safety NPRM a 30-day time period to notify the Administrator before an airplane and its records would be available for review. In notice no. 99–02, the FAA extended this time period to 60 days. The FAA believes that this notification is necessary because notification obtained through normal surveillance of an operator's fleet may be insufficient to ensure the FAA has sufficient time to schedule its resources and minimize the impact on the air carrier.

Ninety-Day Extensions

Comments: One ATA member states the proposed 90-day extension provisions should be open-ended to take into account unforeseen scheduling conflicts of an airplane and possible delays resulting from FAA resource constraints. However, the ATA generally supports the extension provision.

FAA Response: The FAA disagrees and contends that 90 days is a sufficient time period for an operator to resolve an unforeseen scheduling conflict. Operators must therefore plan to account for this requirement. An unforeseen scheduling conflict may arise, for example, if an operator finds that the hangar space dedicated for the incoming aircraft is not available because of additional work required on the aircraft currently in the hangar. The Administrator may approve an extension of up to 90 days, provided the operator presents to the PMI written justification for the scheduling conflict. Also, the FAA will accept electronic, facsimile, or other forms of notification. The request for an extension should provide the PMI ample opportunity to respond to the operator's request. The 90-day extension provision is adopted as proposed.

Cargo-Modified Airplanes

Comments: According to comments, the FAA should create a separate category of inspections for cargo-modified airplanes to require shorter intervals between their baseline inspection programs, unless the FAA takes into account enough precautions during the supplemental type certificate (STC) substantiation process.

FAA Response: The FAA disagrees. The final rule is applicable to those

airplanes modified by cargo conversion STCs. The inspections mandated by the AASA should not be a substitute for routine maintenance. If maintenance is necessary at shorter intervals, the documentation of that maintenance will be a part of the records review.

Definitions

Comments: Commenters state that the FAA should define the term "age-sensitive parts." According to the U.K. Civil Aviation Authority (CAA), other documents, such as AC 25.571–1C, "Damage Tolerance and Fatigue Evaluation of Structure," and AC 91–MA, "Continued Airworthiness of Older Small Transport and Commuter Airplanes; Establishment of Damage-Tolerance-Based Inspections and Procedures," and many aging initiatives do not define clearly the affected structural parts and the various sources of deterioration.

In addition, commenters suggest that the FAA should define more clearly the difference between a "minor" and a "major" repair or structural alteration, for reporting purposes.

FAA Response: The FAA interprets "age-sensitive parts and components" to mean, for the purpose of this rule, those parts and components of the primary structure of an airplane that are susceptible to fatigue or corrosion.

Minor and major repairs, and structural alterations, are already defined in 14 CFR. Additional definitions would be beyond the scope of the AASA and are not addressed in this final rule.

Recordkeeping Requirements

Summary of Proposal/Issue: The FAA proposes in §§ 121.368(d), 129.33(c), 135.422(d) and 135.422a(d) to require a certificate holder to make certain specific airplane records available to the Administrator for review. These records must contain the following information:

- Total years in service of the airplane;
- Total flight hours of the airframe;
- Total flight cycles of the airframe (not required by § 135.422a(d));
- Date of the last inspection and records review;
- Current status of the life-limited parts of the airframe;
- Time since the last overhaul of all structural components required to be overhauled on a specific time basis;
- Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;
- Current status (including the method of compliance) of ADs, the CPCP, and other inspections and procedures required;
- A list of major structural alternations; and
- A report of major structural repairs and the current inspection status of those repairs.

Current Recordkeeping Requirements

Comments: Commenters note most of this information already is required to be maintained by operators under current regulations.

The AIAA states proposed § 121.368(d) duplicates the requirements of current § 121.380. The AIAA further asserts that § 121.380 is more comprehensive than proposed § 121.368(d), particularly regarding ADs. Because most operators of large transport airplanes have developed elaborate maintenance recordkeeping requirements based on § 121.380, the AIAA recommends the FAA revise proposed § 121.368(d) to allow compliance with § 121.380 as an alternative.

FAA Response: Airplane records for air carriers operating under part 121 must be maintained under § 121.380. Proposed § 121.368(d) requires retention of certain records that are not part of current § 121.380 or § 121.707, such as airframe flight cycles, total years in service of the airplane, damage-tolerance inspections, and date of last inspection records review. However, there is no restriction on operators using records maintained under current § 121.380 to comply with part of the requirements of § 121.368.

Part 129 Recordkeeping Requirements

Comments: One commenter states the FAA has never established definitive records and documentation requirements and that part 129 operators use documents developed by "listings companies" and airplane owners. The commenter also notes there is no coordination of guidelines among the various FAA regions, and between ASIs and FAA headquarters. Additionally, the commenter notes most "offshore" operators maintain more complete and detailed records systems than U.S. operators; according to the commenter, a main area of weakness is centered around parts and assemblies that have been overhauled by U.S.-based repair stations, which often fail to deliver proper records with parts.

FAA Response: The FAA has established definitive recordkeeping requirements for persons operating aircraft under part 129. As a signatory to the Convention on International Civil Aviation, the United States requires each commercial operator of a U.S.-registered aircraft to maintain that aircraft in accordance with ICAO Annex 6, part I. Current § 129.14 requires each air carrier and foreign person operating a U.S.-registered aircraft in common carriage to ensure each aircraft is maintained in accordance with a program approved by the Administrator. The FAA approves maintenance programs under § 129.14 that, at a minimum, comply with ICAO Annex 6, part I. Section 129.33 requires records beyond those required by programs under current § 129.14.

Annex 6, part I, Standard 8.8, Records, contains recordkeeping requirements, as follows:

(1) 8.8.1. An operator shall ensure that the following records are kept:

(a) In respect of the entire aeroplane: the total time in service;

(b) In respect of the major components of the aeroplane:

(1) The total time in service;

(2) The date of the last overhaul;

(3) The date of the last inspection;

(c) In respect of those instruments and equipment, the serviceability and operating life of which are determined by their time in service;

(1) Such records of the time in service as are necessary to determine their serviceability or to compute their operating life;

(2) The date of the last inspection.

(2) 8.8.1.1. These records shall be kept for a period of 90 days after the end of the operating life of the unit to which they refer.

Flight Cycles, Landings, and Total Years in Service

Comments: Commenters state that current regulations do not require certificate holders to log flight cycles or landings; therefore, the FAA should specify that tracking this information is a new requirement. Also, the FAA should define "flight cycle" in 14 CFR 1.1 and develop guidelines for establishing a baseline number of airframe flight cycles if an operator has not been maintaining this information.

In addition, commenters suggest that the FAA publish guidelines to be used in cases where a true determination of total years of service for an airplane is not possible.

FAA Response: Under parts 121 and 129, operators track flight cycles to determine the current status of life-limited parts for each airframe, engine, propeller, and appliance. However, the FAA has revised the part 135 inspection and records review rules for airplanes initially certificated with nine or fewer passenger seats by eliminating the requirement to track total flight cycles on the airframe. The FAA has made this change to the rule because the inspection programs for these aircraft

may include service-history-based SSIPs instead of only damage-tolerance-based inspections and procedures. In addition, operators should be able to determine the total number of years in service of an airplane subject to the rule. If the operator cannot determine the total number of years in service of an airplane, the FAA will rely on the date of manufacture of the airplane in question.

Designated Airworthiness Representatives

Summary of Proposal/Issue: Because of the many airplanes that will have to be inspected over a short period of time and the anticipated growth of the aging fleet, the FAA proposed permitting DARs to accomplish the inspections and records reviews required by the rule. Proposed § 183.33(a) expands the authority of DARs to permit them to make findings necessary to determine the continuing effectiveness of airworthiness certificates by conducting the inspections and records reviews required by §§ 121.368, 129.33, 135.422, and 135.422a.

General

Comments: Commenters generally oppose this provision. Several commenters, including the RAA, indicate the FAA is exceeding the intent of the AASA by delegating inspection authority and responsibility from the FAA to DARs.

FAA Response: The FAA disagrees. The AASA requires the inspections and records reviews to be performed by the Administrator. There is, however, no statutory prohibition on the Administrator delegating the responsibilities specified under the AASA. A DAR is a designee of the FAA and a representative of the Administrator and, therefore, is qualified to accomplish the inspections and records reviews required by this final rule.

Qualifications of DARs

Comments: Several commenters assert that delegating to DARs the responsibility of performing inspections and records reviews is a mistake, because DARs are not qualified to conduct the proposed inspections and records reviews. One commenter notes familiarity with the section of 14 CFR pertinent to records documentation and states that there has never been a requirement for a "DAR certificate."

In addition, several commenters contend a PMI assigned to an operator or an operator's own quality control inspectors may be more qualified to conduct the proposed inspections and records reviews than either an ASI or a DAR not familiar with the operator. The RAA asserts requiring an ASI or DAR to conduct the inspections and records reviews is unprecedented and impractical, and would confuse the FAA's oversight responsibilities with that of an air carrier's responsibility for the airworthiness of its airplanes. Another commenter states the FAA should specifically and individually test and establish the capabilities of all DARs who are authorized to perform the inspections and reviews as stated in the proposal. Additionally, one commenter recommends that the FAA permit operator designees or Designated Engineering Representatives (DERs), in addition to DARs, to conduct the inspections and records reviews. Finally, one commenter states that under such a system, air carriers should make available to the FAA any and all records and findings necessary for the FAA to evaluate an airplane.

FAA Response: While the AASA allows properly qualified persons to act on behalf of the FAA to conduct inspections and records reviews, the FAA acknowledges that many DARs currently may not be properly trained or qualified to conduct the required inspections and records reviews. The FAA will develop a training program and guidance material to enable DARs to properly accomplish the requirements of this rule. For this reason, initial inspections and records reviews are not required to be completed until a number of years after the effective date of the rule. After the FAA develops the training program and guidance material, ASIs and DARs will be trained and qualified to conduct the inspections and records reviews required by this rule.

Regarding the commenter's reference to air carrier quality control inspectors, they are not representatives of the FAA and, therefore, would not be eligible to conduct the required inspections and records reviews under the AASA.

However, an operator could facilitate the application of a member of its staff to become a DAR. There is an established procedure on how DARs are appointed, and the FAA does not foresee using a test to make this assessment. The FAA is unsure what the commenter means by the term "operator designees." However, DARs are the only designees allowed to conduct records reviews. Performing such reviews is not within the scope of a DER's delegation.

In response to the commenter's assertion that there has never been a requirement for a "DAR certificate," the FAA notes that a DAR is issued a Certificate of Authority and a Certificate of Designation in accordance with 14 CFR 183.13.

Lack of FAA Resources

Comments: Many commenters question the FAA's assumptions about its ability to conduct inspections and records reviews. The ATA states its members are concerned that the ASI force, even augmented by DARs, would be insufficient to support the proposed inspections and reviews. According to ATA members, airlines currently find it difficult to hire qualified aircraft maintenance employees and predict a shortage in the near future of qualified ASIs and DARs. These members believe this situation would result in inexperienced ASIs and DARs conducting the inspections and reviews, and further delays in returning airplanes to service.

FAA Response: The FAA disagrees. The FAA believes that there will be enough ASIs and DARs to accomplish needed inspections and records reviews and has therefore adopted a rule that permits the initial inspections and records reviews to be completed a number of years after the effective date of the rule. As previously stated, the FAA will train a group of inspectors and DARs to perform the inspections and records reviews required by this final rule and subsequently monitor the performance of those inspectors and DARs.

Supplemental Damage-Tolerance-Based Inspections and Procedures

Summary of Proposal/Issue: Supplemental damage-tolerance-based inspections and procedures refer to an "inspection program that specifies the procedures, thresholds, and repeat intervals that have been developed using damage tolerance principles." Damage-tolerance-based inspections and procedures are developed by a type certificate holder or operator based on an engineering evaluation of likely sites where damage could occur, considering expected stress levels, material characteristics, and projected crack growth rates. The damage-tolerance-based inspections and procedures specified in the proposal can be developed using one of the following methods:

- Damage-tolerance-based inspections and procedures that comply with the damage tolerance provisions for metallic structure listed in 14 CFR 23.573, amendment 23–45, or subsequent amendments;
- Damage-tolerance-based inspections and procedures that comply with 14 CFR 25.571, amendment 25–45, or subsequent amendments;

• Advisory Circular (AC) 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," or AC 91–56A, "Continuing Structural Integrity Program for Large Transport Category Airplanes"; or

• Any other method the Administrator finds complies with the principles of damage tolerance.

Damage-tolerance-based inspections and procedures may be approved through an amended type certificate or STC process for airplanes certificated under a type certificate and associated amendments dated before those that require damage tolerance as part of airplane type design. Damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a Letter of Approval issued by the FAA Aircraft Certification Office (ACO) or office of the Small Airplane Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

Also, for some airplanes, the FAA has approved major structural modifications under an STC. The original type certificate holder may not have sufficient technical data pertinent to these modifications to assist the airplane operator in conducting a damage tolerance assessment of the modification. In these situations, the FAA expects the operator to work with the STC holder to develop damage-tolerance-based inspections and procedures for that modification. If necessary, as an alternative, an operator may conduct its own damage tolerance assessments using competent engineering personnel, inspection findings from the current maintenance program, the airplane's design database, and model fleet experience.

General

Comments: One operator asserts the proposal would result in the grounding of approximately 62 percent of the commuter fleet.

FAA Response: The commenter has provided no data to substantiate its claim.

Alternatives to Damage Tolerance

Comments: An Alaskan operator is not opposed to a SSIP that would be implemented in a cost-effective manner through incorporation into the operator's AAIP and developed by either the FAA or the "manufacturer." The commenter states the FAA and "manufacturers" have the competent engineering staff and access to the relevant design information, while the operators do not.

The RAA notes the FAA fails to reference in the NPRM any technical basis for rejecting the alternative inspection program for smaller airplanes (submitted by the ARAC Small Transport/Commuter Airplane Airworthiness Assurance Working Group (SAAWG)). According to the RAA, damage tolerance analysis may be the most realistic analysis for certain principal structural elements but not necessarily all principal structural elements.

FAA Response: The FAA appreciates the significant efforts of the SAAWG to explore alternative inspection programs for small- and commuter-sized aircraft. Based on the comments received, the FAA has changed the regulation to require damage-tolerance-based SSIPs for affected airplanes initially certificated with 10 or more passenger seats and service-history-based SSIPs for airplanes initially certificated with 9 or fewer passenger seats. Acceptable means of compliance for damage-tolerance-based SSIPs are contained in AC 91–56 and AC 91–56A, and acceptable means of compliance for service-history-based SSIPs are contained in AC 91–60. The FAA is requesting comments on draft AC 91–56B and AC 91–60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule.

Nonmandated Supplemental Structural Inspection Programs

Comments: The RAA states that proposed provisions to allow certain airplanes (with AD-mandated SSIPs) to operate until December 20, 2010, without damage tolerance programs discriminates against regional airplane operators with equivalent structural inspection programs not mandated by SSIP ADs.

FAA Response: In this final rule, the FAA allows airplanes initially certificated with 9 or fewer passenger seats to have service-history-based SSIPs that will be valid indefinitely. For those airplanes that were initially certificated with 10 or more passenger seats, the FAA expects damage-tolerance-based SSIPs for these aircraft to be completed within 4 years after the effective date of the rule. However, the FAA is delaying implementation of the requirement for damage-tolerance-based inspections with respect to those airplanes with AD-mandated non-damage-tolerance-based SSIPs until December 20, 2010.

Potentially Mandated Supplemental Structural Inspection Programs

Comments: The RAA notes there may be airplane fleet types that are in the process of qualifying for an approved SSIP AD program but that may not be included in the final rule because the program was not complete at the time of publication of the NPRM. According to the RAA, several regional/commuter original equipment manufacturers (OEMs) report that they have submitted "SIPs" to the FAA as early as 1990, but the FAA has not adopted the ADs to mandate changes to the affected operators' maintenance programs.

The RAA further asserts most airplanes with SSIPs are considerably older than the regional airplane types cited in the NPRM as having damage-tolerance-based "maintenance inspection programs." Although the RAA appreciates the value of SSIPs, the RAA notes that the service experience for demonstrating structural integrity of the affected regional/commuter airplane types without SSIPs has been excellent.

FAA Response: The commenter did not distinguish between damage-tolerance-based SSIPs and service-history-based SSIPs. Those airplanes that have service-history-based SSIPs implemented through ADs will have until December 20, 2010, before they will have to comply with the damage tolerance requirements of this final rule. Those airplanes that do not have a service-history-based SSIP will have to comply with the damage tolerance requirements within 4 years after the effective date of this final rule.

Approval of Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: Regarding the FAA's proposal that airplane damage tolerance requirements may be approved through an amended or supplemental type certificate when necessary, one type certificate holder questions whether it is the FAA's intent to require type certificate holders to submit applications (FAA form 8110–12) for a type certificate amendment. If so, the type certificate holder warns that ACOs may become overwhelmed, which is a workload situation the FAA failed to consider in its cost-benefit analysis. The type certificate holder also questions whether it is the FAA's intent to modify the type certificate data sheet as a result of incremental changes to type design (as per the definition of an amended type certificate) or as the result of an STC.

FAA Response: The FAA disagrees. The FAA understands that there are many ways to accomplish approved damage-tolerance-based or service-history-based SSIPs, such as amended type certificates, STCs, letters of approval issued by the FAA, or service bulletins issued by the type certificate

holder and approved by the FAA. However, each operator is ultimately responsible for ensuring each of its airplanes has the appropriate inspection programs for the baseline airplane structure, which is the airplane structure as designed by the original type certificate holder, and each specific major repair, modification, and alteration to the baseline structure.

Regarding the comment on FAA workload, the FAA has considered the effects of the rule on the FAA workload and has concluded that the workload will be within acceptable levels during the implementation period.

Letter of Approval

Comments: The NPRM includes a provision that damage-tolerance-based inspections and procedures for certain older airplanes also may be approved by a letter of approval issued by the FAA. The type certificate holder questions whether this process is intended to address damage-tolerance-based inspections and procedures prepared by someone other than the type certificate holder. Also, the type certificate holder requests the FAA clarify whether the letter would be placed in the airworthiness limitations section of an airplane's maintenance manual, in the Airplane Flight Manual, in logbooks, or in another procedural manual.

FAA Response: Inspection programs other than those developed by the airplane type certificate holder will be approved through a letter of approval by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for that airplane's type certificate. The inspection programs required by this rule are for specific operations under part 121, 129, or 135 only and are to be added to the operator's maintenance or inspection program. Airplanes not being operated under the conditions specified in this rulemaking are not required to have these inspection programs. Adding such programs to the airworthiness limitations section of an airplane's maintenance manual is not appropriate because it would require that all operators comply with the program, not just those operators identified in this rulemaking.

Structural Assessment of Major Repairs, Alterations, and Modifications

Comments: Transport Canada states the proposal is unclear about how an STC holder is required to support its designs as far as a structural assessment is concerned. Transport Canada notes major modifications/alterations (including major repairs) may have resulted in a significant alteration to the design, affecting the usage spectrum associated with the STC. According to the commenter, this may result in an undue burden on the operator who may need to perform a damage-tolerance-based assessment without assistance from the type certificate holder. Transport Canada states it is inappropriate to require a type certificate holder to provide assistance in such cases. Transport Canada recommends the FAA provide procedures to allow an operator to implement a supplemental integrity program for its airplanes when the type certificate holder is not able to do so because of an STC or major repair.

FAA Response: This rulemaking states that no operator may operate an airplane after 4 years after the effective date of the rule unless the maintenance or inspection program for that airplane includes damage-tolerance-based or service-history-based SSIPs, as applicable. This program applies to the baseline structure of the airplane, which is that structure designed by the original type certificate holder, as well as any existing or future major repairs, major alterations, or modifications. The exceptions to the 4-year requirement are listed in §§ 121.370a, 129.16, and 135.168.

Modifications to the baseline structure can be accomplished by an STC or by the type certificate holder who has certificated a major type design change. The preamble to the NPRM states that the operators should work with STC holders and type certificate holders to accomplish a damage tolerance assessment of the modified structure, but in the event that the STC holder or type certificate holder is not able or willing to help the operator, then the operator will be responsible for accomplishing the damage tolerance assessment. As stated in the preamble to the NPRM, the operator may (1) accomplish the assessment if it has the capability or (2) contract the appropriate persons to accomplish the assessment. The FAA recognizes that this may be a burden on the operator, but the AASA requires the Administrator to ensure the continuing airworthiness of aging airplanes. The FAA has determined that damage-tolerance-based and service-history-based SSIPs are the best way to achieve that goal.

The FAA also has revised AC 91–56A, which provides detailed guidance to type certificate holders and operators regarding the accomplishment of damage tolerance assessments of repaired, altered, or modified structures.

Compliance Alternatives

Comments: Commenters recommend various alternatives to the proposed regulations on damage-tolerance-based SSIPs. The ATA states incorporation of mandated programs, including "supplemental structural inspection document programs," CPCPs, repair assessment programs, and compliance with air carrier maintenance programs, provides the means necessary to comply with the proposed rule. Other commenters agree with the ATA's position.

FAA Response: The FAA agrees in part and has revised the rule to permit the use of service-history-based SSIPS for certain aircraft. The programs the commenters describe only satisfy part of the requirements of this final rule. SSIPs only address certain portions of an airplane's structure while the damage-tolerance-based or service-history-based SSIPs specified by this rule address the entire primary structure of an airplane, including the baseline structure, and major repairs, major alterations, and modifications to baseline structure.

The "Repair Assessment for Pressurized Fuselages" final rule (65 FR 24108, April 25, 2000) established new §§ 121.370 and 129.32. These sections require a repair assessment program for many of the airplanes also affected by this final rule. These include the Airbus A300, excluding the –600 series; Boeing 707, 720, 727, 737, and 747; BAe BAC 1–11; Fokker F28; and Lockheed L–1011; and McDonnell Douglas DC–8, DC–9/MD–80, and DC–10. However, §§ 121.370 and 129.32 address only fuselage pressure boundary repairs (fuselage skin, door skin, and bulkhead webs).

Meeting the requirements of §§ 121.370 and 129.32 is an acceptable means of compliance with this final rule to the extent that these requirements address repairs to the fuselage pressure boundary for the above-noted airplanes. Operators will have to accomplish additional work to fully comply with this rule. They must establish damage-tolerance-based SSIPs or service-history-based SSIPs, as applicable, for major repairs, major alterations, and modifications to structures not affected by the repair assessment program, such as fuselage frames and longerons, and wing and empennage structures.

Alternatives to Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: One foreign aircraft type certificate holder states that the 3- to 10-year compliance thresholds in the NPRM require further detail regarding

the intended program before they can be implemented. The type certificate holder specifically would like the FAA to further discuss alternate means of complying with this proposed rule. An FAA-approved repair station specializing in the major repair, alteration, and heavy maintenance of deHavilland DHC–6 airplanes also states the required implementation of existing proven type certificate holder inspections and procedures is a more appropriate response to the airworthiness concerns presented by the FAA than the implementation of new, costly programs. Although the commenter admits damage-tolerance-based "inspections and procedures" may prove useful in the successful maintenance of DHC–6 airplanes, the commenter states that current safe-life-based component replacement requirements and inspections have proven successful for over 30 years and should be retained.

The GAMA asserts that a regime of replacing components and parts when they reach their design service lives is one way to ensure structural integrity. Other commenters support the GAMA position, noting a damage-tolerance-based SSIP alone is too restrictive. According to the GAMA, these regimes should be appropriate for particular structural configurations and should employ a schedule of supplemental inspections, as necessary. The GAMA states reliance on frequent, repetitive inspection under a damage-tolerance-based approach would allow for greater human error. Additionally, the GAMA disagrees with the FAA's implied requirement that "manufacturers" must be responsible for developing or assisting operators in the development of damage-tolerance-based inspections and procedures. Also, the GAMA notes several "manufacturers" already have developed and made available appropriate structural integrity inspection programs.

Transport Canada agrees with the GAMA position and states a structural integrity inspection program must include mandatory component replacement (safe life), as well as a mandatory inspection program with a CPCP to ensure the fatigue inspections and part replacement remains valid. According to Transport Canada, including a component replacement (safe life) program is important for the following reasons:

- A safe life program may be required to avoid the risks associated with structural degradation caused by a form of widespread fatigue damage known as multiple site damage (MSD). According to Transport Canada, failure to detect MSD exposes an airframe to a risk of sudden crack coalescence, possibly leading to total structural failure without adequate warning. To ensure structural integrity, Transport Canada asserts a structure that is at risk for MSD must be replaced or repaired at the appropriate interval. According to Transport Canada, an inspection program may not alleviate the risk that there may be cracks too small to be detected reliably. Transport Canada lists several methodologies, including fracture mechanics (crack-growth) techniques and tear-down techniques, that could be used to determine the appropriate component/part replacement (safe life) interval.
- For aging airplanes, particularly in the small commuter class (for example, CAR 3 aircraft, 14 CFR part 23 aircraft, and SFAR 41 aircraft), component design was not influenced by damage tolerance inspection principles. As such, it may be impractical, in an airworthiness sense, to apply the damage tolerance requirements in a retroactive manner. Transport Canada notes the designers of these airplanes may not have considered the inspectability of their designs and may have designed components to be replaced to ensure structural integrity.

The Civil Aviation Safety Authority of Australia (CASA) supports damage-tolerance-based inspections and procedures and recommends changing the phrase " * * * unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures" to " * * * unless the maintenance program for that airplane includes inspections or other procedures developed in accordance with §§ 23.571 to 23.574, or § 25.571, as applicable" for the following reasons:

- *Consistency with the design rules*—While operational rules may match current design rules, they should not exceed them as proposed in the NPRM, because the NPRM is more restrictive. Part 23 allows three fatigue control options while the NPRM allows only damage-tolerance-based inspections.
- *To allow more than one method of analysis*—For light airplanes, this change would allow a conventional fatigue evaluation as well as a crack-growth analysis to determine inspection thresholds and life limits for all structures, not just fail-safe structures.
- *To allow more than one method of control*—There are two ways to control fatigue: safety by inspection and safety by retirement. Neither method is superior and each has its place. Retirement is a practical alternative to inspection and Australian operators routinely replace wing spar lower caps on small twin-engine airplanes. This procedure costs less than an engine overhaul and is required less often. Often operators choose to replace rather than inspect. The CASA suggests the FAA allow and promote replacement and modification in accordance with its policy to avoid relying on continuing inspection for in-service cracking.
- *To reduce the cost of compliance*—Consistency with the design rules would allow immediate acceptance of airplanes whose maintenance programs have already complied with the part 23 fatigue rules in Australia, the United Kingdom, and (to a lesser extent) the United States.
- *To avoid duplication in regulations and guidance material.*

FAA Response: The FAA notes that the method of compliance with the rule is currently outlined in AC 91–56A and AC 91–60. The FAA is requesting comments on draft AC 91–56B and AC 91–60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule. For each airplane initially certificated with 10 or more passenger seats, the inspection program will be based on damage tolerance. Many of the new regional commuter airplanes have already been certificated to damage tolerance requirements.

Operators are ultimately responsible for ensuring a damage-tolerance-based SSIP is developed for airplanes initially certificated with 10 or more passenger seats. The FAA encourages airplane type certificate holders to participate in this development. Even if certain airplanes were not initially certificated to a damage tolerance requirement, completing a damage-tolerance-based SSIP is still possible on the airplanes' structures.

In response to the CASA comments, the FAA has deliberately made changes to parts 121, 129, and 135 to address the continuing airworthiness of aging airplanes. This method of compliance is consistent with the AASA. The CASA's comment with reference to the certification requirements of part 23 are appropriately noted, but any changes to part 23 would only affect new designs. Procedures on how to develop a damage-tolerance-based SSIP are described in AC 91–56A.

As discussed earlier in this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed requirement of damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

Mandating Damage-Tolerance-Based Supplemental Structural Inspection Programs Through Airworthiness Directives

Comments: Several commenters state that the implementation of damage-tolerance-based SSIPs on any additional airplane types should be addressed in ADs for those airplane types.

FAA Response: The FAA disagrees. The inspection programs required by this rule are for specific operations under part 121, 129, or 135 only and are to be added to the operator's maintenance or inspection program. Adding such programs through an AD would require that all operators comply, not just those operators identified in this rulemaking. The damage-tolerance-based SSIP must still be approved by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for each affected airplane's type certificate and the final rule has been revised to reflect this approval requirement.

Damage-Tolerance-Based Supplemental Structural Inspection Programs for Small Transport Airplanes

Comments: According to the ADOT&PF, a damage-tolerance-based "inspection program" is not an appropriate inspection program for smaller airplanes and components that were not designed to have damage-tolerance-based inspections. Many smaller transport category airplanes are not manufactured to enable applicable components to be reconfigured for damage-tolerance-based inspections. The commenter believes real-world experience is a better indicator of mechanical failure; neither accident records nor Structural Difficulty Reports support a mandatory damage-tolerance-based "program" for smaller airplanes.

Also, the ADOT&PF notes that developing a damage-tolerance-based "inspection program" requires engineering data for the affected components. These data are not available for most airframes and components; therefore, each user of each type of airframe would be required to reverse engineer the components at great expense. According to the commenter, the only cost-effective way to establish a damage-tolerance-based "inspection program" is for the FAA or the "manufacturer" to develop such a program for only those airframe components compatible with such a retrofit program and to make the data available to users.

The commenter further states retrofitting damage-tolerance-based "programs" may introduce risks to continued airworthiness caused by inspection access issues; that is, inspecting can result in maintenance problems. Additionally, the commenter notes that operators of aging airplanes eventually phase out older airplanes because the maintenance costs for these airplanes increase as the airplane ages; therefore, focusing on aging airplane inspection may not be necessary.

FAA Response: In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

Applicability to Large Transport Category Airplanes

Comments: One commenter states proposed § 121.370a(a) could be misinterpreted to apply equally to large transport category airplanes. To eliminate confusion, the commenter recommends the FAA alter this paragraph to read as follows:

> Except as otherwise provided in this section, no certificate holder may operate an airplane listed in appendix [N] under this part after [insert date 4 years after the effective date of the rule] unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

FAA Response: The FAA disagrees. Except for airplanes operated by a certificate holder between any point in Alaska and another point in Alaska, § 121.370a is applicable to all airplanes that operate under part 121, including large transport category airplanes.

Part 121 Proposed Changes

Comments: The RAA recommends the FAA remove all part 121 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based inspection program or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 121.368(b).

The GAMA recommends the FAA revise § 121.370a(a), (b), and (c) by allowing the use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to the proposed damage-tolerance-based SSIP.

Transport Canada recommends the FAA revise § 121.370a to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

FAA Response: The FAA disagrees. All airplanes operating under part 121 must have a maintenance program based on damage tolerance regardless of the passenger seating capacity. Many of those airplanes were designed with multiple load path fail-safe or multiple load path crack-arrest design features; therefore, the inspection thresholds can be based on a conventional fatigue analysis and tests with an appropriate scatter factor based on AC 25.571–1C.

Compliance Timeframe for Establishing Damage-Tolerance-Based Supplemental Structural Inspection Programs

Comments: According to the ATA, the requirement in proposed § 121.370a(a) to establish a damage-tolerance-based "inspection program" within 4 years of the effective date of the rule is unreasonable because damage-tolerance-based "inspections" usually are imposed at a cycle threshold greater than 75 percent of the design-life goal. For example, an anomalous result of the proposal would be for a Boeing 737–800. The Boeing 737–800 is not fully damage tolerance designed and would be required to have a complete SSID within 4 years even though it has been in service only 2 years. The paragraph should be limited to airplanes that do not otherwise have FAA-mandated aging programs, or it could state that such airplanes already meet the paragraph's requirements. One foreign aircraft type certificate holder asks the FAA to reconsider the proposed compliance dates for affected airplanes in proposed § 121.370a.

FAA Response: The FAA disagrees. For any airplane certificated before the effective date of the rule, the operators must have a damage-tolerance-based SSIP in place within 4 years from the effective date of the rule. For an airplane certificated after the effective date of the rule by an amended type certificate that preceded Amendment 25–45 (43 FR 46238 published in 1978), the FAA has revised §§ 121.370a and 129.16 to allow operators to have a damage-tolerance-based SSIP in place within 4 years of the date of the amended type certification. Although this rule specifies dates when a damage-tolerance-based SSIP will be required, the actual inspection thresholds may occur much later. The FAA believes the times specified in this final rule are adequate.

Proposed Changes to §§ 121.135 and 121.369

Comments: One operator states that § 121.135, Manual content, and/or § 121.369, Manual requirements, can be revised to include the proposed § 121.370a damage-tolerance-based "inspection requirements."

FAA Response: The FAA disagrees. The requirement for a damage-tolerance-based SSIP is independent of any requirement for inclusion in an operator's manual. It has been added to § 121.370a to keep all the requirements for aging airplane supplemental inspections in part 121 in one section.

Part 129 Proposed Changes

Comments: The RAA recommends the FAA remove all part 129 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based "inspection program" or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 129.33(b).

The GAMA recommends that the FAA revise § 129.16(a), (b), (c), and (d) by allowing the use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to a proposed damage-tolerance-based "inspection program." Additionally, the GAMA notes that the preamble to the NPRM refers to requiring damage-tolerance-based "inspections and procedures" earlier than December 20, 2010, for airplanes with nine or fewer passenger seats operated under part 129. The GAMA states that the preamble does not properly reflect the proposed requirement in § 129.16(b).

Transport Canada recommends the FAA revise § 129.16 to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

FAA Response: In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

A large number of airplanes operating in part 129 were designed with multiple load path fail-safe or multiple load path crack-arrest design features; therefore, the inspection thresholds can be based on a conventional fatigue analysis and tests with an appropriate scatter factor based on AC 25.571–1C.

Airplanes initially certificated with nine or fewer passenger seats will not require a service-history-based SSIP until December 20, 2010, unless the airplane is listed in appendix B to part 129. For those airplanes, a schedule based on the design-life goal is shown in § 129.16(d).

Section 129.16(a)

Comments: One commenter states proposed § 129.16(a) could be misinterpreted to apply equally to large transport category airplanes. Similar to its comment regarding § 121.370a, the commenter recommends the FAA reference appendix B to part 129 in § 129.16(a).

FAA Response: The FAA disagrees. Section 129.16(a) is applicable to all U.S.-registered multiengine airplanes that operate under part 129, which includes large transport category airplanes.

The FAA proposed to revise § 129.1(b) to specify the applicability of the aging airplane requirements to some operations conducted under part 129. In this regard, the FAA inadvertently failed to cite § 129.32 and proposed § 129.33 in proposed § 129.1(b). This final rule corrects that omission.

In addition, the FAA has revised the rest of § 129.1 to make it easier to read. The paragraph (a) reference to the "exception" in paragraph (b) was not accurate, because the requirements referenced in paragraph (b) add to those in paragraph (a), as opposed to conflicting with them. Thus, the FAA has deleted from paragraph (a) "except as provided in paragraph (b) of this section." The FAA has added headings to paragraphs (a) and (b), and has placed the definition of "foreign person" and "years in service" in a new paragraph (c). Paragraph (b) now specifically includes the applicability of §§ 129.14, 129.16, 129.20, 129.32, and 129.33 to operations of U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

The FAA has not made any substantive changes to part 129, other than adding the aging airplane requirements and specifying that the requirements would only apply to U.S. multiengine airplanes operated under the part.

Part 135 Proposed Changes

Comments: The RAA recommends the FAA remove all part 135 provisions in the NPRM. The RAA asks that the FAA replace them with the requirement that each certificate holder incorporate into its maintenance program either a damage-tolerance-based "inspection program" or a structural integrity inspection program for each airplane operated by that certificate holder. The inspection program should require approval by the FAA ACO having cognizance over the type certificate for the affected airplane. According to the RAA, compliance should be required under the guidelines specified in proposed § 135.422(b).

The GAMA recommends the FAA revise § 135.168(a), (b), (c), and (d) by allowing for use of an FAA-approved structural integrity inspection program based on fatigue analysis and fatigue tests, in addition to a proposed damage-tolerance-based "inspection program." Additionally, the GAMA notes the preamble to the NPRM refers to requiring damage-tolerance-based "inspections and procedures" sooner than December 20, 2010, for airplanes with nine or fewer passenger seats operated under part 135. The GAMA states the preamble does not properly reflect the proposed requirement in § 135.168(b).

Transport Canada recommends the FAA revise § 135.168 to include and explicitly state that component replacement (safe life) programs are acceptable as a means of ensuring continued structural integrity as an airframe ages.

Although generally supportive of the proposal, the CASA is concerned about the practicalities and details of the proposed rule, particularly for light airplanes operating under part 135.

The U.K. CAA notes that the NPRM states that it "does not propose requirements for on-demand passenger or cargo carrying operations under part 135." However, the NPRM does introduce a new § 135.168. The CAA questions how the distinction would be made so that on-demand operations are exempt from the rule.

FAA Response: The FAA disagrees. In response to the U.K. CAA's comment, this rule is applicable to operators conducting scheduled operations as defined in § 119.3. The three requirements for scheduled operations include: five round trips per week, one route between two or more points, and the publication of a schedule. On-demand or cargo-only operations conducted under part 135 are not affected by this rule.

In this final rule, the FAA requires a service-history-based SSIP for airplanes initially certificated with 9 or fewer passenger seats, but retains the proposed damage-tolerance-based SSIPs for airplanes initially certificated with 10 or more passenger seats.

Proposed Appendixes

Summary of Proposal/Issue: To assist in implementing the proposed rule, the FAA included appendixes that list the FAA-established design-life goals of several airplane types commonly used in scheduled service. Proposed appendix N to part 121 lists the airplanes and design-life goals referenced in proposed § 121.370a. Proposed appendix B to part 129 lists the airplanes and design-life goals referenced in proposed § 129.16. Proposed appendix G to part 135 lists the airplanes and design-life goals referenced in proposed § 135.168.

General

Comments: The RAA states the proposed appendixes would conflict with other FAA-approved certification documents unless they are updated continually. The RAA notes several of the design-life goals provided are inaccurate and, once adopted, would require constant revision. According to the RAA, several foreign-based airframe OEMs contend that the proposed fatigue lives for their fleet types are inaccurate and that extensions have been approved by foreign regulatory authorities. Also, the RAA states the design-life goals do not account for the differences in design-life goals that exist between the various airplane structures (for example, wings, fuselage, and vertical and horizontal stabilizers).

FAA Response: This rulemaking action is intended to ensure the continued airworthiness of the affected airplanes by requiring SSIPs based on damage tolerance or service history. In response to the RAA's comment, the FAA has published the design-life goals of certain airplanes in the appendixes of the final rule to provide a quick reference to operators. The FAA has not imposed any new requirements through these appendixes. However, as a result of comments received, the FAA has corrected the appendixes to reflect current FAA-approved design-life goals. The FAA has no intention to further delay implementation of the damage-tolerance-based SSIPs.

For airplanes initially certificated with nine or fewer passenger seats, the FAA originally proposed an inspection program that includes damage-tolerance-based SSIPs. In response to the comments received, this final rule adds an exception for multiengine airplanes initially certificated with nine or fewer passenger seats and conducting scheduled operations under part 129 or part 135. Those airplanes can have a service-history-based SSIP instead of a damage-tolerance-based SSIP.

Airplanes operating under part 121 must have damage-tolerance-based SSIPs 4 years after the effective date of the rule. For those airplanes listed in the appendix, from 4 years after the effective date of the rule, the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. As noted in the preamble to the proposal, the design-life goals listed are a result of information from the type certificate holder, the airworthiness authorities of other countries, or the FAA.

Appendix N to Part 121

Comments: Commenters provide specific comments regarding proposed appendix N to part 121. The RAA states that the information provided in appendix N to part 121 can be obtained from other sources and is therefore redundant. Another commenter believes the FAA should include in appendix N any airplane that has design-life goals established for flight cycles and afford them the same opportunities to develop "SIPs" based on these goals. According to the commenter, the FAA also should consider providing another appendix to part 121 listing those airplanes that have existing FAA-approved "SIPs" that meet the proposed requirements.

FAA Response: The FAA disagrees. Appendix N is necessary to determine when damage-tolerance-based SSIPs are required for airplanes with design-life goals; appendix N lists those design-life goals. The rest of the airplanes operating under part 121 must comply within 4 years after the effective date of the rule.

The FAA did not want to provide another appendix to part 121 because a list of SSIPs mandated through specific ADs may have to be revised. If these ADs were listed in such an appendix, the FAA would have to revise the appendix through rulemaking action each time a SSIP was changed.

Appendix B to Part 129

Comments: Regarding proposed appendix B to part 129, the RAA states the information provided in the appendix can be obtained from other sources and is therefore redundant.

FAA Response: Appendix B is necessary to determine when damage-tolerance-based SSIPs are required for airplanes with design-life goals.

Appendix G to Part 135

Comments: Regarding proposed appendix G to part 135, the RAA states the information provided in appendix G can be obtained from other sources and is therefore redundant.

Another commenter operating in Alaska states there is no technical basis for including some airplanes in appendix G and not others. The commenter cites the example of the Piper Seneca, which could operate until 2010 without a "SIP" even though it may be older and have "higher time" than a Piper PA31–350 that would have to comply 6 years earlier. This results in arbitrary and capricious rules. Operators who are fortunate, whose airplanes were the subject of "non-damage-tolerance-based ADs" before the rule change, also could operate until 2010.

According to the commenter, the FAA should consider allowing all nonpressurized airplanes of nine or fewer passenger seats to operate without a "SIP" until 2010 and reevaluate these airplanes based on the experience with larger pressurized airplanes. The NPRM is not clear about whether compliance would be delayed for airplanes with nine or fewer passenger seats. Such a change would dramatically reduce the burden to small businesses and would be a negligible change to the rule.

FAA Response: The FAA agrees in part. Appendix G is necessary to determine when damage-tolerance-based or service-history-based SSIPs are required for airplanes with design-life goals.

In response to the commenter's suggestion that the FAA delay compliance with this final rule for airplanes initially certificated with nine or fewer passenger seats, the FAA agrees and has amended proposed § 135.168 to reflect this change.

BAe Jetstream Model 3101 or 3201

Comments: British Aerospace (Operations) Limited states that the design-life goals listed in this proposal for the Jetstream 3101 and 3201 do not represent current figures published in approved aircraft maintenance documentation. The commenter indicates that the U.K. CAA approved revised figures in 1997. According to the commenter, the revised Jetstream 3101 lives of the components of the airframe are as follows: (1) 45,750 landings for the wing, (2) 46,200 landings for the fuselage, (3) 60,360 landings for the vertical stabilizer, and (4) 45,000 landings for the horizontal stabilizer. The revised Jetstream 3201 lives of the components of the airframe are as follows: (1) 30,000 landings for the

wing, (2) 46,200 landings for the fuselage, (3) 55,500 landings for the vertical stabilizer, and (4) 40,000 landings for the horizontal stabilizer.

FAA Response: The FAA agrees. Using correlation between flight hours and landings specified in notice no. 99–02, the FAA has revised appendix N to part 121, appendix B to part 129, and appendix G to part 135 to reflect the new design-life goals for the Jetstream 3101. The Jetstream 3201's design-life goal remains at 30,000 hours.

Beech 1900 (Any Model)

Comments: The Raytheon Aircraft Company (Raytheon) states the wings on Beech 1900 aircraft use a damage tolerance approach based on test data to define an inspection program. The fuselage uses a fail-safe approach based on test data to define an inspection program. Also, the empennage currently is a safe-life item based on analysis only. Raytheon recommends the FAA include this information in the proposal.

FAA Response: The FAA recognizes that Beechcraft uses a damage tolerance approach based on test data to define an inspection program for the Beech 1900 wings. The FAA also recognizes that the fuselage uses test data to define an inspection program, and the empennage is a safe-life item based on analysis only.

The FAA finds that an inspection program based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for the Beech 1900 within the timeframes listed in this rulemaking.

Beech 300, 300LW, B300, or B300C

Comments: Raytheon states the wings on these airplanes use a damage tolerance approach based on test data to define an inspection program.

The fuselage uses a fail-safe approach based on test data to define an inspection program. Also, the empennage currently is a safe life item based on analysis only. Raytheon recommends the FAA include this information in the final rule.

FAA Response: The FAA recognizes that Raytheon uses a damage tolerance approach based on test data to define an inspection program for the Beech 300 empennage. The FAA also recognizes that the fuselage uses test data to define an inspection program.

The FAA finds that a SSIP based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for the Beech 300 within the timeframes listed in this rulemaking.

Beech 99 (Any Model)

Comments: Raytheon recommends the FAA note in the proposal that currently there is a Continued Airworthiness Program in place for Beech 99 models, based on full-scale tests and field experience. According to Raytheon, this program details inspections of all major components: wing, fuselage, and empennage. Raytheon states the current 46,000-hour life limit is based on analysis supported by test data.

FAA Response: The FAA acknowledges that Raytheon has a continued airworthiness program in place for the Beech 99 models based on full-scale tests and field experience. The FAA also acknowledges that the current 46,000 hour limit is based on analysis supported by test data.

The FAA finds that an inspection program based solely on test data is not consistent with the requirements of the final rule. A damage-tolerance-based SSIP still needs to be developed for all Beech 99 models within the timeframes listed in this rulemaking.

Cessna 402

Comments: One operator states that DOT/FAA/AR–98/66 (Supplementation Inspection Document Development Program for the Cessna Model 402) and Cessna Aircraft Company Structures Report No. S–402–76–2 (Model No. 402) do not support design-life goals for the Cessna 402C (7,700 hours for the wing structure was cited in the proposal). The commenter notes all tests were conducted in accordance with fail-safe requirements in § 23.572, Metallic wing, empennage, and associated structures.

An Alaskan operator states that AD 79–10–15, "Cracks in Wing Structure," on the Cessna 402 has been very successful in addressing aging airplane concerns. However, while the NPRM proposes inspections every 5,000 hours, the AD requires inspections every 400 hours. This demonstrates that the "one-size-fits-all" approach does not address the safety needs of aging airplanes. According to the commenter, inspection of such a critical primary structure can and should be undertaken much more frequently than every 5,000 hours, especially for airplanes with fewer than 10 seats. For example, the commenter's fleet of Chieftains operates under an approved airworthiness inspection program that ensures all critical structures are inspected every 360 hours.

FAA Response: The FAA is requiring service-history-based SSIPs for each multiengine airplane initially certificated with nine or fewer passenger seats. However, Cessna has developed a damage-tolerance-based SSIP, and the FAA strongly encourages operators to incorporate this program into their existing inspection programs.

The Cessna-developed damage-tolerance-based SSIP provides sufficient continuing airworthiness information to meet the intent of a service-history-based SSIP and can be used to comply with that requirement.

The FAA has corrected the design-life goal for the Cessna 402 in appendix B to part 129 to 7,700 hours, which is based on the design-life goals established by U.K. and Australian airworthiness authorities. With respect to the commenter's reference to a 5,000-hour repetitive inspection interval number, it is unclear where the commenter obtained this number, which is not applicable to the Cessna 402 SID program.

This final rule includes the requirement for service-history-based SSIPs for airplanes initially certificated with nine or fewer passenger seats. Guidance for complying with a service-history-based SSIP will be provided in an AC. The FAA is requesting comments on draft AC 91–56B and AC 91-60A. Once these ACs become final, they too will be considered an acceptable means of compliance with this rule. Based on service experience, different inspection thresholds and intervals may be required for different aircraft models.

deHavilland DHC–6 (Any Model)

Comments: Bombardier Aerospace (Bombardier) notes that the deHavilland DHC–6 Series 300 originally was certificated with a 66,000-hour safe life with a one-time wing replacement mandated at 33,000 hours. However, Bombardier and Transport Canada concluded in 1996 that continued operation of this airplane type under the originally certificated safe-life provisions (augmented by damage-tolerance-based inspection of those parts of the structure where this was practicable) was the most appropriate course of action for ensuring the (certification) level of safety of these airplanes is preserved. The commenter also notes that Transport Canada issued AD CF–96–15 on September 17, 1996, for all models of the DHC–6 Twin Otter airplanes requiring these additional actions to ensure continued structural integrity. The commenter notes the FAA has not mandated this program and requests that the FAA do so as part of its aging airplane safety initiative. Additionally, according to Bombardier, the retirement time for the DHC–6 (100,

200, or 300 series) is 66,000 hours or 132,000 flights, whichever occurs first. According to Bombardier, the design-life goal for the DHC–6 is identified incorrectly in the proposed appendixes as 33,000 hours.

One FAA-approved repair station specializing in the major repair, alteration, and heavy maintenance of DHC–6 airplanes notes DHC–6 component life limits are provided in deHavilland PSM 1–6–11, "Structural Components Service Life Limits." The structural components addressed in this document include the wing box, strut, and FS 219 fuselage lower frame. According to the commenter, these "manufacturers" limits have been validated successfully through decades of field experience. The use of damage tolerance analysis to further assess airplane structure is redundant. According to the commenter, although certain remaining components might be subject to further structural fatigue evaluation, several of these components are either replaceable, already inspected at continuous intervals, or not considered fatigue-critical. The commenter states a more appropriate fatigue analysis approach would be to establish safe-life criteria for these additional components.

Transport Canada states that the NPRM statement "This Canadian AD, issued in September of 1996, mandates the retirement of the airplane at 66,000 hours" is incomplete. Airplane retirement at 66,000 hours is dependent on the completion of the mandatory supplemental integrity requirements in Canadian AD CF–96–15. To achieve the 66,000-hour design-life goal, a program of inspections and parts replacements is required. Transport Canada recommends that the statement be amended to say, " * * * the retirement of the airplane at 66,000 hours is required as a result of AD CF–96–15, providing all the requirements of the AD are accomplished."

Transport Canada also states that the DHC–6 meets the requirements of § 511.34 of the Canadian Aviation Regulations, Supplemental Integrity Instructions, per Transport Canada AD CF–96–15, which requires additional actions to ensure continued structural integrity as an airframe ages. Transport Canada was unaware of a similar FAA-mandated AD.

Twin Otter International, Ltd. (TOIL), states that the DHC–6 should not have to comply with damage-tolerance-based inspection techniques for the following reasons:

- deHavilland designed the Twin Otter (DHC–6–300) with the intention that fatigue-critical components (that is, fuselage mainframe, wing struts, and wing boxes) must be replaced upon reaching either a flight hour or a cycle limit, whichever occurs first. Although the life limit of the wing struts and fuselage mainframe originally were established at 30,000 hours/60,000 cycles, Transport Canada, in revision 4 to the life limits manual (Structural Components Service Life Limits Manual, PSM–1–6-11), raised the wing strut life to 36,000 hours/72,000 cycles and the mainframe life to 39,000 hours/78,000 cycles. These components are inspected frequently using strict damage criteria. The commenter notes that the life of wing boxes (30,000 hours/60,000 cycles) can be raised to 33,000 hours/66,000 cycles with incorporation of a service bulletin that adds structural reinforcement. The commenter adds that each of these components is inspected frequently in accordance with strict damage criteria. Also, upon reaching their life limits, the components must be replaced completely or, in the case of wing boxes, re-lifed (which may be done only once). Because of re-lifing, Transport Canada established a safe life for DHC–6 wing boxes of 66,000 hours/132,000 cycles. TOIL also notes that two STCs have been approved to extend the life of DHC–6–300 wing boxes.
- TOIL maintains its DHC–6 airplanes in accordance with the factory inspection and maintenance program Equalized Maintenance for Maximum Availability (EMMA), which requires certain scheduled inspections every 100 hours. If EMMA is followed, TOIL states that there is no additional benefit to implementing damage-tolerance-based inspection procedures.
- TOIL believes corrosion, not structural fatigue, is the cause of structural damage in the DHC–6. TOIL reminds the FAA that on August 24, 1994, Transport Canada issued an AD requiring all DHC–6 airplanes to be subject to exhaustive and repetitive corrosion inspections.
- In 1994, the Aviation Rulemaking Advisory Committee (ARAC) Technical Oversight of Aging Airplanes working group generally accepted the "manufacturer's" method of ensuring continued structural integrity based on structural fatigue analysis, fatigue tests, and field experience correlation. Additionally, TOIL notes that the AASA does not mandate damage-tolerance-based analysis and inspection techniques. However, the AASA recognizes that the continued airworthiness of airplanes could be ensured through other means, particularly those airplane designs not based on damage tolerance guidelines.

FAA Response: The FAA believes that the commenter's reference to the ARAC Technical Oversight of Aging Airplanes group actually refers to the Technical Oversight Group Aging Aircraft (TOGAA) that works with the FAA, but that group does not directly participate in ARAC group activities. The FAA assumes that the commenter is referring to the TOGAA in its comment.

In November 1996, the Commuter Assessment Review Team (CART), which included members from the TOGAA, visited deHavilland to determine what difficulties were associated with conducting a damage tolerance assessment of the DHC–6. The CART found that deHavilland had the capability to perform a damage tolerance assessment of the DHC–6 if they chose to do so. At that meeting, the members of the TOGAA on the CART recommended that deHavilland perform a damage tolerance assessment of the DHC–6.

Congress, through the AASA, instructed the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft." The AASA also stated that air carriers must "demonstrate to the Administrator, as part of the inspection, that the maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety."

The FAA has determined that to ensure the continuing airworthiness of these aging aircraft, each airplane operated under part 121, each U.S.-registered multiengine airplane that was initially certificated with 10 or more passenger seats operated under part 129, and each multiengine airplane that was initially certificated with 10 or more passenger seats operated in scheduled operations under part 135 should be required to have a damage-tolerance-based SSIP included in its maintenance or inspection program.

For the DHC–6, if the aircraft is used in any of the affected operations, then the operator must have a damage-tolerance-based SSIP included in each aircraft's maintenance or inspection program, in accordance with the schedule in this rulemaking.

Regarding the commenter's discussion of component life limits, the FAA used these limits to establish the design-life goal for many of the airplanes identified in the appendixes. The design-life goal for the DHC–6 was chosen based on the wing life-limit of 33,000 hours. Also, the FAA has determined that a damage-tolerance-based SSIP must be accomplished for all airplanes initially certificated with 10 or more passenger seats. In addition, for DHC–6 airplanes

that are in service 4 years after the effective date of the rule and have not yet reached the design-life goal, the FAA has determined that a damage-tolerance-based SSIP must be in place by 33,000 hours or by December 20, 2010, whichever occurs sooner. As a result, the FAA has not issued an AD similar to Canadian AD CF–96–15.

Comments: One Alaskan commenter argues that no replacement airplanes are being manufactured that can match the rugged and unpressurized DHC–6 Twin Otter. The commenter uses the airplanes to provide essential service to many communities in Alaska that have no other source of air transportation. The commenter claims that relegating the airplanes to part 135 cargo operations as a result of the rule change would be a great disservice to the Alaskan people and would degrade safety because the airplanes would be replaced by single-engine, single-pilot airplanes with nine or fewer passenger seats.

FAA Response: Regarding the Alaskan commenter's contention that the DHC–6 provides essential service to many communities in Alaska, the FAA has decided to permit relief from all requirements of this rule for those airplanes operating between any point within the State of Alaska and any other point within the State of Alaska. This change is reflected in §§ 121.368(a), 121.370a(a), 135.168(a), 135.422(a), and 135.422a(a).

Embraer EMB–110

Comments: Empresa Brasileira de Aeronautica S.A. (Embraer) states that the expected fleet in operation by December 2010 would have a substantial residual life (based on original certification criteria). The proposed rule would significantly impact operators and "manufacturers" and would put a sizeable portion of the EMB–110 fleet in an economically impracticable situation unless the FAA makes some simplified methodology available.

Embraer understands that the particular characteristics of each airplane's design would be taken into consideration to allow alternative courses of action. In the case of the EMB–110, two facts must be taken into account: (1) Contrary to the proposal, the EMB–110 is not a pressurized airplane, and (2) a service bulletin permitting the extension of the "design service goal" from 30,000 to 45,000 flight hours is available.

FAA Response: The FAA acknowledges the comment; however, the commenter did not provide any evidence that the 45,000 flight hour design-life goal in the service bulletin has been approved by the Brazilian regulatory authority. Therefore, the FAA is not changing the design-life goal of the EMB–110 from 30,000 to 45,000 flight hours. These airplanes will be required to have a damage-tolerance-based SSIP within the timeframes mandated in this rulemaking. The FAA encourages Embraer to support development of the damage-tolerance-based SSIP for the EMB–110.

Piper Navajo and PA–31 Series

Comments: One operator indicates it has spoken with a representative from New Piper, Inc., regarding the impacts of this proposal. The commenter notes that the Piper Aircraft Corporation that originally produced the PA–31 series went bankrupt. New Piper, Inc., supports out-of-production airplanes only on any issues affecting the airworthiness of those airplanes. The commenter fears that because Australia and the United Kingdom already have established an arbitrary maximum airframe limit, New Piper simply might endorse that limit. The commenter opposes such acceptance. The commenter notes that the Piper Chieftain series of airplanes have relatively few stresses placed on them compared to pressurized airframes.

One Alaskan operator states that the design lives set for the PA–31–350 airplanes (excluding the pressurized version) appear to have no basis and are unrealistically low. The average fleet service life already exceeds the design life set by the proposal. The commenter knows of no failures of primary structure on these airplanes that would justify attributing such a limit to aging. According to the operator, neither the FAA nor the "manufacturer" has set a design-life goal on the airplanes, and it is unreasonable to rely on a design life set by a foreign country that did not certificate the airplanes. The commenter also states that there is no evidence that the foreign country conducted any analysis to develop the design life for the airplanes. The commenter's company has operated several PA–31–350 airplanes in excess of 20,000 hours total time without any indication that the airplanes have reached their design life.

FAA Response: The FAA has revised the rule so that operators of airplanes initially certificated with nine or fewer passenger seats may develop a service-history-based SSIP instead of a damage-tolerance-based SSIP.

Short Brothers SD3–30

Comments: The European Aging Aircraft Working Group (EAAWG) states that the SD3–30 meets the requirements of AC 91–56 and the FAA should consult the "manufacturer" to clarify this issue.

FAA Response: Through informal discussions with the U.K. CAA, the FAA has learned that the Short Brothers 3–30 and 3–60 airplanes meet the intent of AC 91–56, but the U.K. CAA is unable to present documentation to confirm that the FAA has previously accepted the U.K. CAA finding. This final rule requires that the operators of these airplanes include damage-tolerance-based SSIPs in the maintenance program for each airplane within the timeframes in this rulemaking. If the type certificate holder can demonstrate that the existing maintenance program for each airplane meets the intent of AC 91–56, then compliance with this rule will be made considerably easier for each operator. Operators can use the type certificate holder's program as the basis for their damage-tolerance-based SSIPs, altering each one as necessary to account for any modifications and repairs incorporated into specific airplanes in an operator's fleet.

Because documentation from the U.K. CAA is not available at the time this final rule is being published, the economic analysis portion of this rule reflects costs associated with development of damage-tolerance-based SSIPs of the Short Brothers 3–30 and 3–60 airplanes assuming none currently exist.

Short Brothers SD3–60

Comments: Bombardier Aerospace Short Brothers (USA), Inc., states that the proposal lists a design-life limit of 28,800 hours for the SD3–60. However, the commenter states that type certificate data sheet A41EU, note 3. states the life limit is as listed in chapter 5 of the approved Maintenance Manual Document Ref. 360/MM. According to the commenter, this manual states the airplane has an economic structural limit of 57,600 flight hours or 100,000 flights (whichever occurs first). The commenter notes that the manual requires a structural half-life audit at 28,800 flight hours or 50,000 flights.

The EAAWG states that the SD3–60 meets the requirements of AC 91–56 and the FAA should consult the "manufacturer" to clarify this issue.

FAA Response: Through informal discussions with the U.K. CAA, the FAA has learned that the Short Brothers 3–30 and 3–60 airplanes meet the intent of AC 91–56, but the U.K. CAA is unable to present documentation to confirm that the FAA has previously accepted the U.K. CAA finding. This final rule requires that the operators of

these airplanes include damage-tolerance-based SSIPs in the maintenance program for each airplane within the timeframes in this rulemaking. If the type certificate holder can demonstrate that the existing maintenance program for each airplane meets the intent of AC 91–56, then compliance with this rule will be made considerably easier for each operator. Operators can use the type certificate holder's program as the basis for their damage-tolerance-based SSIPs, altering each one as necessary to account for any modifications and repairs incorporated into specific airplanes in an operator's fleet.

Because documentation from the U.K. CAA is not available at the time this final rule is being published, the economic analysis portion of this rule reflects costs associated with development of damage-tolerance-based SSIPs of the Short Brothers 3–30 and 3–60 airplanes assuming none currently exist.

Short Brothers SD3–Sherpa

Comments: Short Brothers PLC proposes that the FAA amend the proposal so that (1) the reference to SD3–30 in line 4 of the proposed appendixes section of the preamble for the Short Brothers SD3–Sherpa (64 FR 16304) correctly reads "SD–3 Sherpa"; (2) 40,000 hours in line 10 reads "35,000 flights"; and (3) the SD3–60 Sherpa airplanes and the following descriptive text be included:

> The Short Brothers SD3–60 Sherpa is a 32-seat airplane configured for 30 passenger seats and 2 pilot seats. The SD3–60 Sherpa was certificated in the United States in 1996 under U.K. certification basis and to the additional validation requirements of part 25, Amendment No. 35. The "manufacturer" has limited the maintenance program to 12,000 flights as defined in the airplane maintenance manual.

FAA Response: The FAA recognizes that some of the references made to the SD3–60 and SD–3 Sherpa as stated in the NPRM (64 FR 16304) were incorrect. All of the appendices in the final rule have been revised to reflect the correct information.

Non-Damage-Tolerance-Based Structural Supplemental Inspection Programs

Summary of Proposal/Issue: The FAA notes that non-damage-tolerance-based SSIPs based on AC 91–60, "The Continued Airworthiness of Older Airplanes," have been mandated by ADs on the following airplanes: Convair 340, 440, 580, and 600 series; Douglas DC–3 and DC–6; Fokker F–27; and Lockheed Electra. Although inspections and procedures based on AC 91–60 address known service difficulties, they do not anticipate the possibility of future fatigue cracks that could be predicted through the use of damage tolerance principles. The FAA has determined that some inspection programs developed in accordance with AC 91–60 do not qualify as damage-tolerance-based inspections and procedures because they are either based solely on service experience or combine partial damage-tolerance-based assessments with service experience. For these reasons, the proposed rule would not allow continued use of inspection programs based on AC 91–60 alone. Instead, the FAA proposes to require damage-tolerance-based inspections and procedures to supplement or replace existing inspection programs based on AC 91–60 no later than December 20, 2010.

Inspection Programs in Accordance With AC 91–60

Comments: The GAMA notes, contrary to the FAA's statements, that some AC 91–60 inspections and procedures programs have been designed to anticipate the possibility of future cracking in the structure and have specified appropriate inspections and procedures to find such occurrences. The FAA should revise its incorrect and broad generalization.

FAA Response: The FAA agrees. The existing AC 91–60 inspection programs were accomplished by different type certificate holders that made different assumptions to create their individual programs. The FAA understands that differences exist between these programs. The minimum standard for a service-history-based SSIP was provided in AC 91–60.

Fokker F–27

Comments: Several commenters question the FAA's assertion that the Fokker F–27 "SIP" is not based on damage tolerance principles. According to these commenters, the Fokker F–27 "SIP," Document No. 27438, part 1, has been declared by the FAA as having been prepared in accordance with AC 91–56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," which qualifies the program as an acceptable damage-tolerance-based inspection program. One operator notes Fokker performed full-scale and detailed tests as well as fatigue analysis (calculations) of the Fokker F–27 primary structure during the original certification process of the airplane. These tests were performed to ultimate loads. The fatigue inspection requirements and structural life limits resulting from those tests were included in the "SIP." Additionally, the operator notes Fokker continues to add service experience, including stress corrosion, to the program. Also, Fokker continues to evaluate the areas of concern, new designs and developments, and service experience using damage tolerance assessments.

FAA Response: The FAA agrees. Based on a review of our records, the FAA has determined that the Fokker F–27 SSIP mandated by AD was approved by the FAA as a damage-tolerance-based inspection program in compliance with AC 91–56.

Convair 580

Comments: One operator states the Convair 580 has had excellent engineering and product support for over 45 years and has a well-proven structural integrity inspection document and corrosion inspection programs. The operator also asserts that it has implemented AD 88–22–06 (revised to AD 92–06–06), "Boeing: Amendment 39–6490," and AD 92–25–13, "General Dynamics, Convair Division: Amendment 39–8427." According to the operator, implementation of these ADs added 132 new inspection tasks relating to the AASA. Additionally, the operator has implemented AD 90–13–13, "General Dynamics (Convair): Amendment 39–6638," and AD 74–16–01, "General Dynamics: Amendment 39–1904, as amended by Amendment 39–3206." Another commenter states the type certificate data sheet holder for the Convair 580 indicated it would cost approximately $2.5 million for an operator of this airplane to develop a damage-tolerance-based "SIP," because the historical data required for development do not exist.

FAA Response: The FAA has determined that Convair 340/440/580 aircraft can operate until December 20, 2010. At that time, a damage-tolerance-based SSIP will be required. The FAA encourages the current type certificate holder to develop a damage-tolerance-based SSIP to support this airplane in service.

Lockheed L–188 Electra

Comments: According to one operator, the Lockheed L–188 Electra SID program was developed using damage-tolerance-based principles and was not based solely on empirical service data. In a separate comment, Lockheed Martin Aeronautical Systems (Lockheed) indicates to operators of the Lockheed L–188 Electra that the cost to develop an aging airplane program and perform its inspections and modifications would need to be

addressed by each operator. According to Lockheed, operators should consider the following options:

- Individually or as a group, develop an Electra aging airplane program;
- Fund a third party to develop an Electra aging airplanes program, which Lockheed would be willing to do if funded by operators; or
- Petition the FAA for relief using the AC 90–60 non-damage-tolerance-based "SIP" issue to defer action until 2010.

FAA Response: The FAA agrees. Based on a review of our records, the FAA has determined that the Lockheed L–188 SSIP mandated by AD was approved by the FAA as a damage-tolerance-based SSIP in accordance with AC 91–56.

DC–6 and C–46

Comments: One commenter who currently operates Douglas DC–6 and Curtiss C–46 airplanes notes it may continue to operate either or both types of airplanes beyond 2010. The commenter further states that if it does upgrade to newer airplanes, the newer airplanes probably will not have damage-tolerance-based inspections in their maintenance programs. Additionally, the commenter notes the lack of "manufacturer" support in developing adequate damage-tolerance-based "inspection programs." According to the commenter, the Curtiss company no longer supports its airplanes. Also according to the commenter, Boeing (which acquired Douglas) has indicated to the commenter that it is not considering supporting the DC–6 (and probably nothing older than the DC–10) in this area.

FAA Response: The FAA has established that a damage-tolerance-based SSIP must be developed for the DC–6 by December 2010 and for the C–46 within 4 years after the effective date of the rule, or those airplanes will not be eligible for operations in part 121, or part 129, or in scheduled operations in part 135. In the future, operators of these airplanes will have to make decisions on how best to support the operation of these airplanes.

Other FAA Initiatives

Comments: One commenter singled out the Fokker F–28 jet, noting there was significant activity a few years ago on a repair assessment program for elements of damage tolerance. According to the commenter, because there has been no regulatory activity (that is, establishment of repair requirements) on repairs for the Fokker F–28, it would be inappropriate to review repairs for damage-tolerance-based inspections.

FAA Response: The final rule titled "Repair Assessment for Pressurized Fuselages" (65 FR 24108, April 25, 2000) that became effective May 25, 2000, is applicable to the Fokker F–28. Therefore, operators must make a damage tolerance assessment of the repairs to the Fokker F–28 fuselage pressure boundary.

Discussion of Economic or Cost Comments

Summary of Proposal/Issue: In accordance with Executive Order 12866, the FAA prepared an economic analysis of the proposed changes to the Code of Federal Regulations. The FAA assessed the costs associated with the following items:

- Implementation of damage-tolerance-based inspections and procedures for those scheduled operators of multiengine airplanes not currently subject to these inspections and procedures.
- Operator development of these procedures for the affected airplane models.
- Additional FAA inspections and records reviews mandated by Congress.

The FAA noted in its analysis that the attributed costs of this proposal do not include the expense of making repairs that may be found necessary during either an operator's damage-tolerance-based inspections or the FAA's oversight inspections. The FAA does not attribute these repair costs in the proposal because current regulations require that repairs be made as necessary to ensure the airworthiness of an airplane. Also, the FAA noted that its analysis did not address directly the costs the proposal eventually would impose on airplanes produced after the effective date of the rule.

The FAA identified two benefits in the proposed rule: (1) Age-related accidents would be prevented and (2) the FAA and the industry would be able to monitor the airworthiness of the affected airplanes as they age and either take timely corrective action to maintain their continued airworthiness or retire them from service before they become unairworthy; consequently, the airplanes would be able to stay in service longer because their continued airworthiness would be monitored, rather than the airplanes being retired at an arbitrary age.

Comments: Commenters generally believe the FAA underestimated the costs associated with this proposal. One commenter provided the following comments regarding the Initial Regulatory Flexibility Determination completed by the FAA: In the "Compliance Assistance" section, the NPRM indicates the FAA has undertaken a research program to develop a simplified damage-tolerance-based methodology directly applicable to commuter-sized airplanes. The company states that if this document has not yet been issued, the FAA should consider withholding issuance of the final rule until such adequate guidance material is available.

FAA Response: In its efforts to assist small entities and other affected parties in complying with the rule, the FAA will publish two ACs for comment with this final rule. One of these is AC 91–56B, "Continuing Structural Integrity Program for Airplanes," and it will provide guidance for implementing a damage-tolerance-based SSIP. The other document is AC 91–60A, "The Continued Airworthiness of Older Airplanes," which will provide guidance for implementing a service-history-based SSIP. Notices of availability for these two ACs are published concurrently with this rule, with a request for public comments. The research referred to by the commenter has not yet been published. The document is in final review and will be published in the near future.

Comment: Additionally, the GAMA and other commenters contend the following statement is incorrect for "SIPs" developed using comprehensive fatigue analysis, fatigue tests, and the correlation of field service data, as applicable: "* * * non-damage-tolerance-based program would induce lower costs but with a concomitant reduction in safety assurance" (64 FR 16314). Also, GAMA states this statement contradicts the FAA's assertion that the proposed rule does not increase the intended level of safety but maintains the level of safety established at type design (64 FR 16311).

FAA Response: The FAA maintains that damage-tolerance-based SSIPs provide the highest level of safety and that service-history-based SSIPs provide something less than that. In the NPRM, the FAA proposed that full damage-tolerance-based SSIPs be imposed on all affected airplanes after 2010. After reviewing the comments, the FAA had to consider the cost, the exceptional difficulty in obtaining the necessary data for airplanes with fewer than nine seats, and the capability of the airlines operating these smaller airplanes to effectively accomplish these requirements. As a result of the review and based on the comments received, the FAA is revising the proposal to allow airplanes initially certificated

with nine or fewer passenger seats to have service-history-based SSIPs.

Comment: The ATA estimates aligning HMCs with the inspections at 5-year intervals alone would cost more than $1.3 billion. According to ATA, one member states this alignment would add $21 million annually to its costs. Another ATA member asserts the proposal would require each airplane to be kept in heavy maintenance a minimum of 2 days longer than scheduled (compared with the FAA's estimate of 0.7 to 1.6 days). According to that operator, this additional time would result in $80,000 in lost revenue (compared with the FAA's estimate of 7 percent of the value of capital, or $2,700 per inspection). Another ATA member with 230 airplanes estimates the proposed rule would cost that operator as much as $150 million during each 5-year cycle and recommends the FAA consider a separate rule for part 121 operators of large transport category airplanes. Six ATA members representing more than 50 percent of the total domestic ATA fleet estimate the proposed rule would cost the group of part 121 operators of large transport category airplanes more than $236 million per year.

FAA Response: Based on the comments received, the FAA has changed the repeat inspection and records review interval from 5 years to 7 years to allow an operator to align the inspection and records review interval more closely with the scheduled HMC interval. This does not require the operator to have its HMC at the initial or repetitive limits set by this rule. The scheduled HMC can occur at any time within those intervals, and the FAA inspection and records review can be held concurrently with the HMC. The intervals shown in the rule are maximum intervals. In addition, it is not the FAA's intent to disrupt operators' scheduled maintenance in such a way that it would significantly impact their schedules. However, each airplane subject to the final rule cannot be returned to service after the specified interval until the Administrator or a designee has completed its inspection and records review and notifies the operator accordingly.

With regard to cost estimation, a time estimate of 2 days per airplane inspection, as suggested by the commenter, was used in the final regulatory evaluation for the oversight inspection of an airplane by an ASI or DAR. This time estimate was used for the large transport airplanes that have damage-tolerance-based SSIPs (the great majority of the affected airplanes).

With regard to downtime costs, the FAA maintains that a reasonable approximation of the cost for the oversight inspection of an airplane by ASIs/DARs is the rate of return applied to the value of the productive capital asset used by the business enterprise (rather than revenue lost per day). Seven percent is the rate of interest that OMB directs agencies to use in present-value calculations. Moreover, such an approach has the advantage of being applied uniformly over the entire air carrier industry. By comparison, "revenue lost per day" varies considerably across companies in the industry and is affected by different accounting procedures. In addition, utilization rates vary across equipment. The FAA estimates the total cost to the industry where revenue lost by one firm is gained by another.

Calculations were made that resulted in estimates of intervals between C-checks and D-checks, in terms of years, for some large transport airplanes (including Boeing models). These calculations showed that the C-checks take place, on the average, every 1 to 2 years depending on the airplane model type. D-checks are estimated to take place, on the average, every 5 to 12 years depending on the airplane model type. Thus, the initial inspection and records review (4 or 5 years after the effective date of the rule) could likely take place at a C-check; while the repeat inspection and records review, at 7-year intervals, could take place at a D-check or a C-check. In addition, those operators that use a segmented D-check schedule will have more opportunity to accommodate the initial and repeat inspections and records reviews. The increasing use of non-destructive inspection techniques should facilitate inspections at C- or D-checks.

Comment: One operator states the FAA assumption that only 50 percent of all fleets affected by the proposal would require modification is too conservative. The operator contends almost 100 percent of the fleets mentioned in the proposal would have to be modified to some extent. The operator further states the high costs of this modification would cause many operators to go out of business.

FAA Response: In the NPRM, the FAA's cost estimates for modifications included airplanes initially certificated with nine or fewer passenger seats (part 135), because they also were supposed to implement damage-tolerance-based SSIPs. This group of airplanes will now be required to implement service-history-based SSIPs. Consequently, the number of airplanes needing modifications is reduced. However, there has been an increase in the number of part 121 airplanes needing damage-tolerance-based SSIPs since the publication of the NPRM.

Therefore, in the absence of substantiation to support the contention of the comment, the economic analysis keeps the 50 percent as a reasonable estimate.

Comment: Based on its own economic analysis of the effects of a 5-year fixed interval "on airplane" inspection with extensive additional access, one part 121 air carrier states the proposal would result in an increased maintenance expense of $404 million for that carrier's fleet alone. The carrier asserts this expense would affect future travel costs but provide no increase in passenger safety for part 121 operations.

FAA Response: Based on the comments received, the FAA has changed the repeat inspection and records review interval from 5 years to 7 years to allow the operator to align the inspection and records review interval more closely with the scheduled HMC interval (C-check or D-check).

Comment: One commenter states the FAA's cost impact analysis on air carrier records preparation does not account for the time carrier employees spend during the inspections and records reviews. The commenter notes that a carrier's employees would have to prepare the airplane records as well as provide a support role during the inspections and records reviews.

Another commenter states the FAA failed to consider adequately the costs of reviewing each repair on each airplane, updating airplane structural repair manuals for damage tolerance repairs, and training professional engineering personnel in damage tolerance repair design.

FAA Response: In the NPRM and the final regulatory evaluation, there is cost estimation for personnel of the operator to prepare the airplane and its records for the inspection and records review by ASIs or DARs.

The FAA estimated the cost of damage-tolerance-based SSIPs per affected airplane, including repairs.

With regard to updating airplane structural repair manuals (SRMs), that cost should be minimal and it is included in the development and review cost. Several type certificate holders of large transport category airplanes have already updated their SRMs to include the results of damage tolerance assessments of repairs.

With regard to training professional engineering personnel, the commenter does not provide information as to the purpose of the training for professional engineers in damage tolerance repair

design. The cost of engineering time to develop damage-tolerance-based SSIPs has been estimated using a fully burdened engineering rate of $95 per hour. This rate can be applied for engineering services (to develop the SSIP) provided by the type certificate holder, a consulting firm, or the operator's own engineering personnel.

Comment: One part 135 Alaskan operator provided the following comments regarding costs of the proposed rule:

- The FAA expects operators to work with STC holders and the original airplane "manufacturer" to develop damage-tolerance-based supplemental inspection programs, which would require that each unique combination of type design and STC require a separate inspection program. The commenter therefore asserts the cost analysis is off by a factor equal to the number of unique type design and STC combinations for each type design.
- The FAA's estimate that 209 part 135 multiengine airplanes would be affected by this rule seems low. (ADOT&PF agrees, estimating that approximately 727 of the 3,198 airplanes in commercial service in Alaska would be affected (the airplanes not counted are single-engine airplanes). According to the ADOT&PF, almost all of these airplanes are more than 14 years old and none have a current damage-tolerance-based inspection program.)
- The commenter does not disagree with the FAA's reasons for excluding the costs of repairs that may result from an operator's damage-tolerance-based inspections or the FAA's oversight inspections; however, because air carriers should maintain their airplanes in an airworthy condition, the new regulations are redundant.
- The enormous costs associated with the proposal would deplete the pool of funds available to maintain airplanes and limit the use and development of other more efficient initiatives that could improve aging airplane safety at a lower cost. The commenter cites two examples: (1) Requiring replacement of all avionics and autopilot wiring after 25 years of service, and (2) requiring all commuter carriers to operate only under instrument flight rules.
- The proposed rule places the economic burden on operators, not "manufacturers" as stated in the NPRM. The operator notes the redundant expenses operators would incur in developing "SIPs."
- The operator questions the FAA's assumption that developing "SIPs" for related models would produce efficiencies. The commenter indicates operators would be unwilling to develop "SIPs" for models related to their own models. Furthermore, if an operator did develop a "SIP" that might be useful to other operators, the developing operator would be hesitant to transfer development information without charging a fee.
- The proposal underestimates the costs associated with developing damage-tolerance-based inspection techniques. According to the operator developing such techniques may (1) take more than 80 hours and (2) require extensive training for mechanics responsible for implementing the programs.
- The FAA's estimated 20-year annualized cost stream figure is misleading and inaccurate because operators would face costs sooner than 20 years. Furthermore, the economic analysis fails to consider costs beyond 2018.
- The economic analysis fails to consider that financing costs are particularly high for commuter operators.

FAA Response: The final rule excepts part 135 multiengine airplanes initially certificated with nine or fewer passenger seats from the requirement to incorporate damage-tolerance-based SSIPs. These operators are to implement service-history-based SSIPs in 2010. Also, the rule provides an exception for those airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

The final rule covers part 135 multiengine airplanes in scheduled service and the NPRM used a count of these airplanes. The commenter refers to a count of 727 airplanes as being in "commercial" service rather than in "scheduled" service. A count of airplanes in "commercial" service includes scheduled and unscheduled operations.

The rule places the responsibility for developing the SSIP on the operators. However, the FAA anticipates that a number of type certificate holders will choose to support the development of the SSIP because it affects the future marketability of their airplanes. For those cases where a type certificate holder does not develop a damage-tolerance-based SSIP, the FAA anticipates that operators of a particular model will recognize the advantages of cooperating and jointly financing the development of a SSIP for that model. This can be done through the airplane type certificate holder or through an aviation engineering/consulting firm. Moreover, the final rule excepts part 135 multiengine airplanes initially certificated with nine or fewer passenger seats from implementing damage-tolerance-based SSIPs.

With regard to efficiencies in developing SSIPs, that factor was removed from the cost-estimating methodology in the final regulatory evaluation. With regard to charging a fee, such a fee can be charged. Then, the cost of developing a damage-tolerance-based SSIP can be shared by all the affected operators.

The development of a damage-tolerance-based SSIP was estimated in the NPRM to take between 10,000 to 25,000 hours. The 80 hours was an estimate of the time needed for an operator to incorporate the damage-tolerance-based SSIP into its maintenance program.

With respect to training mechanics, it is not expected that airline mechanics will need additional training to do damage-tolerance-based inspections. Airline mechanics, through their training and work experience, already have the necessary skills to do such inspections. Most airlines have nondestructive testing capability already and it is only a matter of including those inspections in their maintenance or inspections programs.

The 20-year annualized cost does not mean that operators would not face costs sooner than 20 years. They will face costs sooner, and those costs have been incorporated in the economic assessment.

The period used to analyze the costs of the rule is a 20-year period. In the NPRM, the time period was 1999–2018. In the final regulatory evaluation, it is 2001–2020. If the period becomes longer than this (*e.g.*, 2001–2025), the estimated (undiscounted) costs of the rule will increase.

The final rule contains relieving actions. Airplanes initially certificated with nine or fewer passenger seats have been excepted from damage-tolerance-based SSIPs and, instead, need to implement service-history-based SSIPs in 2010. The repeat inspections interval has been increased from 5 to 7 years. Finally, the FAA will make available advisory material through AC 91–56B and AC 91–60A. This material will be useful to small and commuter operators.

Comments: Commenters also note the FAA is unable to quantify the benefits associated with the proposed rule, thus the proposal seems unjustified. However, according to the GAMA, some reliable information on potential benefits associated with the proposed rule is available in the form of results compiled from the AATF program and other "manufacturer" programs where results have been shared with the FAA.

FAA Response: Based on the comments received, the FAA has revised the final rule to allow airplanes initially certificated with nine or fewer passenger seats to have service-history-based SSIPs. In addition, the FAA has decided to permit relief from the damage tolerance and SSIP requirements of this rule airplanes operating between any point within the State of Alaska and any other point within the State of Alaska. This change is reflected in §§ 121.368(a), 121.370a(a), 135.168(a), and 135.422(a).

The FAA economic analysis provides a reasoned determination that the benefits of the rule justify the costs. The FAA and Congress believe that the risk of accidents does exist. This rule is expected to prevent aging aircraft accidents. The FAA and industry will be better able to monitor the aircraft airworthiness and thus comply with the AASA. This rule is expected to prevent potential aging-related accidents and to extend the airworthy life of affected aircraft.

Comment: One commenter asserts the FAA must provide for alternative inspection methods other than those based on damage tolerance criteria. According to the commenter, maintaining a damage-tolerance-based inspection and records program is administratively cost prohibitive, especially for smaller carriers. Also, the FAA has failed to demonstrate that such alternative approaches are less safe than damage-tolerance-based programs.

FAA Response: The FAA maintains that damage-tolerance-based SSIPs provide the highest level of safety and that service-history-based SSIPs provide something less. In the NPRM, the FAA proposed that full damage tolerance inspections be imposed on all airplanes after 2010. After reviewing the comments, the FAA had to consider the cost, the exceptional difficulty in obtaining the necessary data for fewer than 9 seats, and the capability of the airlines operating these smaller airplanes to effectively accomplish these requirements. As a result, based on the comments received, the FAA is revising the proposal to allow airplanes that were initially certificated with nine or fewer passenger seats to have service-history-based SSIPs.

Comment: This commenter, who operates deHavilland DH–6 Twin Otter airplanes, presumes that deHavilland would not fund a damage-tolerance-based program for the Twin Otter because the airplane has been out of production since 1988. The commenter also presumes that for liability reasons, deHavilland would not provide the necessary engineering and test data upon which a damage-tolerance-based program would be developed by operators of that airplane. Therefore, the commenter asserts it would have to retain a company such as Structural Integrity Engineering to develop its damage-tolerance-based "inspection program." According to the commenter, Structural Integrity Engineering reports that the commenter should expect to spend between $500,000 and $600,000 on the analysis and an additional $250,000 in flight testing to validate flight loads and other criteria.

Because of these liability concerns, the commenter would not sell its damage-tolerance-based "inspection program" to other DHC–6 operators as a means of defraying the initial investment of at least $750,000. In addition, because more of its customers cannot afford to maintain personnel trained and certified in ultrasonic inspection techniques, the commenter would have to add additional personnel and keep them qualified to support its customers. According to the commenter, its "lease rents" would decline in proportion to increased maintenance costs. The commenter states it cannot place a cost on a reduction in rents or in how that income loss could reduce DHC–6 hull values. However, the commenter estimates it would cost at least $100,000 per year in additional personnel costs for the commenter and potentially reduce the DHC–6 hull values by between $400,000 and $500,000 (a total of $15.6 to $19.5 million for the commenter's fleet of 39 DHC–6s).

FAA Response: The FAA recognizes that operators are responsible for the development of their inspection programs. However, the FAA expects type certificate holders to support the operators in the development of those programs. This should be particularly likely when the type certificate holder is still producing a particular airplane model, which is the case for the great majority of the affected airplane models. Operators of an airplane model also may engage and fund the type certificate holder of the airplane to develop a damage-tolerance-based SSIP. In the event that a type certificate holder chooses not to support the airplane, and if the operator is unable to economically justify the development of the damage-tolerance-based inspections, along with other operators of the same model, the airplane will be ineligible for operation in scheduled service in the United States.

Comment: An Alaskan operator obtained an estimate to develop a "SIP" for PA–31–350 airplanes and was advised that without the original design data from the "manufacturer," the cost would approximately double. For an airplane no longer in production, there is no incentive for "manufacturers" to voluntarily provide such data to the operator; it only extends their liability. The commenter alleges that "manufacturers" have strong incentives to impede the development of cost-effective "SIPs" for out-of-production models because withholding data would force airplane retirements and generate demand for new airplanes.

FAA Response: Based on the comments received, the FAA is revising the proposal to allow airplanes initially certified with nine or fewer passenger seats to have service-history-based SSIPs, which includes the PA–31–350. However, for airplanes initially certificated with 10 or more passenger seats, a damage-tolerance-based SSIP is required to ensure the continuing airworthiness of these aircraft.

Fairchild has developed a damage-tolerance-based SSIP for its Metro aircraft. However, the FAA realizes that other type certificate holders may choose not to support the development of SSIPs and that this may lead to the retirement of certain airplanes. The FAA notes that each operator, not the type certificate holder, is responsible for ensuring the continuing airworthiness of its aging aircraft.

International Trade Considerations

One international operator submitted a comment on the International Trade Impact Analysis completed by the FAA. The operator states—

- In encouraging foreign governments to adopt this proposal, the FAA must accept the inspection and review findings of those governments without further FAA-approved review or inspection. The operator indicates the CASA probably will adopt this NPRM; therefore, incurring costs for non-U.S.-registered fleets.
- The international trade impact analysis is underestimated. The NPRM could affect international trade if restrictions apply to the importation of second-hand airplanes into the United States.

Another international operator noted that the proposal will have an effect on foreign trade by increasing operating costs for foreign operators of U.S.-registered aircraft due to the additional costs associated with compliance with this rule.

FAA Response: The commenter's assertion that the FAA must accept the inspection and review findings of foreign governments without further FAA-approved inspection and review is erroneous. The FAA agrees that if

another country adopts this rule, it will impact airplanes registered in that country; however, that cost is not a direct cost of this rule.

The rule applies to all affected U.S.-registered airplanes. It does not apply to non-U.S.-registered airplanes. The FAA notes, however, that anyU.S.-registered airplane will be subject to the requirements of this rule whether it is purchased from a seller in a U.S location or from a seller in a foreign location. Owners of foreign-registered airplanes seekingU.S. registration and prospective owners of such airplanes are aware of the need to comply with applicable U.S. regulations and should take these requirements into account before attempting to transfer a foreign-registered aircraft to the U.S. registry. It is their responsibility to ensure that an aircraft imported into the United States complies with current U.S. regulatory requirements.

Editorial Comments

Summary of Proposal/Issue: Several commenters addressed editorial items related to the proposed rule.

Comments: Commenters recommend that the FAA—

- Correct the appendix references in § 135.168 to read "appendix G."
- Correct the appendix references in § 121.370a to read "appendix N."
- Better define what is meant by the term "age-related fatigue damage." The EAAWG asks whether the term means corrosion fatigue or refers to the more conventional understanding of damage resulting from repeated cyclic loading.
- Better describe what is meant by "fatigue." According to the EAAWG, the description of this term in the Description of Benefits section of the preamble to the proposal implies fatigue may be something other than cracking, although cracking is the specific concern of the proposal.
- Reconsider the use of the term "supplemental" to refer to inspections in §§ 121.370a, 129.16, and 135.168. According to the CASA, whether inspections are supplemental or integral to the basic maintenance program is irrelevant. Also, the CASA states these inspections increasingly would become integral rather than supplemental.

FAA Response: The term "age-related fatigue damage" is damage resulting from repeated cyclic loading, not from corrosion. "Fatigue" is related to cracking only. The FAA disagrees with the comment on the use of the word "supplemental." Such inspections are supplements to the normal maintenance program, and the use of the term "supplemental" is accepted by the industry and is used in FAA advisory material.

The FAA also has corrected the appendix references in §§ 121.370a and 135.16.

Other Issues

Part 23 Airplanes

Comments: The NATA recommends that the FAA suspend the proposed rules for scheduled part 135 air carriers operating part 23 airplanes initially certificated with nine or fewer passenger seats. According to the NATA, currently there are no systemic structural problems in these airplanes that require implementing damage-tolerance-based inspections. The NATA proposes to assist the FAA in conducting evaluations of current inspection and maintenance requirements for these airplanes to determine whether an unsafe condition exists.

The NATA proposes a different method of addressing aging concerns for part 23 airplanes initially certificated with nine or fewer passenger seats certificated before 1993:

- The FAA should identify airplanes for which damage-tolerance-based inspections have been developed and approved by the FAA.
- The FAA should identify airplanes for which the "manufacturer" has developed a SSIP or a supplemental corrosion inspection program.
- For any airplane not covered by the above provisions, the FAA should develop a special inspection to enhance the scheduled periodic/annual inspection currently required. The inspections should be developed through the use of structural difficulty reports and other such reports available to the FAA.
- The owner/operator of any affected airplanes in air carrier service should be required to implement, no later than 14 years after the date of manufacture, a SSIP designated by the "manufacturer." If the "manufacturer" has not designated such a program, the operator should be required to implement the FAA's SSIP.

FAA Response: The FAA disagrees with the suggested changes to the rule. However, based on the comments received, the FAA has amended the final rule to specify that airplanes initially certificated with nine or fewer passenger seats can accomplish service-history-based SSIPs instead of damage-tolerance-based SSIPs as proposed in the NPRM.

New Rulemaking Mandating CPCP and Other Programs

Comments: One commenter proposes that the FAA initiate a new rulemaking to mandate structural integrity programs and CPCPs instead of AD action supplemented with structural and corrosion reliability programs for airplanes with non-damage-tolerance-based "inspection programs."

FAA Response: The FAA agrees and is considering rulemaking to impose CPCPs for the same fleet of airplanes as is covered by this rule.

Operations Specifications

Comments: One operator proposes an aging airplane program that would function through amendments to operations specifications. Under this program, an operator's quality department would have responsibility for records reviews, airplane inspections, and reporting of results. Also, the FAA could focus on providing oversight through sampling or unannounced inspections and records reviews.

FAA Response: The FAA disagrees. The inspection programs must be approved by the FAA ACO or office of the Small Airplane Directorate or Transport Airplane Directorate responsible for each airplane's type certificate. The final rule has been revised to reflect this approval requirement. Once approved, each air carrier's operations specifications can be revised to include these inspections in each airplane's maintenance or inspection program.

DAR Services

Comments: A number of commenters state that the FAA underestimated the cost for DAR services. One commenter states that the increased inspection and DAR costs would add significantly to the costs per flight hour for low utilization operators.

Another commenter indicates he has been a DAR since 1983 and generally charges $125 per hour for services performed (based on appendix A to part 187, Methodology for Computation of Fees for Certification Services Performed Outside the United States, and AC 187–1, Flight Standards Service Schedule of Charges Outside the United States). The ATA estimates the costs of hiring a DAR would be no less than $100 per hour, compared with the FAA's estimate of $55 per hour.

Other commenters worry that the operator would have to bear the costs of the DAR inspections and records reviews. One operator states that some FAA offices routinely direct operators to

seek the services of a DAR whenever the task can be accomplished by a DAR, indicating the FAA office is too busy.

FAA Response: The FAA has established that the benefit of doing the inspections and records reviews outweighs the associated costs of using DARs to accomplish these tasks. However, the FAA will establish policy on how DARs will be used, and the FAA has revised the regulatory evaluation to reflect the cost of DAR services.

In the NPRM cost calculations, the FAA used $95 per hour for the burdened hourly wage of DARs. The FAA used $55 per hour for other types of skills. In the cost calculations of the final regulatory evaluation, the FAA used $100 per hour for the burdened wage rate of DARs. With regard to the availability of FAA inspectors, the cost-estimation methodology recognizes the possible obstacles with the supply and availability of FAA inspectors, and has consequently assumed that 60 percent of this cost will be for the use of DAR services and 40 percent will be for the use of FAA inspector services. The total cost of the rule remains the same.

Regulatory Evaluation Summary

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement (19 U.S.C. section 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 government, 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 rule: (1) Has benefits which do justify its costs, is a "significant regulatory action" as defined in the Executive Order, and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will have a significant impact on a substantial number of small entities; (3) will have a neutral impact on international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Introduction

This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. Section 44717 of title 49 instructs the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft" and to "make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation."

Consistent with section 44717 of title 49, the purpose of the rule is to ensure the continuing airworthiness of aging airplanes operating in commercial air transportation. The implementation of this rule ensures that: (1) Modern damage-tolerance analysis and inspection techniques will be applied to older airplane structures that were certificated before such techniques were available, and (2) the FAA will conduct mandatory aging-aircraft inspections and records reviews.

Since the publication of the NPRM, the FAA made changes to the final rule consistent with the enabling legislation to ensure the airworthiness of aging aircraft, while factoring in public comments about the economic consequences. The net effect is that all operators have more time to be in compliance with this rule and that operators of smaller aircraft implement less rigorous inspections. Despite these cost-reduction factors, the estimated total cost of the rule is higher than that initial regulatory evaluation, due to cost adjustments resulting from information provided by the industry.

Differences Between the Current Rules and the Aging Rule

There is strong evidence that the current system of maintenance inspections is not working effectively in the detection, and repairing, cracks on airplanes during regular maintenance inspections, while these cracks are still small. This section discusses the differences between the current rules and the aging rule in order to show the focused emphasis of the aging rule toward the early detection of cracks.

There are significant differences between the requirements under *current* rules for aircraft inspection/maintenance and the *new* requirements of the "Aging Airplane Safety" rule. Under current operation rules—with an exception [1]—there are no requirements for operators to accomplish a damage-tolerance based inspection program for any airplane; however, the FAA has mandated DT–SSIPs for large transport airplanes by the use of ADs. These ADs are applicable to the operators. The manufacturers agreed to provide DT-SSIPs to the operators. However, there is no rule mandating this, and it has been taking a long time for the manufacturers to develop the DT-SSIPs. Consequently, for some airplane models, there are various degrees of implementation of damage-tolerance-based standards, while for other airplane models, there is still no such implementation. For example, for the Boeing 757 and 767 models, it took 18 years for DT-based SSIPs to be implemented. The MD–80 model still does not have an implemented DT-based SSIP—after 18 years.

Currently, the inspection programs of small transport airplanes (such as DeHavilland/DHC–6) are not damage-tolerance based. Parts of these airplanes were certificated to either *safe-life* or *fail-safe* requirements. Under existing programs, that use these requirements, there are no provisions for inspections specifically focused on cracks. These inspection programs (which are provided by the original equipment manufacturer) involve a general visual inspection, but the mechanics may never look in areas that are hard to inspect visually—such as the horizontal stabilizer.

In contrast to the *current* situation/rules, this final rule will require DT-based SSIPs within a reasonable length of time (4 years) after the effective date of the rule—so that all (part 121) transport airplanes will have DT-based SSIPs applicable for each model. Damage-tolerance standards emphasize inspections and procedures to detect cracks at an early stage. These cracks can then be repaired. By contrast, the current inspection and maintenance programs of airplanes do not place special emphasis on cracks. Under the current system, the finding of cracks depends more on the quality of the particular mechanic doing the inspection, and on the particular inspection programs adopted by different airlines (or repair stations). Consequently, there is considerable variability in the detection of these cracks, across the U.S. commercial airplane fleet.

[1] " That exception is the recently implemented rule on "Repair Assessment for Pressurized Fuselages," which requires damage-tolerance assessment of repairs to the fuselage pressure boundary of eleven aging, large transport airplane models.

The damage-tolerance-based program uses both *non-invasive* and *invasive* techniques to detect cracks on airplanes. By contrast, the current non-DT-based programs use simpler and fewer non-invasive techniques, and they do *not* use invasive techniques at all. The damage-tolerance-based program uses (new) non-invasive technology—such as eddy current, ultrasonic waves, and magnetic particle inspections—to detect cracks, particularly small cracks. The existing non-DT-based maintenance programs do not require the use of these techniques; eddy current is used only if it is mandated by an AD for a previous cracking problem.

Also, DT-based SSIPs implement inspections for fatigue "*hot spots*"—that is, areas on the aircraft where cracks may develop. In this way, it will be possible for an airline to detect and follow the progress of these spots, or potential cracks, and repair them promptly.

With regard to *invasive techniques,* the damage-tolerance-based inspections and procedures will mandate that operators of the affected airplanes inspect—by invasive techniques—in areas where that they probably would not have inspected before, such as the horizontal stabilizer. To get access to the stabilizer, operators may have to install access doors. Inside the horizontal stabilizer, there are ribs and spar caps that are covered by airplane skin. These components can crack without being detected by an inspection from the outside. A crack in a horizontal stabilizer can result in the loss of control of the aircraft—and lead to an accident.

The comprehensive status of the U.S. airplane fleet with regard to cracking is fairly unknown. It is known that the fleet is aging and the metal of airplanes' structures is accumulating more flight cycles, resulting in an increasing risk of fatigue cracks and a catastrophic airplane accident. The *current ad hoc* approach relies heavily on airplane mechanics reporting cracks from visual inspections (leading to repairs). These inspections have resulted in the discovery of large cracks. If/when the discovery of cracks is deemed to be a serious problem, the FAA issues an AD for a particular model (and part of the airplane). In contrast to the current *ad hoc* approach, this rule will require *all* commercial airplanes to have damage-tolerance based SSIPs which include *directed* inspections for cracks.

Benefits

The purpose of this rule is to play a key-role in assuring the continued structural airworthiness of air carrier airplanes as they continue in service. The rule puts into place one integral part of the FAA's "Aging Aircraft Program", initiated in 1988, to address the unique problems associated with older airplanes. This initiative was undertaken because significant numbers of air-carrier airplanes were, and are, continuing to operate beyond their original design service goals. The Aging Airplane Program was launched with participation by airplane operators and manufacturers, and with the specific goal of identifying maintenance procedures that are necessary beyond current requirements to deal with the phenomena of aging materials.

After an extended period of working with industry's Airworthiness Assurance Task Force and the Airworthiness Assurance Working Group within the Aviation Regulatory Advisory Committee (ARAC), the FAA has concluded that four distinct areas of airplane aging need to be individually addressed. These areas are (1) fatigue cracking, (2) corrosion, (3) damage tolerance of structural repairs, and (4) widespread fatigue damage. Protection from fatigue cracking is the most generalized of these four areas, and was the first area of focus by the FAA. The agency issued a notice of proposed rulemaking on fatigue cracking on April 2, 1999, entitled "Aging Airplane Safety".

Structural properties of materials change as a result of prolonged and/or repeated application of stress cycles on those materials. After some duration of cyclic stress, the material will fail under the applied load because of fatigue. One manifestation of fatigue in materials is cracking. In principal-structural elements of the airplane, cracking due to fatigue can result in a catastrophic failure of the aircraft. Left unchecked, it is not a question of whether the repeated loadings on aircraft will produce a major structural failure but, rather, when that failure will occur. At the time when the NPRM for this final rule was published, more than 29 percent of the airplanes affected by that proposal were already 20 years old or older; 14 percent were over 30 years old; and 7 percent of the airplanes were over 40 years old. The average age of the U.S. airplane fleet has increased, in recent times, from 13.3 years in 1995 to 14.2 years in 1999 (even with retirement of older airplanes).

There is growing evidence of significant occurrence of fatigue cracks on airplanes and the potentially dire consequences of such cracks. This evidence includes: (1) The accident of the Aloha Boeing 737–200, on April 28, 1988, when 18 feet of upper fuselage separated from the airplane in flight; and (2) the substantial, accumulated data showing the development of significant numbers of cracks on airplanes. In the Aloha accident, the National Transportation Safety Board determined the probable cause of the accident to be metal fatigue and corrosion. In addition, many cracks have been found over time on airplanes, including some that are quite long—thus, increasing the risk of accidents. These cracks are typically the result of fatigue from aging. The evidence of significant risk of airplane accidents as a result of cracks is described below, and includes: (1) A relative risk assessment, followed by (2) the record of Service Difficulty Reports, and ending with (3) a discussion of the Airworthiness Directives issued on fatigue and cracking for the U.S. commercial fleet.

Relative Risk Assessment

This benefit analysis provides an estimate of the increasing *relative* risk of accidents over time, based upon existing data and some conservative assumptions. The FAA believes that the analysis results in a reasonable estimate of how much the accident risk, due to fatigue cracking, increases over time with aging aircraft, in the absence of the rule. The analysis is not an estimate of actual future accidents.

To date, the airplane fleets affected by this rule have not experienced a fatigue-related accident, resulting in loss of life or serious injury, although the Aloha accident (mentioned previously) was partly attributed to the age of the airplane involved. The Aloha accident was followed by a series of ADs, on operators, whose successful implementation depended on the voluntary development of DT–SSIPs by manufacturers. The development of these DT–SSIPs has been taking a relatively long time, and is still not completed. Moreover, numerous instances of serious cracking have been discovered among the fleet even during currently-required inspections that do not systematically investigate for fatigue cracking, as is required by this rule. This suggests that a fatigue problem does exist. An attempt is made here to provide an estimate of the magnitude of that problem—now and in the future.

Based upon extensive testing, it is common engineering practice to assume that materials fail from fatigue according to a normal probability curve. The "mean" or highest point of the bell-shaped normal curve denotes the point at which half of the test samples have failed; or, stated another way, that is the point where the probability that any one

sample will have failed is one-half. Engineers often define "Safe life" as outside three standard deviations of the curve, to the left of the mean.

An airplane is made up of a great many different and independent elements, each with its own failure characteristics. Consideration of the probabilities of time-to-failure resulting from fatigue for an entire airplane can be analyzed in terms of a normal distribution. The Central Limit Theorem allows the useful assumption that a plot of the means, of the various times-to-failure of a sufficient number of samples of individual parts of an airplane, will approximate a normal distribution, without regard to the actual underlying distribution of various times-to-failure of the parts. Using this approach, it can reasonably be assumed that in the absence of some preventive action, the fleet of aircraft affected by this rule would experience fatigue failure according to an approximately normal distribution curve. This analysis makes such as assumption. A normal curve is defined by its mean and standard deviation, and unfortunately neither of those numbers is known for the fleet of affected airplanes. As a result, a reasonably accurate failure curve cannot be constructed.

However, by making some conservative assumptions, a curve of relative failure risk may be developed that could yield some useful indications. The *relative* risk curve would be identical to the *actual* failure curve if the failure curve could be identified. Therefore, the relative risk curve is also assumed to be approximately a normal distribution. The mean and standard deviation of this curve are also unknown. However, for the purpose of discussing relative risk, it is assumed that the mean of the relative risk curve is 50 years of age. That is to say, the probability of fatigue failure risk reaches 50 percent at age 50, if no preventive action is taken. If the curve under discussion were an actual failure curve, it would mean that one-half of the fleet would have experienced fatigue failure by age 50 if no preventive actions were taken.

For the purpose of discussing relative failure risk—not actual failure risk—it is assumed that the point of three standard deviations on the risk curve (to the left of the mean) occurs at the age of 14 years. This matches the statutory requirement and the requirements of this rule that additional preventive actions be initiated at that time. Three standard deviations matches the often-used engineering convention that a component is "safe" outside that point (to the left of the mean).

The curve is defined with a mean of 50 years and a standard deviation of 12 years ((50–14)/3). Interpolating from a standard normal probability table, the probabilities associated with such a curve by aircraft age are shown in Table 1. As previously stated, available data are not sufficient to claim that this table shows the fraction of the fleet that would experience fatigue failure with age, in the absence of this rule, but it may be a reasonable indicator of relative risks of failure for individual aircraft.

A very small risk of failure occurs by age 14 years (0.001), as shown in Table 1. By age 22, however, the relative risk is ten times greater—one order of magnitude (at 0.01). By age 35, the risk of failure is one-hundred times greater, than that at age 14—two orders of magnitude (at 0.1). If the maximum, acceptable "safe life" risk occurs when an airplane reaches the point of three standard deviation from the mean, at 14 years of age, then this analysis indicates that this maximum acceptable risk is exceeded by one order of magnitude by age 22, and two orders of magnitude by age 35.

A similar tabulation was done for relative probabilities of fatigue failure if the mean is assumed to be 62 years, instead of 50 years. (62 years, instead of 60 or 65 years, was selected simply for ease of interpolation from the standard normal curve table.) In this case, the relative risk increases by one order of magnitude when an airplane reaches age 25 and two orders of magnitude by age 42.

Although the above brief risk analysis is not precise and depends upon assumptions that could be varied, it does provide an idea of how the risk to aging aircraft increases over time. From this analysis, there is no question that over the years, the risk of fatigue failure for an airplane's structural parts increases. When the above analysis is applied to the fleet of airplanes affected by the rule, there is a strong indication that the level of safety from fatigue crack accidents has significantly declined. The analysis suggests that in the absence of the action proposed by this rule, the accident risk has increased beyond "safe life" by one order of magnitude when an aircraft reaches around 22 to 25 years of age. Over 25 percent of the fleet has reached or exceeded that age range. Further, the analysis suggests that the accident risk has increased to two orders of magnitude, beyond "safe life", in the 35 to 40 years of age range. Over 10 percent of the fleet has reached or exceeded that range.

TABLE 1.—RELATIVE RISK OF FATIGUE-CRACKING ACCIDENT, WITH AGE

[Mean = 50 years]

Age (years)	Relative risk	Age (years)	Relative risk
14	0.0013	33	0.0793
15	0.0018	34	0.0918
16	0.0023	35	0.1056
17	0.003	36	0.123
18	0.0039	37	0.1401
19	0.0049	38	0.1587
20	0.0062	39	0.1814
21	0.008	40	0.2033
22	0.0099	41	0.2266
23	0.0122	42	0.2546
24	0.0154	43	0.281
25	0.0188	44	0.3085
26	0.0228	45	0.3409
27	0.0281	46	0.3707
28	0.0335	47	0.4013
29	0.0401	48	0.4364
30	0.0485	49	0.4681
31	0.0571	50	0.5
32	0.0668		

Service Difficulty Reports

A review of Service Difficulty Reports (SDRs) shows that a significant problem exists with cracks on airplanes in the U.S. commercial fleet. SDRs are reports that provide information on the incidents (as opposed to accidents) of airplanes related to maintenance problems. The reports are typically completed by airline (or repair station) mechanics, and are then sent to, and collected by, the FAA. An objective of the submission and collection of SDRs is to track problems with aircraft parts and components. The findings of SDRs can lead to the issuing of airworthiness directives (ADs), when conditions observed are deemed to create a significant, adverse effect on air-transport safety.

The FAA searched the National Aviation Safety Data Analysis Center (NASDAC) for service difficulty reports since 1990—for part 121 airplanes—using three keywords: "crack", "aging", or "fatigue". The search resulted in over 94,000 records or SDRs. Of these, about 93 percent, or 88,000 SDRs, were on "cracks" (while the remaining were on "corrosion"). *Eighty-eight thousand* records are a significant number of problems involving aircraft cracks. These cracks were found on all the main parts of the airplane structure: fuselage, wings, and doors (of both passenger and cargo airplanes). Therefore, this assessment of SDRs shows a wide prevalence of cracks on U.S. commercial airplanes.

Airworthiness Directives

Airworthiness Directives (ADs) are issued when serious problems with airplanes are discovered that—if not repaired—have a high likelihood of resulting in an accident. So, ADs are issued quickly in order to maintain the airworthiness of the affected airplanes and thus prevent accidents. Given the threat of an accident, when an AD is issued, operators have a limited time to resolve the problem and often require unscheduled maintenance.

A tabulation was made of ADs issued by the FAA for problems with airframe "fatigue" and "cracking"—for a recent period of less than one year: January 1 through September 2000. The results show that 56 such ADs were issued by the FAA over that time period. These ADs apply to various parts of the airplane structure and these parts include: Fuselage, wings, door frames, deck floor beams, etc. A count of the affected parts indicates that:

(1) Ten ADs were issued for cracks found on the fuselage skin;

(2) Nine ADs were issued for cracks on wings;

(3) Eight ADs were issued for cracks found on, and around, doors.

(4) Eight ADs were issued for cracks found on (and around) bulkheads.

(5) Two ADs were issued for cracks found on the tail assembly (which includes the horizontal and vertical stabilizers, and rudder).

These Airworthiness Directives on cracks, also, affect *all* of the well-known airplane *models*. They include: Aerospatiale, Airbus, Boeing, Bombardier, British Aerospace, Dornier, Fairchild, Fokker, Lockheed, and McDonnell Douglas. Also, some of these ADs affect an *entire airplane* series. For example, an AD applies to the Airbus A–300 Series, while another AD refers to the Boeing 727 Series. Still another AD applies to the Boeing 737–200C Series, the Boeing 747 Series, and the Boeing 777 Series.

If cracks are left undetected—and, thus, untreated—they grow. Subsequently, they can result in accidents. With regard to crack *sizes* and *growth* of cracks, one can refer—as an example—to the "Airworthiness Directive; Boeing Model 747 Series Airplanes", Final rule; request for comments (Docket No. 2000–NM–206–AD). In the text of this AD, it is pointed out that "The FAA has received reports that, during regular maintenance of certain Boeing Model 747 series airplanes, operators detected cracking of certain areas of the fuselage skin adjacent to the drag splice fitting. One operator reported finding four skin cracks, which ranged in length from *0.19 to 1.37 inches*, under the drag splice fitting of the right side underwing. On another airplane, there was detection of a *8.5-inch long crack* under the drag splice fitting of the left side. Moreover, another operator found a *25-inch long diagonal crack* between station (BS) 982 and BS 990 at stringers 37L through 38L." These data show the existence of different-size cracks found on different airplanes (of the same airplane model). The cracks (in this particular case) range in size from 0.19 inches to 25 inches. Therefore, these data indicate that under current inspection/maintenance procedures, which are not based on damage-tolerance standards, cracks have gone unnoticed and have become quite large.

The text in the same AD goes on to emphasize the serious, potential consequences of cracks. It states that "Such conditions, if not corrected, could result in reduced structural integrity of the fuselage, and consequent rapid depressurization of the airplane." Depressurization means that the fuselage of the aircraft is breached and that can result in an accident. When a fuselage is under pressure, if a crack gets long enough, it will fast fracture.[2] When a crack fast fractures and is not arrested, the fuselage will experience a rapid depressurization event. Rapid depressurization can result in a number of serious adverse effects on the airplane and passengers. At best, after the airplane has suffered depressurization, the passengers ride in an unheated aircraft, breathe through oxygen masks, and hope for a safe landing. Another possible result, however, is an airplane accident. There are examples of catastrophic accidents occurring as a result of rapid depressurization; these accidents were not caused by cracks but they show the dire consequences of rapid depressurization. In one accident, in 1974, a DC–10 operated by Turkish Airlines, lost a door and had rapid depressurization. This caused the floor of the airplane to move and sever control cables—with catastrophic results. The accident killed 246 people. In another accident, in 1985, a B–747 operated by Japan Airlines experienced a failure in the aft pressure bulkhead (from a bad repair). This affected the control system and the airplane crashed in a mountain—killing 524 people. It was very fortunate that the Aloha accident resulted in only one fatality.

[2] When a crack fractures at a rapid rate. A cleavage fracture may run as fast as 1 mile/second (1600 meters/second), a dimple fracture as fast as 1500 feet/second (500 meters/second), although it may be slower.

Therefore, cracks are a serious airworthiness problem, as evidenced by the necessity to issue numerous ADs. These cracks have affected critical parts of the entire airplane structure across all the airplane types used in commercial aviation. The use of ADs is meant to address a *specific* problem during a specific time period. It is not an effective way to address a *widespread* problem that affects the entire U.S. commercial airline fleet—such as cracks. The "Aging Airplane Safety" rule provides a comprehensive and effective way to address that problem.

In sum, it is accepted that after some duration of cyclic stress, metal will fail under applied load because of fatigue. From the relative risk assessment discussed above, it is clear that risk of metal fatigue increases by orders of magnitude as the airplanes age. Since 1990, there are over 88,000 airplane service difficulty reports that identify cracks found on all the main parts of airplane structure. There is not only abundant evidence of pervasive cracking in airplanes, but also many of these cracks have led to airworthiness problems. These risks are not acceptable. The FAA concludes that action must be taken to avoid this unacceptable risk. The inspections and records reviews required by this rule are expected to achieve the goal of maintaining an acceptable risk from fatigue cracking accidents.

Costs

Differences Between Costs of the NPRM and Final Rule

There are several differences between preliminary regulatory evaluation of the NPRM and the final regulatory evaluation of the rule. Some of these differences reduce the costs of the rule, while others increase these costs. The net effect is for the estimated costs in the final regulatory evaluation to exceed substantially the costs estimated in the NPRM. These changes are explained in more detail below.

The following changes from the NPRM to the final rule, based on information from public comments, reduced the cost of some requirements of the rule:

(1) The time between repeat intervals was increased from 5 years to 7 years—in order for the required inspections to be better accommodated by the schedule for heavy maintenance checks.

(2) For airplanes that will be 25 years or more on the rule effective date, the time interval for the initial inspection was increased from 3 to 4 years.

(3) In the final rule, operators of part 135 airplanes are exempt from damage-

tolerance inspections. Instead, they only need to implement a service-history based SSIP—and that by 2010.

(4) In the final rule, operations within Alaska are exempt from the rule's requirements.

Despite the above factors that reduced costs, the estimated total cost of the rule in the final regulatory evaluation is significantly greater than the total cost of the rule estimated in the NPRM. This increased cost was affected by the following factors:

(1) The number of affected airplanes was higher in the final regulatory evaluation. The number of part 121 airplanes that need DT SSIPs increased from 925 in the NPRM to 1,596 in the final regulatory evaluation.

(2) For part 121 airplanes that have DT SSIPs, the cost estimation in the final rule increased the downtime for FAA/DAR inspections and records review to 2 days.

(3) In the final regulatory evaluation, efficiency factors were not applied in the writing/development of damage-tolerance-based SSIPs.

(4) The average airplane values used in the final regulatory evaluation were higher than those used in the preliminary regulatory evaluation. This results in increased downtime costs.

As a result of the above changes, the total estimated cost of the rule increased from $99.6 million in the NPRM to $173.5 million in the final rule—in present value. The cost of the part 135 operators declined from $8.5 million to $1.7 million, in present value.

Also, with respect to the distribution of the cost for inspections/records review by FAA inspectors/DARs, in the final regulatory evaluation it was assumed that 60% of this activity will be conducted by DARs, while 40% will be conducted by FAA inspectors. In the NPRM, the cost methodology assumed that the cost of this activity would be shared 50%–50% between FAA inspectors and DARs. Consequently, the methodology of the final regulatory evaluation increased the cost of this activity for the operators.

The rule will affect the operators of airplanes under part 121 that currently have (or are expected to have by 2004) damage-tolerance-based SSIPs incorporated into their maintenance program. In addition, those operators of airplanes under part 121 that are not currently required to incorporate a damage-tolerance-based SSIP into their maintenance program will need to develop such a program. The rule will also generate costs for operators of multi-engine airplanes that are operated in scheduled service under part 135 and initially certificated with 10 or more passenger seats. These operators are required to develop and implement damage-tolerance-based SSIPs by the year 2010. Many of the airplanes in this group have moved over time into part 121; consequently, their costs are measured through the part 121 airplane list.

The rule will also generate costs for operators of multi-engine airplanes that are operated in scheduled service under part 135 and initially certificated with nine or fewer passenger seats. These operators are required, by the final rule, to develop and implement service-history-based SSIPs by the year 2010. Service-history-based SSIPs have considerably lower costs than damage-tolerance-based SSIPs. In the NPRM, the proposed rule required that the operators of these airplanes also implement damage-tolerance-based SSIPs. However, as a result of public comments and additional consideration, this final rule exempts those airplanes from damage-tolerance-based SSIPs and, instead, requires the lower-cost service-history-based SSIPs.

The estimated costs of this rule do not include the expenses of making repairs to airplanes that may be found necessary during either the SSIP-directed inspections, conducted by the airplane mechanics, or the oversight inspections conducted by the FAA inspectors or DARs. While the FAA recognizes that such repairs can sometimes constitute a considerable expense, the costs of these repairs are not attributable to this rule because existing FAA regulations require that repairs be made to assure the continued airworthiness of the airplane.

Also, the economic evaluation focuses on existing airplanes and does not address the costs that the rule will eventually impose on newly-produced airplanes. The requirements of this rule on newly-produced airplanes are beyond (or nearly so) the 20-year time period of this study. Consequently, these costs, particularly their present value, are expected to constitute a relatively small proportion of the costs calculated in this study.

Costs for Part 121 Airplanes That Have Damage-Tolerance-Based SSIPs

For those part 121 operators that have (or will have by 2004) a damage-tolerance-based SSIP, the rule will not impose costs for damage-tolerance-based inspections conducted by their mechanics or for downtime of airplanes caused by these inspections. The rule will require that these airplanes implement inspections and records reviews by FAA inspectors or Designated Airworthiness Representatives (DARs), at designated time intervals. This requirement will result in additional costs for the affected operators. These inspections/records review are expected to result in additional time that an airplane is out-of-service. While this downtime cost estimates in the NPRM were based on loss-of-service estimates that ranged from 0.7 to 1.6 days per airplane inspection, in these cost calculations, the downtime has been increased to 2.0 days. This increase in downtime reflects the input of public comments.

The estimated cost of airplane downtime is based on a rate of return to capital approach, in which the operational airplane is the productive capital and there is a return associated with its use. Consequently, out-of-service cost can be estimated through the loss of capital services of the aircraft. The value of this loss is measured by the rate of return to capital (aircraft). This analysis uses 7 percent per annum as the average rate of return to capital; this rate is also preferred by the Office of Management and Budget for present-value calculations. Consequently, downtime costs were calculated as the product of the 2 downtime days, divided by 365 days (per year), multiplied by the rate-of-return to capital, at 7 percent. The resulting estimate is a downtime cost per airplane (in a model group), per inspection. To obtain the cost of downtime for a model group, the downtime cost per airplane is multiplied by the number of airplanes in that model group. The total downtime cost of the rule is the summation across model groups and over time. Thus, the estimate for downtime costs, for part 121 airplanes with damage-tolerance-based SSIPs over the period of analysis, is $98.4 million, undiscounted. Assuming an average of two inspections per airplane over the 20-year period of analysis, and using 7,620 airplanes and 2 days per inspection, one estimates downtime costs at $3,228 per day per airplane (undiscounted).

This figure (of $3,228 per day) is significantly different/lower than figures provided by some public comments of $80,000 in lost revenue per inspection which—given a two-day downtime period—would result in $40,000 lost revenue per day. On should note that the relevant variable to measure for downtime cost is lost net income—that is, "revenue minus costs" of operating the airplane. And lost net income would be substantially lower than lost revenue per day for an airplane. When an airplane is out-of-service, there is loss of revenue but costs of operation are also

not incurred (pilot salaries, fuel, maintenance, *etc.*).

There were also adjustments to these cost estimates. The estimated total cost of the rule, for this group of airplanes, was computed under the hypothesis that all of the affected airplanes that exist today will continue to be operating through the end of the study period—year 2020. In actuality, however, over time there will be normal replacement and retirement, by operators of these airplanes. Consequently, a substantial portion of these costs will not be incurred. The evaluation assumes that at least one-third of the potential $245.0 million costs will not be incurred due to normal replacement and retirement of aircraft. This assumption is the same as that used in the initial regulatory evaluation.

Cost of the Rule for Part 121 Airplanes That Need To Incorporate Damage-Tolerance-Based SSIPs Into Their Maintenance Program

Steps in Cost Estimation

The relevant tasks and associated costs of the rule for these airplanes include:

(1) Development of the damage-tolerance-based SSIP.

(2) Incorporation of damage-tolerance-based SSIPs into operators' maintenance programs.

(3) Review/approval by FAA of operators' damage-tolerance-based SSIP and of their incorporation into the operators' maintenance programs.

(4) Modification costs.

(5) Inspections—conducted by airline mechanics.

(6) Downtime costs for airplanes for inspections—by airline mechanics.

(7) Cost for operator personnel to prepare the airplane and its records for the FAA inspector or DAR, to conduct their inspection and records review.

(8) Direct costs for FAA inspectors/DARs, to conduct inspections and records reviews of the affected airplanes.

(9) Downtime cost of airplane for the above inspection and records review by FAA/DARs.

With regard to the downtime costs of airplanes for inspections by mechanics, the evaluation assumes that each 40 hours of inspection work, caused by this rule, will require one additional day of airplane downtime. The methodology again uses the rate of return to capital approach, with 7 per cent per year. Consequently, the cost of aircraft downtime, for mechanic inspections, for the affected airplanes over the period of analysis is estimated at $3.1 million, undiscounted.

With regard to the downtime costs of these airplanes for inspection/records review by FAA/DARs, the additional downtime is estimated to range between 0.7 and 1.6 days per airplane inspection—depending on airplane value. Subsequently, the cost of downtime is calculated by the rate of return to capital approach (using 7 percent). The result is an estimate of $702,000 undiscounted, for downtime costs of the affected airplanes.

Adjustments to Cost Estimates

For some models, the potential cost of complying with the requirements of the rule could constitute a significant proportion of (or may actually exceed) the economic values of the airplanes involved. Consequently, for each airplane model group, the estimated potential cost of compliance was compared with the estimated economic value of the airplanes in that model group. In cases where the potential compliance cost exceeds 50 percent of the group value, the methodology assumes that an SSIP will not be developed and implemented. Consequently, the related compliance costs for the rule will not be incurred. Instead, it is expected that the affected models will be retired or transferred out of scheduled service. The estimated forced out-of-service costs for these models are estimated to be 50 percent reduction in their economic value.

However, this (apparent) reduction in the cost of the rule is accompanied by an increase in another type of cost. This includes the hardship and economic dislocation that will result from the reduction in operations, or by possibly going out of business, by some operators. This hardship can include the loss of jobs by employees of the affected operators, and the subsequent negative effects of this on themselves (their households) and their communities. These costs are recognized although not quantified.

Other Adjustments to the Cost Estimates

The estimated cost of the rule for this group of airplanes was computed under the scenario whereby all of the affected airplanes that exist today will continue to fly through the end of the study period (year 2020). In actuality, however, there will be normal replacement and retirement of these airplanes (by operators) and, consequently, a substantial portion of these costs will not be incurred. The replacement cycle for this group of airplanes can vary widely. For some mainstream scheduled commuter carriers, it is common practice for airplanes to be routinely replaced. In a number of cases, few if any of the costs of this rule will be incurred. Conversely, the economics of some smaller, or niche carriers, are such that airplanes may continue to fly for 40 years or more. Given available information, the evaluation assumes that at least one-third of the potential $163.8 million costs will not be incurred, as a result of normal replacement/retirement of airplanes—leaving an estimated cost of $104.4 million.

Part 135 Airplanes

This final rule exempts certain part 135 airplanes from implementing DT-based SSIPs. These are multi-engine airplanes, operated in scheduled service, initially certificated with nine or fewer passengers. Instead of a DT SSIP, the operators of these airplanes will have to implement a service-history-based SSIP—by the year 2010. A service-history-based SSIP is estimated to cost significantly less than a damage-tolerance-based SSIP—in general, 0.20 of the cost of a DT-based SSIP. The cost of the rule for this group of airplanes is estimated at $1.7 million, discounted ($2.9 million, undiscounted).

Costs to the FAA

The rule is also estimated to have costs of $91.0 million undiscounted to the FAA. Virtually, the entire amount of these costs is for FAA inspectors to conduct inspections and records review. This cost estimate is based on the assumption that 40 percent of the inspections/records review will be conducted by the FAA inspectors while 60 percent will be conducted by DARs.

Table 2 presents the total costs of the rule, over the period of analysis—for the operators (and manufacturers) of the affected airplanes and the FAA. Total costs are estimated at $362.9 million, undiscounted, with a present value of $173.5 million.

TABLE 2.—TOTAL COST OF THE RULE
[Dollars in millions, 2001–2020]

	Undiscounted costs	Discounted costs
Operators of airplanes that have damage-tolerance-based SSIPs	$164.1	$72.2
Operators of airplanes that need damage-tolerance-based SSIPs	104.9	59.6
Operators of airplanes that need service-history-based SSIPs	2.9	1.7
FAA costs	91.0	40.0
Total Costs	362.9	173.5

Comparison of Costs and Benefits

The changes required by the rule are necessary to ensure the continuing airworthiness of aging airplanes. The FAA finds that the expected benefits of the rule justify its costs. The total estimated costs of the rule are $173.5 million, discounted ($362.9 million, undiscounted). The benefits have been assessed through several perspectives as explained below.

There is growing evidence of significant occurrence of fatigue cracks on airplanes and the potentially dire consequences of such cracks. The evidence of significant risk of airplane accidents, as a result of cracks, include: (1) The Aloha accident; (2) the results of the relative risk assessment; (3) the number of Service Difficult Reports on cracks; and (4) the Airworthiness Directives issued for fatigue and cracking on the U.S. commercial aviation fleet.

The relative risk assessment showed that while a small risk of failure—due to fatigue cracks—exists by year 14 of an airplane's service life, by age 22, that risk is 10 times greater (one order of magnitude). Furthermore, by age 35, the risk is 100 times greater than at age 14 (two orders of magnitude). Over 25 percent of the fleet has reached or exceeded the range of 22 to 25 years of age. Over 10 percent of the fleet has reached or exceeded 35 years of age.

In addition, a search resulted in 88,000 Service Difficulty Reports on cracks, since 1990. This number of records indicates a prevalent and significant problem with cracks in the aircraft fleet. Furthermore, the significant number of ADs on cracks on airplanes—issued during a recent period (of less than a year) also indicates the existence of a serious problem with cracks on the U.S. commercial fleet. ADs are issued quickly to remedy problems that have a high likelihood of resulting in accidents. Each AD, by itself, is proof that a significant accident risk exists.

Therefore, based on the above evidence, the FAA finds that the expected benefits of this rule justify its expected costs.

Regulatory Flexibility Analysis

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 consider the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have such an impact, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed, or final, rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and 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.

For the NPRM, the FAA conducted a complete initial regulatory flexibility analysis to assess the impact on small entities. This rule will affect commercial operators of airplanes, in the specified part of the CFR. For these operators, a small entity is defined as one with 1,500 or fewer employees. As there are operators that met that criteria for a small business, calculations were carried out to assess whether the rule will have a significant impact on a substantial number of these operators.

Issues Addressed in the Final Regulatory Flexibility Analysis (FRFA)

The central focus of the FRFA, like the Initial Regulatory Flexibility Analysis (IRFA), is the requirement that agencies evaluate the impact of a rule on small entities and analyze regulatory alternatives that minimize the impact when there will be a significant economic impact on a substantial number of small entities.

The requirements, outlined in section 604(a)(1–5), are listed and discussed below:

(1) *A succinct statement of the need for, and objectives of, the rule.*—This rule represents a critical step toward compliance with the Aging Aircraft Safety Act of 1991. Section 44717 of title 49 instructs the Administrator to "prescribe regulations that ensure the continuing airworthiness of aging aircraft." The law also requires the Administrator to make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation. The objectives of the rule is to ensure the continuing airworthiness of aging airplanes operating in air transportation.

(2) *A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*—There were very few public comments explicitly on the Initial Regulatory Flexibility Analysis. There were a substantial number of comments from part 135 operators that complained about the financial burden that the proposed rule would place on them. Small commercial operators (less than 1,500 employees) come from this group, as well as from part 121 operators.

In response to public comments, the FAA made several changes to the final rule:

(i) The primary change is that part 135 airplanes operating in scheduled operations, initially certificated with nine passenger seats or less, are exempted from implementing damage-tolerance-based SSIPs. Instead, they are

to implement service-history-based SSIPs—and those by 2010. The SH SSIPs are estimated to cost 20 percent of the cost of a DT SSIP (to develop and implement).

(ii) The interval between repeat inspections was extended in the final rule to seven years, from five years in the NPRM.

(iii) For the initial inspection, the interval from the effective date of the rule was extended from 3 to 4 years for airplanes greater than 25 years old.

(3) *A description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*—The FAA estimated the number and input of small entities as follows. First, small operators in part 121 were selected, by using a database that listed part 121 operators, with their number of employees and annual revenue. This database came from a study on small business done for the FAA by a consulting firm (GRA, Incorporated). The search identified 58 operators with 1500 or fewer employees, and with known annual revenue. Then, airplanes of these operators were identified—by using data from the BACK database. This search identified small entities operating under part 121, with affected airplanes (those in part 121 that had DT SSIPs and those that need DT SSIPs).

Next, the net present value of the cost of the rule was calculated for each operator. As these cost calculations are based on airplane model groups, the resulting net present value (NPV) for one airplane is obtained by dividing the cost of the group by the total number of airplanes in that group. The result is an "average" net present value per airplane. The NPV per airplane is then multiplied by the number of airplanes of that operator, in that model group. If there is more than one model group, per operator, the NPVs of the model groups are summed to derive the net present value of the cost of this rule for the affected operators. Subsequently, these discounted costs are used to derive annualized costs, for each affected small operator.

With respect to part 135 operators, a search was made in the GRA database that listed part 135 operators, along with the number of employees and annual revenues per firm. The identified small operators were then checked against a database of the FAA which listed the names of part 135 operators and their airplanes. This search identified 26 small entities operating under part 135, including two operators that operate under parts 135 and 121. For part 135 operators, the net present value of the rule's cost and annualized cost were derived in the same manner as for part 121 operators.

Annualized costs for the affected operators were then divided by annual revenues of the operators. The results show that for all—except two—of the listed 58 small operators, under part 121, the ratio of annualized cost to revenues is substantially less than one percent. For one operator, the ratio is 5.9 percent, while for another operator, it is 1.1 percent. With regard to part 135 operators, of the 24 identified operators, all but two show a ratio of annualized cost to annual revenue that is less than one percent. Thus, of the 82 identified small operators—under part 121 and/or part 135—all except four have a ratio of annualized cost to annual revenue that is substantially less than one percent.

(4) *A description of the projected reporting, record-keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*—In order for the FAA to fulfill its obligation under 49 U.S.C. 44717, this rule will require that certain records be made available by the operator. Most of the records that will be required under this rule for part 121 airplanes are currently required by other regulations. Consequently, there is expected to be a minimal additional paperwork, for these airplanes, as a result of the rule. Concerning part 135 airplanes, their exemption from DT SIPPs is expected not to result in additional paperwork for their operators.

(5) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*—In order to decrease the cost burden for the final rule, the FAA will exempt operators of part 135 airplanes from implementing damage-tolerance-based (DT) SSIPs. These operators are nearly all small entities. Instead of the DT-based SSIP requirement, these operators' aircraft will be subject to a Service-History (SH)-based supplemental inspection program to be implemented by the year 2010. The SH-based SSIP is estimated to be 20 percent of the cost of a DT-based SSIP.

Furthermore, in its efforts to assist small entities and other affected parties operating part 135 airplanes, the FAA will publish (with the final rule) an advisory circular, AC 91–60A "The Continued Airworthiness of Older Airplanes".

Description of Alternatives

The FAA has considered several alternative approaches to this rulemaking and has attempted to minimize the potential economic impact of the rule, especially the impact on the operation of aircraft most likely to be used by small entities. At the same time, the agency needs to meet its primary responsibility for aviation safety and its particular obligation under 49 U.S.C. 44717 to ensure the continuing airworthiness of aging aircraft.

The FAA made two changes to the requirements of the final rule that significantly lower compliance costs of operators. First, the FAA chose to lengthen the time period between inspections from 5 to 7 years. This longer period lowers the compliance cost of the affected operators as the inspections can occur at a heavy maintenance check. Second, the FAA exempted part 135 operators from the most expensive requirement of the rule. Part 135 operators are nearly all small entities.

Compliance Assistance

In its efforts to assist small entities and other affected parties in complying with the rule, the FAA will be publishing two advisory circulars (for comment) with the final rule. One is AC 91–56B "Continuing Structural Integrity Program for Airplanes" and it will provide guidance for complying with a DT SSIP. The other document is AC 91–60A "The Continued Airworthiness of Older Airplanes", which will provide guidance for complying with a service-history based SSIP. These circulars will be published concurrently with this rule, with a request for comments.

International Trade Impact Analysis

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.

In accordance with the above statute, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international

entities and thus will have a neutral trade impact.

Unfunded Mandates Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate, in a proposed or final agency rule, that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 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 the Act is any provision in a Federal agency regulation that will 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 the Act, 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 shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Paperwork Reduction Act

Information collection requirements in the final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Numbers: 2120–0020–, 2120–0008, and 2120–0039. Part 129 record requirements can be found in International Civil Aviation Organization Annexes.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

International Trade Impact Analysis

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. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade. This includes both barriers affecting the export of American goods and services to foreign countries, and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities, and thus will have a neutral trade impact.

Unfunded Mandates Analysis

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate, in a proposed or final agency rule, that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 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 the Act is any provision in a Federal agency regulation that will 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 the Act, 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 shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 119

Air carriers, Air transportation, Aircraft, Aviation safety, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 119, 121, 129, 135, and 183 of title 14, Code of Federal Regulations as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Amend § 119.3 by adding the definition of "years in service" after the definition of "When common carriage is not involved or operations not involving common carriage" to read as follows:

§ 119.3 Definitions.

* * * * *

Years in service means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Add § 121.368 to read as follows:

§ 121.368 Aging airplane inspections and records reviews.

(a) *Applicability.* This section applies to all airplanes operated by a certificate holder under this part, except for those airplanes operated between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspection and records review.* After the dates specified in this paragraph, a certificate holder may not operate an airplane under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service but not 24 years in service on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (b) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 121.370a of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

5. Add § 121.370a to read as follows:

§ 121.370a Supplemental inspections.

(a) *Applicability and general requirements.* After December 5, 2007, a certificate holder may not operate an airplane under this part unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (b), (c), and (d) of this section list the exceptions to this requirement. This section does not apply to an airplane operated by a certificate holder under this part between any point within the State of Alaska and any other point within the State of Alaska.

(b) *New model added through type certificate amendment.* This paragraph applies to each airplane added to a type certificate after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A certificate holder may not operate that airplane more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(c) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of an airplane reaches the design-life goal listed in appendix N to this part, the certificate holder may operate that airplane until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(e) *Approvals.* The inspections and procedures required by this section to

be included in the certificate holder's maintenance program for an airplane must be approved by the FAA Aircraft Certification Office or office of the Small Airplane Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

6. Add appendix N to part 121 to read as follows:

APPENDIX N TO PART 121.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
deHavilland Aircraft Co.: DHC–6	22+2	A9EA	33,000
Dornier Luftfahrt GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Short Brothers PLC:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

8. Revise § 129.1 to read as follows:

§ 129.1 Applicability and definitions.

(a) *Foreign air carrier operations in the United States.* This part prescribes rules governing the operation within the United States of each foreign air carrier holding the following:

(1) A permit issued by the Civil Aeronautics Board or the U.S. Department of Transportation under 49 U.S.C. 41301 through 41306 (formerly section 402 of the Federal Aviation Act of 1958, as amended), or

(2) Other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the U.S. Department of Transportation.

(b) *Operations of U.S.-registered aircraft solely outside the United States.* In addition to the operations specified under paragraph (a) of this section, §§ 129.14, 129.16, 129.20, 129.32, and 129.33 also apply to U.S.-registered aircraft operated solely outside the United States in common carriage by a foreign person or foreign air carrier.

(c) *Definitions.* For the purpose of this part—

(1) *Foreign person* means any person who is not a citizen of the United States and who operates a U.S.-registered aircraft in common carriage solely outside the United States.

(2) *Years in service* means the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate.

9. Add § 129.16 to read as follows:

§ 129.16 Supplemental inspections for U.S.-registered aircraft.

(a) *Multiengine airplanes with 10 or more passenger seats.* After December 5, 2007, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats under this part unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (c), (d), and (e) of this section list the exceptions to this requirement.

(b) *Multiengine airplanes with nine or fewer passenger seats.* After December 20, 2010, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane initially type certificated with nine or fewer passenger seats under this part unless the inspection program for that airplane includes service-history-based inspections and procedures. Paragraphs (d) and (e) of this section list the exceptions to this requirement.

(c) *New model added through type certificate amendment.* This paragraph applies to each U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats that is added to a type certificate

after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A foreign air carrier or foreign person may not operate that airplane more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(d) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of the airplane reaches the design-life goal listed in appendix B to this part, the foreign air carrier or foreign person may operate the airplane until the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the foreign air carrier or foreign person may not operate the airplane unless it complies with paragraph (a) or paragraph (b) of this section.

(e) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a foreign air carrier or foreign person may operate a U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats and for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the foreign air carrier or foreign person may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(f) *Approvals.* The inspections and procedures required by this section to be included in the certificate holder's maintenance program for an airplane must be approved by the FAA Aircraft Certification Office or office of the Small Aircraft Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

10. Add § 129.33 to read as follows:

§ 129.33 Aging airplane inspections and records reviews for U.S.-registered multiengine aircraft.

(a) *Operation after inspection and records review.* After the dates specified in this paragraph, a foreign air carrier or foreign person may not operate a U.S.-registered multiengine airplane under this part unless the Administrator has notified the foreign air carrier or foreign person that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the foreign air carrier or foreign person must demonstrate to the Administrator that the maintenance of age sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on* December 8, 2003; *initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(b) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (b) of this section.

(c) *Airplane and records availability.* The foreign air carrier or foreign person must make available to the Administrator each U.S.-registered multiengine airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 129.16 of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(d) *Notification to Administrator.* Each foreign air carrier or foreign person must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

11. Add appendix B to part 129 to read as follows:

APPENDIX B TO PART 129.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	19+2	A14CE	46,000
—Beech 1900 and 1900C	13+2	A24CE	45,000
—Beech 300 and 300LW	15+2	A24CE	30,000
—Beech B300 and B300C	19+2	A24CE	30,000
—Beech 1900D	15+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700

APPENDIX B TO PART 129.—DESIGN-LIFE GOALS—Continued

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
deHavilland Aircraft Co.: DHC–6	22+2	A9EA	33,000
Dornier-Luftfahrt GmbH:			
—Dornier 228–100 and –200	19+2	A16EU	42,800
—Dornier 228–101 and –201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Inc., The New:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers PLC:			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

13. Add § 135.168 to read as follows:

§ 135.168 Supplemental inspections.

(a) *Applicability.* This section applies to each multiengine airplane operated by a certificate holder in scheduled operations under this part, except for those operations conducted between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Multiengine airplanes with 10 or more passenger seats.* After December 5, 2007, a certificate holder may not operate, in scheduled operations under this part, a multiengine airplane initially type certificated with 10 or more passenger seats unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures. Paragraphs (d), (e), and (f) of this section list the exceptions to this requirement.

(c) *Multiengine airplanes with nine or fewer passenger seats.* After December 20, 2010, a certificate holder may not operate, in scheduled operations under this part, a multiengine airplane initially type certificated with nine or fewer passenger seats unless the inspection program for that airplane includes service-history-based inspections and procedures. Paragraph (e) of this section lists the exception to this requirement.

(d) *New model added through type certificate amendment.* This paragraph applies to each U.S.-registered multiengine airplane initially type certificated with 10 or more passenger seats added to a type certificate after December 8, 2003, that has a certification basis that does not include a requirement for damage-tolerance-based inspections and procedures. A certificate holder may not operate that airplane, in scheduled operations, more than 4 years after the date of the type certificate amendment unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(e) *Design-life goal airplanes.* If on or after December 5, 2007, the time in service of the airplane reaches the design-life goal listed in appendix G to this part the certificate holder may operate that airplane in scheduled operations until the date the airplane's time in service reaches the design-life goal or until December 20, 2010, whichever occurs sooner. After that date, the certificate holder may not operate the airplane in scheduled operations unless it complies with paragraph (b) or paragraph (c) of this section.

(f) *Airworthiness directive-mandated service-history-based inspections.* Until December 20, 2010, a certificate holder may operate an airplane for which an airworthiness directive requires the maintenance program to include service-history-based inspections and procedures. After that date, the certificate holder may not operate the airplane unless the maintenance program for that airplane includes damage-tolerance-based inspections and procedures.

(g) *Approvals.* The inspections and procedures required by this section to be included in the certificate holder's maintenance program for an airplane

must be approved by the FAA Aircraft Certification Office or office of the Small Aircraft Directorate or Transport Airplane Directorate having cognizance over the type certificate for the affected airplane.

14. Add § 135.422 to read as follows:

§ 135.422 Aging airplane inspections and records reviews for multiengine airplanes certificated with 10 or more passenger seats.

(a) *Applicability.* This section applies to multiengine airplanes with 10 or more passenger seats operated by a certificate holder in scheduled operations under this part, except for those airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspections and records review.* After the dates specified in this paragraph, a certificate holder may not operate a multiengine airplane in scheduled operations under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (c) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which a inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Total flight cycles of the airframe;

(4) Date of the last inspection and records review required by this section;

(5) Current status of life-limited parts of the airframe;

(6) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(7) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(8) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 135.168 of this part;

(9) A list of major structural alterations; and

(10) A report of major structural repairs and the current inspection status for those repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

15. Redesignate existing § 135.423 as § 135.424.

16. Add new § 135.423 to read as follows:

§ 135.423 Aging airplane inspections and records reviews for multiengine airplanes certificated with nine or fewer passenger seats.

(a) *Applicability.* This section applies to multiengine airplanes certificated with nine or fewer passenger seats operated by a certificate holder in scheduled operations under this part, except for those airplanes operated by a certificate holder between any point within the State of Alaska and any other point within the State of Alaska.

(b) *Operation after inspections and records review.* After the dates specified in this paragraph, a certificate holder may not operate a multiengine airplane in scheduled operations under this part unless the Administrator has notified the certificate holder that the Administrator has completed the aging airplane inspection and records review required by this section. During the inspection and records review, the certificate holder must demonstrate to the Administrator that the maintenance of age-sensitive parts and components of the airplane has been adequate and timely enough to ensure the highest degree of safety.

(1) *Airplanes exceeding 24 years of service in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 24 years in service on December 8, 2003, no later than December 5, 2007, and thereafter at intervals not to exceed 7 years.

(2) *Airplanes not exceeding 14 years in service but not 24 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has exceeded 14 years in service, but not 24 years in service, on December 8, 2003, no later than December 4, 2008, and thereafter at intervals not to exceed 7 years.

(3) *Airplanes not exceeding 14 years in service on December 8, 2003; initial and repetitive inspections and records reviews.* For an airplane that has not exceeded 14 years in service on December 8, 2003, no later than 5 years after the start of the airplane's 15th year in service and thereafter at intervals not to exceed 7 years.

(c) *Unforeseen schedule conflict.* In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond an interval specified in paragraph (c) of this section.

(d) *Airplane and records availability.* The certificate holder must make available to the Administrator each airplane for which an inspection and records review is required under this section, in a condition for inspection specified by the Administrator, together with the records containing the following information:

(1) Total years in service of the airplane;

(2) Total flight hours of the airframe;

(3) Date of the last inspection and records review required by this section;

(4) Current status of life-limited parts of the airframe;

(5) Time since the last overhaul of all structural components required to be overhauled on a specific time basis;

(6) Current inspection status of the airplane, including the time since the last inspection required by the inspection program under which the airplane is maintained;

(7) Current status of the following, including the method of compliance:

(i) Airworthiness directives;

(ii) Corrosion Prevention and Control Programs; and

(iii) Inspections and procedures required by § 135.168 of this part;

(8) A list of major structural alterations; and

(9) A report of major structural repairs and the current inspection status for these repairs.

(e) *Notification to Administrator.* Each certificate holder must notify the Administrator at least 60 days before the date on which the airplane and airplane records will be made available for the inspection and records review.

17. Add appendix G to part 135 to read as follows:

APPENDIX G TO PART 135.—DESIGN-LIFE GOALS

Airplane type	Number of seats	Type certificate data sheet	Design-life goal (hours)
Raytheon (Beech) Aircraft Co.:			
—Beech 99 (all models)	15+2	A14CE	46,000
—Beech 1900 and 1900C	19+2	A24CE	45,000
—Beech 300 and 300LW	13+2	A24CE	30,000
—Beech B300 and B300C	15+2	A24CE	30,000
—Beech 1900D	19+2	A24CE	45,000
British Aerospace Ltd.:			
—BAe Jetstream 3101	19+2	A21EU	45,000
—BAe Jetstream 3201	19+2	A56EU	30,000
Cessna Aircraft Co.:			
—Cessna 402 Series (all models except 402C)	8+2	A7CE	12,000
—Cessna 402C	8+2	A7CE	7,700
deHavilland Aircraft Co.:.			
—DHC–6	22+2	A9EA	33,000
Dornier-Luftfahrt GmbH:			
—Dornier 228–100 and – 200	19+2	A16EU	42,800
—Dornier 228–101 and – 201	19+2	A16EU	32,800
—Dornier 228–202	19+2	A16EU	29,600
—Dornier 228–212 (Except SN 155 & 191 and up)	19+2	A16EU	26,400
—Dornier 228–212 (SN 155 and 191 and up)	19+2	A16EU	42,800
Empresa Brasileira de Aeronautica (Embraer): Embraer EMB–110	19+2	A21SO	30,000
Fairchild Aircraft Corporation:			
—SA226–TC	20+2	A8SW	35,000
—SA227–AT	14+2	A5SW	35,000
—SA227–TT	9+2	A5SW	35,000
—SA227–AC	20+2	A8SW	35,000
—SA227–PC	20+2	A8SW	35,000
—SA227–BC	20+2	A8SW	35,000
—SA227–CC	19+2	A18SW	35,000
—SA227–DC	19+2	A18SW	35,000
Pilatus Britten-Norman: PBN BN–2 Mk III (all models)	16+2	A29EU	20,480
Piper Aircraft Inc., The New:			
—PA 31 Navajo	6+2	A20SO	11,000
—PA 31–300 Navajo	6+2	A20SO	15,500
—PA 31P Pressurized Navajo	6+2	A8EA	14,000
—PA 31T Cheyenne and Cheyenne II	7+2	A8EA	12,000
—PA 31–350 Chieftain and (T–1020)	9+2	A20SO	13,000
—PA 31–325 Navajo CR	9+2	A20SO	11,000
—PA 31T2 Cheyenne II XL	5+2	A8EA	11,400
—PA 31T3 (T–1040) without tip tanks	9+2	A8EA	17,400
—PA 31T3 (T–1040) with tip tanks	9+2	A8EA	13,800
Short Brothers PLC:.			
—SD3–30	39+2	A41EU	57,600
—SD3–60	39+2	A41EU	28,800
—SD3–Sherpa	39+2	A41EU	40,000

PART 183–REPRESENTATIVES OF THE ADMINISTRATOR

18. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

19. Amend § 183.33 by revising paragraph (a) to read as follows:

§ 183.33 Designated Airworthiness Representative.

* * * * *

(a) Perform examination, inspection, and testing services necessary to issue, and to determine the continuing effectiveness of, certificates, including issuing certificates, as authorized by the Director of Flight Standards Service in the area of maintenance or as authorized by the Director of Aircraft Certification Service in the areas of manufacturing and engineering.

* * * * *

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

Marion C. Blakey,

Administrator.

[FR Doc. 02–30111 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91–60A, The Continued Airworthiness of Older Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed advisory circular (AC) 91–60A, which provides guidance on the development and use of a service-history-based Structural Supplemental Inspection Program (SSIP) to ensure the continued airworthiness throughout their operational life of all U.S.-registered multiengine airplanes operated under 14 CFR part 129 or part 135 and initially certificated with 9 or fewer passenger seats. This guidance material addresses the requirement of the "Aging Airplane Safety Rule" for the development and use of a service-history-based SSIP. This proposed AC outlines an acceptable method, but not the only method, of compliance with this rule. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91–60A and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC.

Discussion

This proposed AC provides guidance on how to develop a service-history-based maintenance or inspection program to design approval holders, owners, and operators of all U.S.-registered multiengine airplanes operated under 14 CFR part 129 or part 135 and initially certificated with 9 or fewer passenger seats. This proposed AC reflects current maintenance and inspection practices and includes acceptable methods of compliance with the "Aging Airplane Safety Rule." The proposed AC lists structural points that require more frequent maintenance as an airplane ages and discusses the development of a continuous airworthiness program, including participation by design approval holders and implementation by airplane owner/operators.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30110 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 120–XX, Aging Airplane Inspections and Records Reviews

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 120–XX, which provides guidance pertaining to aging airplane records reviews and inspections that are accomplished to satisfy the requirements of the final rule entitled Aging Aircraft Safety which was enacted in response to a statutory requirement, the Aging Aircraft Safety Act of 1991. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

FOR FURTHER INFORMATION CONTACT: Frederick Sobeck, AFS–304, Aging Airplane Program Manager, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone number: (202) 267–7355.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 120–XX, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC.

Discussion

To address aging aircraft concerns, in October 1991, Congress enacted Title IV of Public Law 102–143, known as the Aging Aircraft Safety Act of 1991, which was subsequently codified as 49 U.S.C. 44717. The law instructed the Administrator to prescribe regulations that would ensure the continued airworthiness of aging aircraft. The law also instructed the Administrator to conduct inspections and review the maintenance and other records of each aircraft an air carrier uses to provide air transportation. These inspections and records reviews were intended to enable the Administrator to decide whether aging aircraft are in a safe condition and maintained properly for operation in air transportation. The law also required the Administrator to establish procedures to be followed for performing such inspections.

In addition to imposing obligations on the Administrator, the law stated that air carriers must demonstrate that the maintenance of their aircraft's age-sensitive parts and components has been adequate and timely, and operators must make their aircraft and aircraft records available for inspection.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30109 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 91–56B, Continuing Structural Integrity Program for Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed Advisory Circular (AC) 91–56B, which provides guidance on developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational life. This proposed AC addresses airplanes affected by the "Aging Airplane Safety Rule" and provides guidance on the development and use of a damage-tolerance-based Supplemental Structural Inspection Program (SSIP) for all airplanes operated under Title 14, Code of Federal Regulations (14 CFR) part 121; all U.S.-registered multiengine airplanes operated under 14 CFR part 129 certificated with 10 or more passenger seats; and all multiengine airplanes used in scheduled operations under 14 CFR part 135 certificated with 10 or more passenger seats. This AC outlines an acceptable method, but not the only method, of compliance with the Aging Airplane Safety Rule. A previous notice of availability was published in the **Federal Register** in error on November 20, 2002, and should be disregarded.

DATES: Comments must be received on or before February 4, 2003.

ADDRESSES: Send all comments on the proposed AC to: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, ANM–120L, Federal Aviation Administration; 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone number: (562) 627–5237, facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by accessing the FAA's Web page at *http://www.faa.gov/avr/arm/nprm.cfm?nav=nprm* or at *http://faa.gov/avr/afs/acs/ac-idx.htm*. Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 91–56B, and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC.

Discussion

This proposed AC provides guidance to type certificate holders and airplane operators on how to incorporate an FAA-approved Aging Aircraft Program into FAA-approved maintenance or inspection programs. Previous versions of this AC (AC 91–56 and AC 91–56A) provided guidance to operators of large transport category airplanes on how to develop a damage-tolerance-based SSIP. In this proposed AC, the FAA expands this guidance to small transport category airplanes. In addition, AC 91–56 and AC 91–56A considered only the effects of repair and modifications approved by the type certificate holder and the effects of repairs and operator-approved modifications on individual airplanes. This proposed AC considers the effect of all major repairs, major alterations, and modifications approved by the type certificate holder. In addition, the AC includes an expanded discussion of repairs, alterations, and modifications to take into consideration all major repairs and operator-approved alterations and modifications on individual airplanes. The proposed AC also describes the current Mandatory Modifications Program, Corrosion Prevention and Control Program, the Repair Assessment Program, and Evaluation for Widespread Fatigue Damage.

Issued in Washington, DC on November 21, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–30108 Filed 12–5–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
December 6, 2002

Part III

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AAB86

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service is proposing changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. These proposed changes are a result of a review conducted by Forest Service personnel at the direction of the Office of the Secretary. The review affirmed much of the 2000 rule and the underlying concepts of sustainability, monitoring, evaluation, collaboration, and use of science. Although the 2000 rule was intended to simplify and streamline the development and amendment of land and resource management plans, the review concluded that the 2000 rule is neither straightforward nor easy to implement. The review also found that the 2000 rule did not clarify the programmatic nature of land and resource management planning. This proposed rule is intended to improve upon the 2000 rule by providing a planning process which is more readily understood, is within the agency's capability to implement, is within anticipated budgets and staffing levels, and recognizes the programmatic nature of planning.

DATES: Comments must be received in writing by March 6, 2003. Comments received after this date will be considered and placed in the record only if practicable.

ADDRESSES: Send written comments to: USDA FS Planning Rule, Content Analysis Team, PO Box 8359, Missoula, MT 59807; via email to *planning_rule@fs.fed.us;* or by facsimile to Planning Rule Comments at (406) 329–3556. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. Persons wishing to inspect the comments need to call (801) 517–1023 to facilitate an appointment. In addition, the Forest Service preliminary draft directives on ecological, social, and economic sustainability, the business model cost study done to estimate predicted costs to implement the 2000 and proposed rules, the Civil Rights Impact Assessment, and the cost-benefit analysis accompanying this proposed rule are expected to be posted during the comment period on the World Wide Web/Internet at *www.fs.fed.us/emc/nfma.* These materials, when available, also may be obtained from the Director, Ecosystem Management and Coordination Staff, Forest Service, USDA, Mail Stop 1104,1400 Independence Avenue, SW, Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Jody Sutton, Content Analysis Team Program Coordinator, Forest Service, (801) 517–1023.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

The Forest Service (the agency), an agency within the United States Department of Agriculture (the Department), is responsible for managing the lands and resources of the National Forest System, which include 192 million acres in 44 states, Puerto Rico, and the Virgin Islands. The System is composed of 155 national forests, 20 national grasslands, 1 national prairie, and other miscellaneous lands under the jurisdiction of the Secretary of Agriculture (the Secretary).

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 *et seq.*; 16 U.S.C. 1601–1614), requires the Secretary to promulgate regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 that set out the process for the development and revision of land and resource management plans (16 U.S.C. 1604(g)). The first planning rule, adopted in 1979, was substantially amended on September 30, 1982 (47 FR 43026), and was amended in part on June 24, 1983 (48 FR 29122), and on September 7, 1983 (48 FR 40383). The 1982 rule, as amended, has guided the development, amendment, and revision of the land and resource management plans (LRMP or plans) that are now in place for all national forests and grasslands, including an initial plan recently completed for the Midewin National Tall Grass Prairie that was recently added to the National Forest System (NFS).

The Forest Service has undertaken several reviews of the planning process implemented under the 1982 rule. The first review took place in 1989, when the Forest Service, with the assistance of the Conservation Foundation, conducted a comprehensive review of

the planning process and published the results in a summary report, "Synthesis of the Critique of Land Management Planning" (1990). The critique concluded that the agency spent too much time on planning; that planning costs too much; and, therefore, that the Forest Service needed a more efficient planning process. These findings are still considered valid and are a prime consideration in the development of this proposed rule.

Subsequently, the Forest Service published an Advance Notice of Proposed Rulemaking (56 FR 6508; Feb. 15, 1991) regarding possible revisions to the 1982 rule. A proposed rule was published in 1995 (60 FR 18886); however, the Secretary elected not to proceed with that proposal.

In response to suggestions from persons who commented on the 1995 proposed rule, the Secretary convened a 13-member Committee of Scientists (Committee or COS) in late 1997 to evaluate the Forest Service's planning process and recommend changes. In 1998, the COS held meetings across the country to invite public participation in their discussions. The Committee's findings were issued in a final report, "Sustaining the People's Lands" (March 1999). A proposed rule based on the COS report was published on October 5, 1999 (64 FR 54074), and a final rule was adopted on November 9, 2000 (65 FR 67514).

The 2000 Planning Rule

In response to many of the findings in the 1990 Critique of Land Management Planning and the 1999 COS report, the Forest Service attempted to prepare a planning rule that would provide a more efficient planning process. The 2000 planning rule (also referred to as the 2000 rule) changed the Forest Service planning process by: (1) Establishing ecological, social, and economic sustainability as the overall stewardship goal for managing the National Forest System; (2) identifying maintenance and restoration of ecological sustainability as the first priority for management of National Forest System lands; (3) requiring collaboration with the general public, interested organizations, Tribal, State and local governments, and Federal agencies in all phases of the planning process; (4) expanding monitoring and evaluation requirements; (5) specifying the use of scientists and establishing detailed requirements for the application of science in the planning process; and (6) providing a dynamic planning framework for solving problems and addressing issues at the appropriate scale. The 2000 rule applies not only to plan amendments and revisions, but also to project-level planning and decisionmaking.

The general goals of the 2000 rule are laudable. A major improvement achieved in that rule is the emphasis on sustainability, which assists the Forest Service in providing for multiple uses over time. The 2000 rule also promotes efficiency in that it eliminates zero-based plan revisions as recommended in the 1990 critique, and it removes some analytical requirements of the 1982 rule, such as the requirements for developing benchmarks, which are no longer considered helpful. The 2000 rule also emphasizes public involvement more than the 1982 rule. The 2000 rule gives explicit direction on the use of science in the planning process, while the 1982 rule relied on knowledge shared through an interdisciplinary team approach without procedural requirements for the use of science. The 2000 rule replaces the post-decisional administrative appeal process for challenging plans with a pre-decisional objection process. The 2000 rule also delegates the authority for plan decisions to the Forest, Grassland, or Prairie Supervisor, rather than to the Regional Forester. The 2000 rule also recognizes the plan as a dynamic document.

Despite the positive aspects of the 2000 rule, however, the number of very detailed analytical requirements, the lack of clarity regarding many of the requirements, the lack of flexibility, and the lack of recognition of the limits of agency budgets and personnel led to a reconsideration of this rule.

Subsequent Reviews of the 2000 Planning Rule

After adoption of the 2000 rule, the Secretary received a number of comments from individuals, groups, and organizations expressing concerns regarding the implementation of the 2000 rule. In addition, lawsuits challenging promulgation of the rule were brought by a coalition of 12 environmental groups from 7 states and by a coalition of industry groups (*Citizens for Better Forestry* v. *USDA*, No. C–01–0728–BZ–(N.D. Calif., filed February 16, 2001)) and (*American Forest and Paper Ass'n* v. *Veneman*, No. 01–CV–00871 (TPJ) (D.D.C., filed April 23, 2001)). As a result of these lawsuits and concerns raised in comments to the Secretary, the Department initiated a review of the 2000 rule focusing on its "implementability." The "NFMA Planning Rule Review," completed in April 2001, concluded that many of the concerns regarding implementability of the rule were serious and required immediate attention.

In addition, the Forest Service developed a business analysis model of the 2000 rule and conducted a workshop with field-level planners to determine the implementability of the 2000 rule based on this business model. The business model reflected business activities directly applied from the 2000 rule and provided the basis for a systematic evaluation of the rule for implementability.

The business model identified the following nine major categories of planning activities and associated sections of the 2000 rule:

(1) Collaboration (primarily §§ 219.12 through 219.18);

(2) Best Science/Science Consistency (primarily §§ 219.22 through 219.25 with consideration of relative text in §§ 219.11 and 219.20);

(3) Recommendations (primarily §§ 219.3 through 219.9 with consideration of relative text in §§ 219.19, 219.20, 219.21, 219.26, and 219.27);

(4) Sustainability (primarily §§ 219.19 through 219.21 with consideration of relative text in § 219.11);

(5) Developing/Revising Plan Decisions (primarily §§ 219.6 through 219.9 and 219.11 with consideration of relative text in §§ 219.20, 219.26, 219.28, and 219.29);

(6) Write Plan Documentation (primarily §§ 219.11 and 219.30);

(7) Maintain the Plan (primarily § 219.31);

(8) Objections and Appeals (primarily § 219.32); and

(9) Miscellaneous (public notifications and selected NEPA activities).

Within the context of the nine categories defined, the facilitated workshop centered on answering two questions: (1) Are the business requirements clearly understood? (2) What is the agency's perceived ability to execute the requirements?

An important consideration in this business model analysis was that it was conducted by planning practitioners who have current field-level experience. They are the agency experts in a variety of resource areas, including assessing what can reasonably be accomplished, considering existing knowledge and information, the issues relevant to planning areas, and local staffing and funding situations.

This review and analysis found the following:

(1) The 2000 rule has both definitions and analytical requirements that are very complex, unclear, and, therefore, subject to inconsistent implementation

across the agency; for example, species viability, population monitoring, and the range of variation within the current climatic period;

(2) Compliance with the regulatory direction on such matters as ecological sustainability and science consistency checks would be difficult, if not impossible, to accomplish; and

(3) The complexity of the 2000 rule makes it difficult and expensive to implement.

Sustainability. The planners particularly questioned whether or not the agency could achieve the ecological, social, and economic sustainability standards established in § 219.19 of the 2000 rule. Similar concerns were noted regarding the viability provisions for the diversity of plant and animal communities, also in § 219.19 of the rule. The reviewers found that the ecological sustainability requirements in the rule are not only complex, but needlessly so. Although the 2000 rule was intended to increase the focus on ecosystem-level analyses for addressing the diversity of plant and animal communities and, thereby, reducing the far more costly species-by-species approach, the means to accomplish the intent of the rule are not clear. There was disagreement among the reviewers about the degree of potential reduction in the species-by-species analysis burden in the 2000 rule.

The role of science. The reviewers affirmed the importance of using the best available science in planning. However, the detailed provisions of the 2000 rule for the use of science and scientists in the planning process raised many concerns.

(1) Field-level planners believed the 2000 rule includes unnecessarily detailed procedural requirements for scientific peer reviews, broad-scale assessments, monitoring, and science advisory boards.

(2) Moreover, these requirements do not recognize the limits of budgets for use of science, nor does the 2000 rule clearly relate use of science to the scope of issues in the planning process.

(3) The 2000 rule also does not recognize limitations on the availability of scientists. The reviewers believed it to be unwise to place such detailed requirements on the use of scientists in the rule given the ambiguities of the rule text and the limited availability of scientists. Although science is needed to inform the Responsible Official, the reviewers concluded that the 2000 rule anticipates a level of involvement by scientists that may or may not be needed considering the planning issues or the anticipated amount of project activities during on-the-ground implementation of the plan.

Monitoring. Reviewers identified three major issues arising from the monitoring requirements of the 2000 rule. First, the unnecessarily detailed requirements for monitoring and evaluation in the 2000 rule are likely beyond the capacity of many units to perform. Second, it was considered to be generally confusing throughout the rule to mix programmatic and project level planning direction. Third, the monitoring requirements in the 2000 rule are overly prescriptive and do not provide the Responsible Official sufficient discretion to decide how much information is needed.

Also, during development of this revised proposed planning rule, it became apparent that monitoring should be focused on whether on-the-ground management is achieving desired conditions identified in the plan. This focus was not clear in the 2000 rule, as its monitoring direction primarily required a broad array of techniques intended to measure indicators of sustainability. This conceptual change reflects a fundamental difference in philosophy between the 2000 rule and this proposed rule. The 2000 rule tends to be highly prescriptive regarding a variety of aspects of planning. This proposed rule tends to focus more on results, rather than on techniques for achieving results. The Responsible Official is guided by a very large body of law, regulation, and policy that helps ensure responsible management on the ground. The much lower amount of procedural detail in this new proposed rule reflects the agency's assumption that the Responsible Officials will discharge planning duties responsibly and will conduct planning within the bounds of authority.

Transition from the 1982 to the 2000 rule. The reviewers also identified concerns with the transition requirements of the 2000 rule. There is a lack of clarity about how projects are to be compliant with the 2000 rule and how the entire rule is to be used in the more limited scope of plan amendments. Planners expressed uncertainty about how transition to the 2000 rule would occur, particularly for site-specific decisions. Finally, to fully implement the 2000 rule the planners felt the relatively short transition period provided is unrealistic given the complexities and uncertainties identified.

Having considered the reports of the review teams, the Acting Deputy Under Secretary for Natural Resources and Environment requested that the Chief of the Forest Service develop a proposed rule to revise the 2000 rule.

Provisions and Intent of the Proposed Rule

Overview

The Forest Service is now proposing changes to the planning rule at 36 CFR part 219, adopted November 2000, to address issues and concerns raised in the various reviews. The proposed rule retains many of the basic concepts in the 2000 rule, namely sustainability, public involvement and collaboration, use of science, and monitoring and evaluation. The agency has attempted to substantially improve these aspects of the 2000 rule by eliminating unnecessary procedural detail, clarifying intended results, and streamlining procedural requirements consistent with agency staffing, funding, and skill levels.

Because of the concerns identified regarding the 2000 rule and because this proposed rule changes the 2000 rule, it is necessary to explain exactly how and why the 2000 rule has been adjusted in this proposal. However, the agency believes it is productive to begin this overview with a vision of the planning process and the contents of resource management plans. The Forest Service believes the direction of many aspects of current planning activities and the basic concepts of the 2000 rule are very valuable and reflect the expectations of the American people for planning on their public lands.

Planning

The agency expects programmatic planning to be accomplished in the following ways:

- The extent of a plan analysis will be proportional to the kinds of decisions being made.
- Plans will be kept up to date, because planning will be simpler and thus, plans will be more efficiently amended.
- Plan revision will be based on a "need for change."
- Plan monitoring and evaluation will be emphasized more and will measure the success of adaptive management efforts, and the attainment of, or progress toward, desired conditions. This monitoring and evaluation will provide key information to help keep plans current and will help inform project-level decisionmaking. States, other Federal agencies, local governments, Tribes, and the public will be more closely involved in monitoring efforts.
- Public involvement is expected to be collaborative, vigorous, and focused

on consensus-based identification of and reasonable choices for desired conditions.

- Planning will continue to actively involve our Federal, State, county, and Tribal partners.
- Science will be integrated throughout the planning process, from initial data collection and interpretation, through issue identification, to the analysis process, to development and design of monitoring, and later to evaluation of monitoring results.
- The agency's strategic plan, national assessments, and monitoring results will provide useful information for the development of land and resource management plans and a national context for planning.
- Planning analysis will be more focused on desired conditions rather than speculative and detailed examination of future project effects.
- Planning will continue to focus on addressing baseline conditions and trends applicable to the planning issues. Baseline condition and trend analysis will clearly display anticipated progress toward desired conditions if active management occurs and also what may happen if active management is restricted.
- Planning analysis will focus on reasonable choices for zoning the landscape.
- Planning will recognize budget limitations in order to help the Responsible Official prioritize and balance competing planning activities, such as choosing the appropriate approach for monitoring watersheds.

Plan Contents

The agency's vision of planning expects a land and resource management plan to contain:

- Broad, programmatic direction for a forest, grassland, or prairie. Plans will make such key strategic decisions as identification of priority areas for wildfire hazard reduction; designating major utility corridors; identification of areas of especially high diversity, or areas containing rare or unique species, ecosystems, or biotic communities that need certain protections; identification of lands at the broad-scale (not an acre-by-acre determination) suitable for timber harvest or grazing, or other consumptive uses; identification of areas suitable for motorized use; and identification of areas where certain types of recreation use may be emphasized.
- More specific statements of desired conditions for such resources as vegetation, recreation, cultural and heritage resources, and watersheds, developed within the context of ecological, economic, and social systems.
- More specific outcome-based objectives (*i.e.*, measurable standards of performance).
- A set of standards that set appropriate limitations on activities to help achieve desired conditions. Standards will be fewer, simpler, and better allow for adaptive management than existing plans.
- Identified special areas, such as areas recommended for wilderness or wild and scenic river status. Plans will continue to include specific direction for these areas.
- As needed, associated materials such as maps or other documents necessary to make plan decisions.
- Plans will be brief and will refer to, rather than repeat, what is already in the Forest Service Directive System, existing law, regulation, or policy.
- Collaborative work with the public and emphasis on consensus building should lead to fewer unresolved issues and, therefore, fewer plan alternatives.

The goal of the agency is to have a planning rule that is simpler and easier to implement than the 2000 rule and that allows the agency to more easily adapt to changing issues and opportunities. Available agency budgets, personnel availability, and other resource limitations are recognized as important because they help provide a framework for the Responsible Official to make decisions such as the following: What issues can the Responsible Official reasonably address? What method will be used to solicit meaningful public involvement? What are the pressing resource needs? What data needs to be collected? Does the unit need to hire specialists to support the planning action? Are contracts needed to obtain various kinds of information? Recognition of budget availability and limitations helps the Responsible Official make choices about how to weigh and balance competing needs and to consider the costs and benefits of various actions for optimal results.

The proposed rule retains the important improvements of the 2000 rule. These include:

- Emphasis on sustainability;
- Strong public involvement and collaboration;
- Use of science throughout the planning process;
- An emphasis on monitoring and evaluation as fundamental to adaptive management;
- Need-for-change planning;
- Use of the objection process;
- The identification of the Forest, Grassland, or Prairie Supervisor as the Responsible Official; and
- The concept of planning as a dynamic process.

The Forest Service believes the proposed rule will apply these important improvements more efficiently than does the 2000 rule. The Forest Service believes that the proposed rule provides as efficient a planning process as possible within the scope of the National Forest Management Act (NFMA) requirements. In addition to retention of the key improvements, the agency also looked to earlier versions of published and unpublished proposed planning rules as sources of ideas in revising specific sections. Finally, the Forest Service has applied over 20 years of planning experience to craft this proposed rule.

It is also useful at this point to discuss in more detail one important component of the body of direction that governs the Responsible Official's actions. The Forest Service Directive System consists of the Forest Service Manual (FSM) and Handbook (FSH), which codify the agency's policy, practice, and procedure. The system serves as the primary basis for the internal management and control of all programs and the primary source of administrative direction to Forest Service employees.

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff in more than one unit to plan and execute assigned programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the direction issued in the FSM. Examples include Handbooks on land management planning and environmental analysis.

As discussed throughout this proposed rule, the Directive System plays and will continue to play an important role in directing field employees on how to conduct planning.

Section 219.5 of the 2000 rule is a specific example of direction better included in the agency's Directive System. The agency believes that much of the process direction, such as potential uses of an assessment (*e.g.*, identification of additional research needs), or who has responsibility for a broad-scale assessment (Regional Foresters and Station Directors), or examples of what a local analysis should describe (*e.g.* likely future conditions, characterizations of the area of analysis) are more appropriately addressed in the Directive System, not

a codified rule. Pursuant to NFMA, the Forest Service will provide notice and give the public an opportunity to comment on the proposed Forest Service Manual direction for this proposed rule because of the substantial public interest in this direction (36 CFR 216.4).

The agency must improve its planning processes so that direction and resources will be in place to manage the National Forest System (NFS) lands more effectively. The trend in planning over the past 20 years has been towards more complexity with the result that limited funds and personnel available to the agency are being disproportionately spent on planning and analysis. With this proposal, the agency seeks to produce a planning rule that sets the stage for planning to be done in a reasonable manner, at reasonable costs, in a reasonable amount of time, and thus provide a sound and rational framework for managing National Forest System lands.

The agency has evaluated the entire cost of planning for both the 2000 rule and proposed rule. The evaluation shows that there will be efficiencies and reduced costs associated with implementation of the proposed rule.

Increasing efficiency and reducing costs are important. The Forest Service believes that the public's primary expectation is that the agency do a good job of land management. The agency needs to balance its planning efforts with its efforts to actually manage the land through the application of plan direction to subsequent actions. There is urgency to make planning more efficient, as there are issues, activities, and resource concerns that are not halted during the planning process and which may pose increased concerns when planning occurs over excessively long timeframes. There is a growing population that will recreate on National Forest System lands whether the agency is prepared to deal with these uses or not. There are growing needs for watershed restoration for such purposes as prevention of flooding and the attendant adverse effects on people, property, and resource health. There are increasing demands for energy resources. Many NFS lands have a critical wildfire problem. Spending disproportionate agency time and money on planning and analysis that is not commensurate with the scope and effect of the decision to be made reduces the agency's ability to address serious land management issues.

Additionally, the Forest Service has seldom been able to revise its plans prior to NFMA's 15-year deadline. There have been several reasons for this delay, but one consistent cause has been the excessive length of time needed to plan under existing procedures. Please refer to the November 30, 2001, **Federal Register** notice (66 FR 59775), which contains the agency's schedule to systematically approach the NFMA 15-year revision deadline for NFS units, considering critical resource and social/economic issues. Reviewers may also refer to the Forest Service Ecosystem Management Coordination staff Web site at *www.fs.fed.us/emc/nfma* for the latest update of the agency-wide land and resource management plan (LRMP) revision schedule.

The Forest Service believes this proposed rule, if adopted, would improve and streamline the planning process. In accordance NFMA, plans are to be revised from time to time when the Secretary finds conditions on a unit have significantly changed, but at least every 15 years. Plan revisions that take four, five, or six or more years to complete are not responsive to the vision of NFMA, are not responsive to changing issues, and are in danger of exhausting public interest and involvement. When plans cannot be easily amended, many people feel that they need to have all their concerns resolved in a plan revision, because that will be the direction in place for many years. This viewpoint not only can increase contentiousness in planning, but also result in unreasonably high expectations of what a plan does. Several aspects of this proposed rule will improve the ability to not only revise plans more easily, but also to amend them more easily.

As stated, the proposed rule is intended to reflect the programmatic nature of planning and provide a process that is within the agency's ability to implement. Fundamental to programmatic planning is the premise that plans are permissive; that is, they allow, but do not mandate, certain activities to take place within the plan area. Consequently, the proposed rule emphasizes that plans themselves generally are not actions that significantly affect the quality of the human environment, nor do they dictate site-specific actions.

The agency must align its planning processes and performance responsibly. This means targeting dollars spent on planning to those activities that will yield clear benefits. Programmatic land and resource management planning cannot do more than establish a framework for management in an ever-changing environment. The Forest Service believes that the proposed rule provides as efficient a planning process as possible within the framework of NFMA direction.

A detailed explanation of the proposed rule that would amend the rules at 36 CFR Part 219 follows.

Section-by-Section Explanation of the Proposed Rule

Table I at the end of this document provides a section-by-section comparison of the 2000 rule and the proposed rule.

Proposed section 219.1—Purpose and applicability. The Multiple-Use Sustained-Yield Act of 1960 (MUSYA) establishes that NFS lands must be administered for outdoor recreation, range, timber, watershed, and wildlife and fish values. The Act authorizes and directs the Secretary to develop and administer these resources for multiple use and the sustained yield of the several products and services that are obtained from management of the surface resources. The Act defines multiple use as the management of all the various renewable surface resources of the NFS lands so that they are utilized in the combination that will best meet the needs of the American people. The Act further provides that sustained yield of the several products and services means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the NFS without impairment of the productivity of the land.

The Forest Service has embraced the concept of sustainability to guide the agency in meeting requirements of MUSYA. Sustainability addresses the "sustained yield" aspect of MUSYA because it requires balancing resource management with the needs of current and future generations "in perpetuity." The concept of sustainability will assist the Responsible Official in assuring that Forest Service management of the various renewable resources will be administered without impairment of the productivity of the land, as required by MUSYA. Sustaining the productivity of the land and its renewable resources means meeting present needs without compromising the ability to meet the needs of future generations. Meeting present and future needs does not imply all individual needs can be met at one time, either now or in the future.

The concepts of multiple use and sustainability are addressed in § 219.1 of the 2000 rule. Because these concepts are so fundamental to planning, they are retained in § 219.1 of this proposed rule. As does the 2000 rule, this proposed rule affirms the health of the land and sustaining its resources within the

authority granted by MUSYA as the overall goal for managing the National Forest System.

This section of the rule sets forth a clear process for establishing, amending, and revising plans and for monitoring plan implementation. As provided in § 219.1 of the 2000 rule, this proposed rule also recognizes that planning may consider many time frames and geographic areas and that it is an ongoing process. However, the proposed rule would not determine the selection or implementation of site-specific actions. Rather, the proposed rule requires documentation that a future project decision is consistent with the plan. The agency believes that a rule which focuses solely on programmatic-level planning will be better understood and more consistently applied than a rule that includes direction on both programmatic and project-level decisionmaking. Agency guidelines on project-level planning are specified in FSM 1950 and FSH 1909.15.

The USDA Office of General Counsel, Natural Resources Division working paper entitled "Overview of Forest Planning and Project Level Decisionmaking," describes the nature of the agency's two-staged decisionmaking process. The paper is available on the World Wide Web at *www.fs.fed.us/emc/nfma*. The relevant issues, levels and kinds of analysis needed, and decisions to be made in a programmatic plan are quite different from those required for development of site-specific projects. The paragraph in this section regarding the applicability of the proposed rule is the same as § 219.34 of the 2000 rule, except that it adds a reference to subsequent statutes in order to allow for any future additions to the National Forest System.

Proposed section 219.2—Nature and scope of a land and resource management plan. This section of the proposed rule establishes the fundamental purpose of a plan and provides specific requirements on how that purpose will be met. In contrast to §§ 219.1–219.5 of the 2000 rule, this proposed section describes the nature of a land and resource management plan concisely, and, thereby, sets the stage for a planning process that is more flexible and efficient.

Proposed paragraph (a) of this section establishes that the fundamental purpose of a plan is (1) to establish the desired conditions to be achieved through the management of the lands and various renewable resources of the National Forest System and (2) to guide the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the present and future needs of the American people. This concept is central to the planning vision. In contrast to the lengthy and non-regulatory exposition of §§ 219.1–219.5 of the 2000 rule, § 219.2 of this proposed rule concisely describes the nature of a land and resource management plan.

Proposed paragraph (b) is somewhat similar to § 219.2 of the 2000 rule in that it sets out principles on which that rule is based. Rather than dwelling on principles modifying the rules, however, paragraph (b) imposes core requirements for which the Responsible Official will be held accountable in plan development, amendment, or revision. While brief and concise, these requirements touch all the major principles covered in § 219.2 of the 2000 rule—sustainability, use of science, consultation with government agencies and Tribes, public participation, interdisciplinary planning, and monitoring and evaluation.

Proposed paragraph (c) recognizes the role of plans in integrating the various statutory authorities applicable to National Forest System management. It also recognizes the Forest Service Directive System as the primary source of agency-wide management direction relevant to planning and management of National Forest System lands and resources. Planning is conducted in the context of the body of environmental laws, regulations, Executive orders, and policy. The plan itself does not generally repeat existing law, regulation, Executive order, or policy but rather interprets their requirements as they apply to the plan area.

Although the proposed rule does not explicitly address integrating statutory authorities, it does at § 219.1(a) identify the principal authorities applicable to National Forest System lands.

Paragraph (d) of proposed § 219.2 describes the force and effect of land and resource management plans, making clear that:

- These plans do not grant, withhold, or modify any contract, permit, authorization, or other legal instrument;
- These plans do not subject anyone to civil or criminal liability; and
- These plans create no legal rights.

This proposed paragraph better recognizes the programmatic nature of plans than the 2000 rule, and therefore, more accurately describes the nature of a land and resource management plan. Since a plan provides only the framework for management, a plan normally does not specifically authorize any ground-disturbing activities nor does it specifically commit funding or resources. Therefore, the analysis associated with a plan should be proportional to the level of decisions made in a plan. Also, a plan focuses on desired conditions. It zones the forest, grassland, or prairie into defined areas where activities could occur to help meet those desired conditions and sets out a program for monitoring progress toward desired conditions. This kind of plan can be supported by an analysis that evaluates, on a broad level, the areas' suitability for future potential activities.

The type of plan level analysis that the Forest Service has found most useful for developing a plan, and for project analysis thereafter, is baseline and general trend analysis, which gives as complete a picture of the forest or grassland as possible at one time and provides the best information of trends of natural processes and of uses in the plan area and surrounding lands. The Forest Service will continue such analyses in the planning process. The Forest Service believes that environmental analyses are most useful when done in the development of site-specific decisions that will execute on-the-ground management. More specifically, while a plan guides project implementation, extensive up-front effects disclosure is generally too speculative to be useful for project analysis. Thus, the opportunity to "tier" a project's NEPA analysis to a plan EIS, as provided in NEPA regulations (40 CFR 1502.20), is useful only for certain aspects of analysis and in practice has proven more theoretical than real. The Forest Service therefore intends to conduct most detailed analysis on the site-specific project level.

Plan management direction should be flexible and allow for adaptive management. Monitoring should not only measure progress toward desired conditions but also help measure the success of adaptive management strategies and actions.

A plan is generally a zoning document. It may allow for later, site-specific authorization of activities and may restrict activities in specific areas. There are different ways this zoning is applied depending on the type of existing or potential future activities. For example, a plan may allow transportation development or motorized use on some portions of the National Forest System unit, but not on others. Such a plan decision does not immediately authorize road construction, but rather identifies zones where road construction may occur in the future, based on an appropriate project-specific NEPA analysis, public involvement, and a future decision.

Another example of zoning-type direction in a plan is direction that would restrict motorized access in areas where it has been allowed in the past or that would restrict other recreation uses that are currently allowed. The plan itself does not normally execute the restriction. Rather, the restriction would have to be implemented with a subsequent process, such as a closure order or other instrument.

It must be recognized that a plan is not the final word deciding forever the fate of an area of land, determining that some actions will certainly occur and others never will occur, over all or part of the plan area. According to the Forest Service's vision of planning, plans can and should be dynamic documents, which can and should be reconsidered throughout their existence and readily amended when circumstances call for change.

In summary, the plan is a framework for future on-the-ground management decisions. Site-specific projects are proposed and developed within the constraints of the plan, and are subject to the National Environmental Policy Act and other applicable laws and regulations.

Proposed section 219.3—Levels of planning and planning authority. This section of the proposed rule identifies three levels of planning—national, regional, or unit (national forest, grassland, or prairie) level. As in the 2000 rule, the Forest, Grassland, or Prairie Supervisor is the Responsible Official for a land and resource management plan, unless the Regional Forester or the Chief chooses to act as the Responsible Official for a specific amendment or revision.

The key planning elements listed in § 219.3(d) of the 2000 rule are omitted from the proposed rule because they are unnecessary. Proposed § 219.5 provides direction on indicators or a need to amend or revise a plan. §§ 219.7–219.9 discuss the steps to develop a new plan or amend or revise a plan. § 219.10 discusses application of plan direction and § 219.11 provides for plan monitoring or evaluating plans. It is not necessary to summarize these planning elements in a single section. The 2000 rule § 219.3 key element number 7 is not needed because the proposed rule does not provide direction for site-specific decisions. Additionally, in contrast to the 2000 rule, § 219.3 in this proposed rule does not contain direction for site-specific actions. As noted previously, the focus of this proposed rule is the development, amendment, and revision of plans, not site-specific project planning. The Forest Service uses a staged decisionmaking process in which land and resource management plans establish the guidance that governs site-specific project planning and decisionmaking.

One new provision of § 219.3 is the recognition of the need to ensure that management direction for designated areas of experimental forests is consistent with the research being conducted and concurred in by the appropriate Station Director. The need for this direction emerged from review by Forest Service Research and Development employees.

Proposed section 219.4—Decisions embodied in plans. This proposed section, in paragraphs (a)(1)–(6), retain the five types of plan decisions found in the 2000 rule. Those decisions are "desired conditions," "objectives," "standards," "the identification and designation of suitable and unsuitable land uses," and "the identification of requirements for monitoring and evaluation." For efficiency and clarity, § 219.26 of the 2000 rule, which governs identifying and designating suitable uses, has been incorporated into § 219.4 as proposed paragraph (a)(4). Overall, this section of the proposed rule is similar to § 219.7 of the 2000 rule, although reorganized in this proposal. The proposed rule, however, more explicitly tracks the National Forest Management Act (NFMA)

In proposed paragraph (a)(3) of section 219.4, the rule states "Standards generally should be adaptable and assess performance measures." The following is an example of an adaptable standard that assesses performance measures: "No pre-commercial thinning is allowed in lynx habitat unless at least three years of monitoring of snowshoe hares shows that hares are present and are not a limiting factor for lynx. In these cases, pre-commercial thinning may occur on no more than 20 percent of the hare habitat."

Proposed paragraph (a)(3)(ii) of section 219.4 addresses maximum size openings. The 2000 rule does not provide for maximum size openings. As in the 1982 rule, the proposed rule reinstates this statutory requirement and uses the same maximum size limits, by forest cover type.

An additional required standard is added at § 219.4(a)(3)(vii) on the use and application of culmination of mean annual increment (CMAI). The addition of CMAI direction was added to the proposed rule in order to clarify how this NFMA requirement is to be applied because there has been some confusion in this area. This new requirement specifies that CMAI considerations apply only to regeneration harvest of even-aged tree stands on suitable lands that are harvested for timber production purposes. This section allows for exceptions to the application of CMAI to be made in the plan; for example, a plan could provide exceptions for wildlife openings or for fuel reduction or fuel breaks.

The 2000 rule provides that lands are not suited for a particular use if law, regulation, or Executive order would prohibit the use, if the use is incompatible with the mission or policies of the National Forest System, or if the use would involve substantial and permanent impairment of the productivity of the land. The proposed rule retains the 2000 rule's criteria concerning laws, regulations or Executive orders and the criteria concerning productivity of the land. However, the proposed rule changes the provision of § 219.7(d) of the 2000 rule in two ways. First, the proposed rule no longer uses the criteria of incompatibility with the mission or policies of the National Forest System, because this is so broad that it would not be a useful criterion for the Responsible Official to consider. Instead, the proposed rule adopts a much more explicit criterion to consider; that is, "If agency resource management directives prohibit the use." Second, the proposed rule adds a criterion for determining if lands are not suited for a particular use: "If the use is incompatible with the desired conditions as established for the plan." This criterion was added to clearly recognize that the decisions made in adopting a plan may result in prohibiting some uses on all or parts of a plan area. In addition, this proposed section adds a clarification in paragraph (b) that assessments, surveys, and similar efforts are not plan decisions nor do they constitute a proposed action. This regulatory finding is essential to avoid public and employee confusion about what is a plan decision and what is not.

Proposed section 219.5—Indicators of need to amend or revise a plan. This section focuses on emerging issues and new information as indicators of the need to amend or revise a plan. Paragraph (a) of this proposed section is very similar to paragraph (a) of § 219.4 of the 2000 rule in identifying a variety of sources from which issues or problems may come to be addressed in planning. However, proposed paragraph (a) differs from the 2000 rule in that the reference to evaluation of collaboratively developed landscape goals has been removed from this section because of confusion regarding the intent of this provision in the 2000 rule. The concept of collaboratively

developed landscape goals is addressed in this preamble in the discussion of proposed § 219.12—Collaboration, cooperation and consultation. Proposed § 219.5 retains the concept of engaging the public in development of desired conditions as a cornerstone of planning. Paragraph (a) of proposed § 219.5 also differs from the 2000 rule by including a specific requirement for obtaining inventory data, as required by NFMA.

The 1982 rule used the term "issues" many times, and issue identification was a cornerstone of how planning was done, but the 1982 rule was not specific concerning the sources from which an issue could arise, except that public participation was a key element of issue identification. In contrast, the 2000 rule specifies how issues originate and gives detailed description of the Responsible Official's consideration of issues.

Proposed paragraph (b)(1) lists factors the Responsible Official may use to determine if an issue or opportunity is timely. Like the 2000 rule, this section makes clear that the Responsible Official has full discretion to make this determination. The requirements in § 219.4(b)(2)(ii), (iii), (iv), (vi), and (vii) of the 2000 rule address the extent to which "consideration" of the issues relate to opportunities of the planning unit to contribute to various elements of resource protection and sustainability. The proposed rule does not include these specific criteria, because it may not be practicable to consider these criteria at the initial stage of planning. There is often a lack of information when issues arise, and it is not always known how the issues relate to the National Forest System unit's contribution to sustainability. For example, there may not be complete information early in the issue identification stage related to opportunities to contribute to recovery of threatened or endangered species. This consideration may not be appropriate or efficient to consider until later in the planning process when the best available science may be assembled, when better inventory data may become available, or when public involvement may help discover opportunities that were not earlier known.

This proposed section does not retain the provision at § 219.4(b)(2)(v) that the Responsible Official should consider the extent to which addressing an issue relates to the potential for negative environmental effects on minorities. Potential negative effects are most meaningfully identified and addressed in the analysis phase of planning. Executive Order 12898 and Departmental Regulation 43004–4 (1978) require the Forest Service to determine if proposed actions would create disproportionate adverse effects on minority populations and, if so, to mitigate those effects to the extent practicable. The Forest Service complies with these requirements through its NEPA procedures. Scoping, the process of accepting public comments on a proposed action, should indicate whether environmental justice issues exist and the social and economic effects analysis would display the depth and range of those impacts and possible mitigation. The agency affirms that any action it can affect that would cause a disproportionate adverse effect on minority populations would be addressed through a NEPA procedure, thus there would be no controllable effects that the agency would not disclose, analyze, and mitigate to the extent practicable.

Proposed paragraph (b)(2) of this section incorporates the intent of § 219.5 of the 2000 rule with regard to addressing information needs and requires the Responsible Official to keep information gathering within reasonable costs and timeframes. However, this proposed paragraph does not carry forward the detailed provisions of § 219.5 of the 2000 rule for conducting broad-scale assessments and local analysis. These provisions are considered unduly detailed and too inflexible to apply to all National Forest System units, which have a wide variety of issues and information needs as well as differences in budgets and staffing levels. Needed direction on what constitutes broad-scale assessments and local analyses and how the Responsible Official should develop and use this information is more appropriately described in the agency's Directive System.

Proposed paragraph (b)(2) makes clear that a decision to consider or not consider an issue or opportunity is not subject to administrative objection.

Proposed section 219.6—Compliance with National Environmental Policy Act. This proposed section is intended to replace § 219.6 of the 2000 rule, which defines proposed actions, requires compliance with Forest Service NEPA procedures, and ties scoping to issue development.

Applicability of NEPA. NFMA section 6(g)(1) requires the Secretary of Agriculture to specify "procedures to insure that land management plans are prepared in accordance with" NEPA, including "direction on when and for what plans an environmental impact statement shall be prepared" (16 U.S.C. 1604(g)(1)). Thus, NFMA provides the statutory authority for the Secretary to specify not only what should be included in a plan, but also when and how the documentation of NEPA compliance applies to the planning process. This includes determining whether a plan decision's NEPA compliance is to be documented in an EIS, an EA and FONSI, or whether a plan decision may be categorically excluded from NEPA documentation.

The proposed rule maintains the planning process requirements already familiar to the public. These include public notice, public involvement, analysis, public comment on the draft plan, and an objection process for contesting planning decisions. The proposed planning process is intended to be open to all stakeholders and well-informed regarding the environmental effects of the proposed plan and appropriate alternatives.

Plan analysis and documentation: The 2000 rule at section 219.9 requires documentation of a plan revision in an EIS and allows the Responsible Official to determine whether or not to prepare an EIS for a plan amendment. The proposed rule at section 219.6, in contrast, applies this authority in a different manner and outlines the environmental analysis and documentation requirements for revisions. An EIS at the planning stage will not be required if the decision to adopt a plan revision or amendment is not an action significantly affecting the quality of the human environment or if a component of a plan does not yet authorize an action that commits funding or resources that could have a significant effect on the quality of the human environment. In addition, all plans in revision were adopted with full EIS analysis. Therefore, where the existing EIS and subsequent plan and/or project level documentation have adequately evaluated the significance of plan direction, no further supplementation is required.

Plans that only establish goals, objectives, standards, land allocations, monitoring requirements, and desired resource conditions do not authorize site-specific implementing actions and would not be expected to have significant effects on the environment or effects that have not been previously addressed in prior NEPA documents. As noted above, the question with respect to NFMA planning is when and how—not whether—to follow NEPA where it applies. NFMA specifically authorizes the Secretary of Agriculture to decide how and when to do NEPA environmental analysis for National Forest System plans. The agency may, based on the implementation of the proposed rule, identify a category of

plan decisions that do not individually or cumulatively have significant effects and may be categorically excluded from NEPA documentation through a subsequent rule-making process. However, plan decisions including actions that may have significant effects on the human environment must analyze and describe those effects in a more detailed environmental document, including an EIS where relevant. The following examples illustrate this principle.

- A plan decision revising or amending a plan's desired conditions, objectives, and standards for rangeland conditions would not ordinarily be an action with significant environmental effects. However, plan direction substantially increasing or reducing livestock grazing on a part or all of the plan area would be an action requiring further NEPA documentation of the effects of such a decision prior to plan approval.
- Plan direction revising or amending a plan's desired vegetative conditions, objectives, and standards to achieve such conditions would not ordinarily be an action with significant environmental effects. However, if plan direction imposes a substantial change in vegetative conditions, such as conversion of vegetation type, or if the plan decision includes a specific project or set of projects to reach those desired conditions, then further NEPA documentation for those actions must occur prior to plan approval.
- A plan decision revising or amending a plan's objectives for travel management within the plan area would not ordinarily constitute an action with significant environmental effects. However, when such a plan decision would substantially modify ongoing uses within the plan area, then NEPA documentation would be required for that proposed action prior to plan approval.
- Plan direction that revises or amends goals and objectives for consumptive and non-consumptive National Forest water uses and for special use authorizations would not ordinarily be an action with significant environmental effects. However, if a plan would impose substantial new or changed by-pass flows on current special use authorizations for the diversion of water, then NEPA documentation of the effects of that proposed action would be required prior to plan approval.
- Plan direction that revises or amends goals and objectives for oil and gas leasing would not ordinarily be an action with significant environmental effects. However, when a plan specifies stipulations for oil and gas leasing which have not been previously analyzed, NEPA disclosure would be required prior to plan approval.

Plan and project analysis: In contrast to the 2000 rule, the proposed rule at § 219.6(b) requires the detail of analysis at the plan and project level to be proportional to the decisions proposed. The proposed rule requires plans to provide substantial baseline data and trend analysis, which can include the description of direct, indirect, and cumulative effects information at a broad scale appropriate to planning, while requiring more detailed fine-scale NEPA analysis, including the description of direct, indirect, and cumulative effects, to be conducted when a site-specific action at the project level is proposed to implement the plan. Experience has shown that site-specific NEPA analysis, based upon more general plan-level analysis, provides a more timely and accurate assessment of the effects of Forest Service management actions than could otherwise be projected under more hypothetical reasoning in more detailed NEPA analysis at the plan level.

The proposed rule requires plans to be based on substantial analysis of pertinent issues regardless of the level of NEPA analysis and documentation. These plan analyses would: (1) Serve to help the Responsible Official, the public, and others develop land allocations, standards, desired conditions, and other plan decisions; (2) help limit the effects of future projects by application of the plan allocations, standards, desired conditions, and other plan decisions; and (3) provide information useful for analyzing project effects.

For example, both options in proposed section 219.13, developed to ensure that the NFMA diversity requirements are met, require ecological analyses. Option 2 in this proposed rule contains very specific analytical requirements. It focuses ecological analyses at both ecosystem and species levels of ecological organization, requires analyses of diversity across multiple geographic areas and timeframes, and stresses the importance of analyses conducted over large geographic areas or long timeframes. Option 2 requires description of the influence of the ecological condition, structure, and land use history of the surrounding landscape, as well as of natural and human-induced disturbance regimes, and a discussion on how these factors influence a forest's or grassland's ability to achieve biological diversity objectives. These analyses are a key part of both the proposed planning rule and the analysis of the ecological effects of proposals for plan decisions. This analysis will also provide essential baseline and trend data that will inform the analysis of the direct and indirect effects of plan implementation at the project level.

Cumulative effects analysis: Cumulative effects analysis normally involves analysis both at the plan level and at the project level. Under the proposed rule, plan-level analysis would evaluate existing conditions and broad trends at the geographic scale of the plan area. For example, depending on applicable issues, plan analysis may examine habitats for wide-ranging species at various geographic scales and discuss trends for that habitat. Plan analysis may examine recreation use and trends near a community. Plan analysis may also examine the current distribution and likelihood of spread for noxious weeds and whether existing roads may serve as vectors for that spread.

Analysis for site-specific projects will provide additional information that, when combined with the plan-level analysis and monitoring information collected and maintained on the plan's monitoring requirements, would serve as a basis for evaluating the cumulative effects of projects carried out under the plan. For example, where plan analysis documents the quantity and quality of habitat that is available for a wide-ranging species, that plan-level analysis, combined with applicable monitoring data and other inventory information, can provide much of the information needed to describe the cumulative effects of project and other past, current, and reasonably foreseeable projects upon the habitat available for that species.

Likewise, if plan analysis indicates that a particular recreation use is high and increasing the risk of loss of a rare plant, then plan direction may require particular measures for rare plant protection near trails in the recreation use area and a closer and more detailed examination for cumulative effects analysis associated with recreation management decisions. If plan-level analysis indicates that uses of existing roads are contributing to the spread of noxious weeds, and monitoring indicates that open roads from nearby projects are contributing to the spread, the project-level cumulative effects analysis may be required to assess mitigation measures that may be needed to restrict travel for the area.

Project level NEPA compliance: As stated elsewhere in this preamble, agency guidelines on project-level planning are specified in FSM 1950 and

FSH 1909.15. Whether a proposed project is categorically excluded from NEPA documentation, or is considered in an EA or EIS depends upon whether that project would have a significant effect on the environment.

For those projects that the agency believes there may be significant effects, an EIS will be prepared to display those effects. Pursuant to the FSH requirements, EIS's are required for actions in certain circumstances, for example, herbicide application, or road construction in an inventoried roadless area. In addition, the Forest Service typically documents other types of projects in an EIS. For example, large timber sale projects are normally documented in an EIS. Another example of a type of project that may be documented in an EIS would be an approval of a plan of operation for a large hard-rock mining operation.

The reason to do an EA is to determine whether or not an EIS is necessary and to document agency NEPA compliance when an EIS is not necessary. The EA will briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or to reach a finding of no significant impact for the proposed action.

Projects typically documented in an EA are those projects that, at the time of the proposal, the Forest Service believes will not have significant environmental effects. Examples of types of projects typically documented in an EA include smaller timber sale projects, road construction, campground construction, special use authorizations, and fuels reduction.

The FSH also lists categories of actions that are excluded from NEPA documentation because they do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by the agency in implementation of the regulations. Existing categories include road maintenance, administrative site maintenance, or trail construction.

Whether a project is documented in an EIS or an EA or whether it is categorically excluded from NEPA documentation, land and resource management plan analyses will provide critical baseline and trend data that will inform the site-specific analysis for the project. Project level NEPA documentation will analyze project effects as needed, depending on the nature of the project and the applicable issues, and known information. Project analyses will supplement and use monitoring data, pertinent assessments, inventories, research, and the plan analysis information. This plan analysis information will be available regardless of whether the plan is documented in an EA, EIS, or categorically excluded from NEPA documentation.

Categorical exclusion for planning: If this proposed rule is adopted, conforming changes would be required in FSH 1909.15, section 20.6. A new categorical exclusion pertaining to categories of plan decisions may be adopted for plan decisions that do not individually or cumulatively have a significant effects on the human environment and are found to have no such effect by the agency based on the implementation of this proposed rule. A separate **Federal Register** notice would be published to provide public notice of the proposed category and request for comment.

Public comment: The agency recognizes that the manner in which the proposed rule applies NEPA with respect to new plans, plan amendments, and plan revisions is a departure from the approach taken in the 2000 rule and the 1982 rule requiring an EIS for plan revisions, significant amendments, or new plans. This departure is based on the agency's extensive experience with land and resource management planning over the years. That experience indicates that attempting to draw precise conclusions about the environmental effects of plan direction is subject to analytical uncertainty and is ultimately of limited value for purposes of informed decision-making in compliance with NEPA. However, the agency recognizes that some level of NEPA documentation for plan direction is warranted, and that there may be substantial disagreement over the extent of NEPA analysis and documentation that is appropriate. With this proposed rule, the Forest Service is attempting to strike an appropriate balance between broad-scale plan-level analysis and finer-scale project-level analysis with sufficient inter-relationship between the two to ensure NEPA compliance for all decisions. Therefore, the Forest Service specifically requests comments and suggestions from the public regarding how the "significance" of land and resource management plan direction is applied in this proposed rule, what plan decisions authorize an action or commit funding or resources that could have a significant effect on the environment and the circumstances for which an EA or EIS for a plan would be appropriate.

It is useful to summarize the differences between elements of NEPA application in the 2000 rule and in this proposed rule. This summary consolidates discussion present in other parts of this preamble.

Type of NEPA documentation: The 2000 rule requires preparation of an EIS for a plan revision (36 CFR 219.9(d)). The proposed rule states plans may be categorically excluded from documentation in an EA or EIS when the Responsible Official determines that the action fits an established Categorical Exclusion category and no extraordinary circumstances are present.

Public involvement: The 2000 rule has detailed requirements on who should be involved in planning (§§ 219.13–219.17). The proposed rule has essentially the same requirements, although they are more succinctly stated. These requirements would still apply for plans categorically excluded from documentation in an EA or EIS.

The Forest Service will ensure that categorically excluding land and resource management plans from documentation in an EA or EIS does not result in an adverse or disproportionate effect on groups of people identified under Title VI of the Civil Rights Act, the Executive Order 12898—Environmental Justice or other civil rights laws, regulations, and orders. These identified groups include minorities, seniors, women, subsistence lifestyle populations, Tribes, and low income populations. By definition in NEPA, a categorical exclusion address only those actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an EA nor an EIS is required (40 CFR 1508.4). Pursuant to agency policy set out in Forest Service Handbook 1909.15, Chapter 10, the Responsible Official would still be required to identify potentially affected and interested agencies, organizations, and individuals during the planning process, regardless of which type of documentation is used. Additionally, specific Forest Service guidance on scoping under NEPA will still apply to categorical exclusions.

Issues: The 2000 rule has very detailed requirements for issue identification. The proposed rule does not. While the proposed rule would still require the Responsible Official to document a rationale for issue identification in the proposed rule, it is likely that this documentation would be briefer as he or she would not need to cross reference an extensive list of issue sources (refer to § 219.5 in this preamble). The requirements in the proposed rule for issue identification would still apply for plans categorically excluded from documentation in an EA or EIS.

Analysis: The 2000 rule contains very detailed requirements for what can be

termed "analysis" in §§ 219.5, 219.9, and 219.20–219.25. The proposed rule has much simpler requirements. In addition, as pointed out previously in this preamble, the agency has a vision of an analysis that is more proportional to the decisions being made and that the analysis will be much briefer. The number and complexity of requirements in the 2000 rule make it unlikely that a proportional analysis effort would be successful.

Alternatives: The 2000 rule does not directly address alternatives to consider in developing a new plan, revision, or amendment. This proposed rule also does not directly address alternatives, but the preamble does in the planning "vision" and signals the agency's intention to work toward consensus with the public with an expected result of fewer alternatives.

Neither the 2000 rule nor this proposed rule set out specific NEPA requirements in the planning regulation, in accordance with the desire not to repeat direction contained in law, regulation or Executive order.

Proposed section 219.7—Amending a plan. As with the 2000 rule, this section of the proposed rule characterizes an amendment to a plan as an addition to, the modification of, or the rescission of one or more of the plan decisions listed in § 219.4. As with the 2000 rule (at § 219.18(b)), paragraph (a) of this proposed section specifically excludes administrative corrections as amendments. Paragraph (b) of this proposed section identifies issues or opportunities as provided in § 219.5 as potential sources for plan amendments. Proposed paragraph (c) requires that the Responsible Official provide opportunities for consultation and collaboration as addressed in § 219.12 during plan amendment. The process to produce an amendment, including the identification of issues or opportunities, the use of applicable information, an effects analysis, and provisions for consultation opportunities for consultation are the same in the 2000 rule and the proposed rule. While the process steps are the same, the rules are organized differently. The 2000 rule lists all the steps for amendment in § 219.8, while the proposed rule addresses issues in § 219.5, use of applicable information in § 219.13, and effects analysis in § 219.6 by reference to NEPA. The two rules differ in the specific requirements to accomplish the steps in the amendment process. These differences are addressed in the discussion for those individual sections in this proposed rule.

Proposed paragraph (d) defines a significant amendment and requires a 90-day comment period for a draft proposed significant amendment, as referenced in § 219.6 and as required by NFMA, (16 U.S.C. 1604 (f) (4)).

Under the 1982 planning rule, when amending the plan, the Forest Service has to cope with two processes to determine significance for two different statutes. First, under NFMA, the Forest Service had to determine whether an amendment is a significant change to a plan. Even if an amendment was determined not to be a significant change to the plan, the amendment still required an EIS if it was determined under NEPA to be a major Federal action significantly affecting the quality of the human environment. This direction has proven confusing to agency personnel and to the public. The 2000 rule uses only the NEPA definition for significance. This proposed rule defines a "significant amendment," as one that would have a significant affect on the quality of the human environment. The proposed rule also provides for a new category of interim amendments in § 219.7(f) to enable the agency to make more rapid adjustments to management direction when necessary, such as when a threatened or endangered species is newly listed or initially discovered to exist in a particular area. In fact, a rapid response to the needs of threatened or endangered species is the prime reason this category of amendment is included. In 1995, for example, the Southern Region of the Forest Service amended their plans to provide interim standards and guidelines for the federally listed red-cockaded woodpecker. This interim direction was to remain in effect up to three years until individual plans could be amended or revised with longer term direction.

An interim amendment would expedite needed amendments to a plan, while the agency initiates further analysis and decisionmaking for a permanent amendment. The proposed rule would establish a maximum duration of four years for an interim amendment; however, there are a number of alternative views on the duration and process for these interim amendments, and the agency would especially welcome public comment concerning their use.

Proposed section 219.8—Revising a plan. The proposed rule requires a description of the current management situation and an assessment of the adequacy of existing plan direction, a summary of timely and relevant issues to be addressed, and a summary of relevant information. The proposed rule requires consultation with federally recognized Indian Tribes, State and local governments and other Federal agencies and contains requirements for public notice of intent to revise a plan. These requirements are much simpler than either the 1982 or 2000 rules.

The 2000 rule and the proposed rule are fundamentally different with regard to the amount of information and analysis required to initiate a revision. At § 219.20 of the 2000 rule, the Responsible Official must develop or supplement extensive information to address ecosystem sustainability and must provide comparable information at § 219.21 to address social and economic sustainability.

To initiate a revision of a plan, § 219.9 of the 2000 rule established requirements related to collaboration; identification of issues; analyses and information; identification of special areas; identification of specific watersheds in need of protective or restoration measures; identification of lands classified as not suitable for timber production; identification of and evaluation of inventoried roadless and unroaded areas; and development of an estimate of anticipated outcomes for the next 15 years. Each of these requirements refers in turn to additional requirements elsewhere in the planning regulations. For example, paragraph (b)(4)of § 219.9 of the 200 rule states in order to begin the revision process, the Responsible Official must, "Evaluate the effectiveness of the current plan in contributing to sustainability (§§ 219.20–219.21) based on the information, analyses, and requirements described in § 219.20 (a) and (b) and § 219.21 (a) and (b), and provide for an independent scientific peer review (§ 219.22) of the evaluation."

As the agency launched the November 2000 rule, field-level planners and resource professionals expressed uncertainty about the degree and scope of analysis and information gathering required to initiate a plan revision. They also were concerned about the potential controversy that might be associated with a plan developed under these untested and unclear requirements. Also questioned was the appropriateness of and the agency's ability to conduct pre-revision analysis and presenting some of this information at the revision initiation stage. For example, identification of new proposals for special areas or wilderness recommendations benefit from public involvement and input, which is more fully developed later in the planning process, not at the pre-revision stage.

The agency supports sharing as much known information as possible with the public at the early stage of revision initiation, but it does not believe the

extensive information and analysis requirements of the 2000 rule are necessary. In fact, the extensive work required to initiate revision will create further delays in revision of plans.

Both the proposed rule and the 2000 rule address the statutory requirements for plan initiation; however, the 2000 rule includes more extensive direction on the revision process than does the proposed rule. Both also include public notice requirements. The 2000 rule includes a 45-day public comment period. The proposed rule does not include a specified comment period, although notice is required to invite comment. This proposed change would allow the Responsible Official to tailor the comment period for initiation of plan revision to the scope and complexity of planning issues and opportunities for the unit.

The proposed rule and 2000 rule have the same substantive requirement for a 90-day public comment period of a draft proposed revision.

Proposed section 219.9—Developing a new plan. This proposed section recognizes that, over time, additional units may be added to the National Forest System, such as occurred with the recently established Midewin Prairie in Illinois. Should Congress establish a new national forest, grassland, prairie, or other unit of the National Forest System, the Responsible Official must determine whether a separate plan is needed or whether an existing plan can be amended. If a new plan is needed, the Responsible Official must follow the requirements of this regulation. The 2000 rule did not address this issue.

Proposed section 219.10—Application of plan direction. Paragraph (a) of this proposed section addresses the statutory requirements of the NFMA (16 U.S.C. 1604(h)(3)(i)) that permits, contracts, and other legal instruments must be consistent with the applicable plan. This paragraph is similar to the provisions of the 2000 rule at § 219.10 requiring all site-specific project decisions, permits, contracts, and other authorizations to be consistent with the applicable plan, which is required by NFMA.

However, unlike the 2000 rule, this proposed paragraph adds a specific requirement that project decisions disclose the relationship of the project to the plan desired conditions. While all project decisions must be consistent with the plan, it is not practical to require each project decision to be in strict compliance with all aspects of a plan's desired conditions. Sometimes a project may have positive effects on one aspect of desired conditions and negative effects on another. It is also possible that a project may have short-term negative effects that relate to a specific desired condition, with predicted long-term positive effects. At other times a project may have neutral effects related to desired conditions. These examples illustrate the complexity of the relationship of a particular project to the desired conditions in a plan. The agency therefore, has chosen not to include a specific requirement that projects comply with the plan's desired conditions, but rather a requirement that the project decision disclose how the decision relates to the applicable plan desired conditions.

Also in contrast to the 2000 rule, this proposed paragraph specifically requires that a new plan, amendment, or revision decision document consider the effects of the plan on occupancy and use already authorized. This change is proposed to ensure that there will be an orderly transition when a new plan, amendment, or revision is authorized. This proposed section also acknowledges that modifications of instruments authorizing ongoing occupancy and use of the plan area necessary to make them consistent with the changes in the plan are subject to any valid existing rights.

Paragraph (b) of this proposed section provides that direction in plans undergoing amendment or revision would remain in effect until the Responsible Official signs a decision document for a new amendment or revision. This provision is the same as in § 219.10 of the 2000 rule.

Paragraph (c) of this proposed section makes clear that nothing in the rule itself requires a change of approved projects while new information is being assessed. This provision is proposed to clarify the effect of considering new information and fills a gap in both the 1982 rule and the 2000 rule.

Paragraph (d) of this proposed section retains the provisions of § 219.10 of the 2000 rule that lists options available to a Responsible Official when a proposal for a project or activity would not be consistent with plan direction.

Paragraph (e) of this proposed section recognizes the need for testing and research projects to gain information and knowledge that will assist the land manager. This paragraph makes clear that testing and research projects are subject to all applicable laws, regulations, and Executive orders and must be consistent with the plan. This is a new paragraph developed to acknowledge the important role of research in National Forest System land management and the role of NFS lands as sites for research. This provision also further strengthens the emphasis of this proposed rule on monitoring and evaluation.

Proposed section 219.11—Monitoring and evaluation. As at § 219.11 of the 2000 rule, this proposed section specifies that plans must include requirements for monitoring and evaluation, although this proposed rule does not refer to such requirements as a "strategy." This proposed section provides direction on the purpose of monitoring and evaluation, the data sources that may be used, the coordination of monitoring that may occur, possible evaluation activities, and direction on record keeping. Paragraph (a) provides that the Responsible Official ensure that monitoring occurs and that monitoring methods may be adjusted without plan amendment or revision. As with the 2000 rule, monitoring could be conducted jointly with other interested parties such as other governmental agencies, Tribes, and scientific and academic organizations.

Paragraph (b) lists situations where evaluation may be used to determine, among other things: trend identification; information and analysis validation; use of performance measures to assess the effects of programs, projects, and activities; and the effectiveness of plan standards. Paragraph (c) of this proposed section would require information to be collected from any of a variety of sources to meet the monitoring requirements. Paragraph (d) requires findings and conclusions to be published annually in reports that are made available to the public.

At § 219.11(b), the 2000 rule requires that if there is a need for monitoring and evaluation of site-specific actions, decision documents must include a description of the monitoring and evaluation and the Responsible Official must determine that funding is adequate to conduct monitoring and evaluation before authorizing the site-specific project. This provision is not retained in the proposed rule which is limited to programmatic planning.

The monitoring and evaluation provisions of the proposed rule differ from the monitoring provisions of the 2000 rule, which impose far more detailed and specific requirements for monitoring characteristics of sustainability, ecological conditions, and populations of focal species/species-at-risk and for site-specific activities. Monitoring is very important, but given the testing and experimentation inherent in monitoring and evaluation, Responsible Officials need considerable flexibility to design monitoring strategies to fit local

situations. The specificity of the 2000 rule does not allow for such flexibility and discretion. To the extent that guidance is needed on who should do monitoring, how monitoring should be done, what monitoring should be done, and how monitoring information should be evaluated, that can best be provided through the agency's Directive System rather than specified in a rule.

For example, the detailed provisions in § 219.11(a)(1)(ii)(B) and (C) of the 2000 rule are being evaluated for issuance in the Forest Service Manual or Handbook. Some of these current regulatory requirements will be made optional in order to be responsive to variations in funding, staffing, and information needs among individual National Forest System units.

Other monitoring and evaluation provisions of the 2000 rule that are proposed to be removed from the rule are those for which there is no corresponding provision elsewhere in the proposed rule. Also, at § 219.23(c), the 2000 rule requires that scientists play a significant role in developing and evaluating monitoring strategies. The agency certainly believes use of science is important in monitoring and in evaluating results; however, the agency has determined upon review that the degree of required participation of Forest Service research scientists specified in the 2000 rule would overburden the Research and Development mission area of the Forest Service. Moreover, not every plan amendment or revision will require the same degree and intensity of scientific review.

Monitoring may take many forms and include different requirements for the understanding of science and involvement by scientists. Different types of monitoring require different levels of scientific rigor in their development and application. For example, if a plan has a standard to keep fences repaired and gates closed to aid with the restoration of certain degraded riparian systems, then monitoring to assess the ability of the managers to keep the fences standing and the gates closed requires little, if any, involvement of science. However, to assess if keeping the fences closed and gates repaired was an effective approach to reach the desired condition of a restored riparian system may well require development and application of particularly rigorous, scientifically valid monitoring protocols. The consistency evaluation process described in Section 219.14 would evaluate the likelihood that the designed monitoring plan would be able to determine the effectiveness of the action (keeping the gates closed and fences repaired) in achieving the objective of ecosystem restoration.

As this proposed rule was being developed, a great deal of internal discussion occurred regarding direction for, and decisions on, adaptive management and on whether the proposed rule needed to specifically address this concept. The term "adaptive management" has been used formally and informally within the agency to describe the process of continually adjusting management techniques in response to new information, knowledge, or technologies. The Forest Service recognizes that uncertainty and unknowns exist in the course of achieving any natural resource management goal. The adaptive management process relies on focused monitoring to measure success in achieving desired conditions and to determine if there is the need to make further changes in strategies and implementation. Whether such monitoring would be scientifically rigorous would depend on the resource, the use, and the specific situation.

The 2000 rule uses the term "adaptive management," and explains adaptive management concepts and purposes, but it has no specific requirements for how the concept and purposes were to be carried out. Although the agency believes that adaptive management concepts are valid, the agency maintains that it is not necessary for the planning rule to specifically address these concepts beyond stating that measurement of adaptive management results is one of the purposes of monitoring and stating in § 219.4 that the need to provide adaptive management is one reason why plan standards should not be overly rigid.

A plan can allow for and address adaptive management without specific direction to do so in the planning rule. Essentially, there is no real difference between the 2000 rule and the proposed rule in the area of adaptive management. Under both rules, plans can include adaptive management strategies and methods in their direction.

In fact, both conceptually and operationally, adaptive management is integral to the planning process laid out in this proposed rule, and monitoring and evaluation represent a fundamental component of the adaptive management process, as was the case in the 2000 rule. In this context, an essential linkage exists between plan requirements for monitoring and evaluation, discussed previously, and those for the ecological component of sustainability, discussed later in this preamble under proposed section 219.13. The ecological information and analyses focused on assessing ecosystem and species diversity, as specified in proposed § 219.13(b)(1), contribute directly to adoption of plan decisions that provide for ecosystem and species diversity in the plan area within the multiple use objectives of the plan. Results of monitoring and evaluation are among the information and analyses that may contribute to the development of future plan decisions affecting diversity. Moreover, monitoring and evaluation provide an essential feedback loop to assess whether implementation of plan direction is producing progress toward attainment of desired conditions and plan objectives, as well as the basis for deciding whether plan direction should be modified or changed through plan amendments or revision.

As specified in § 219.11(a), data and other information pertinent to characteristics of ecosystem and species diversity, as determined relevant by the Responsible Official, should be included in the monitoring information to be collected. Evaluation of this information should reveal whether progress toward achievement of diversity objectives is being achieved, or whether plan direction or plan implementation must be changed. In this sense, and with specific reference to the ecological component of sustainability, monitoring and evaluation complete the essential feedback loop of adaptive management to assess whether plan direction is achieving the NFMA requirement that plans provide for diversity in a multiple use context. Monitoring and evaluation focused on the characteristics of diversity thus inform both the development of plan decisions and the decision to undertake plan amendments or revisions, thereby ensuring that adaptive management is an integral part of this revised planning rule.

Proposed section 219.12—Collaboration, cooperation, and consultation. This proposed section combines §§ 219.12 through 219.17 of the 2000 rule. Paragraph (a) of this section is similar to paragraph (a) of § 219.12 of the 2000 rule in requiring the Responsible Official to provide early and frequent opportunities for the public to participate in the planning process, using any of several specified roles, and to encourage such participation. Paragraphs (a)(1) and (a)(2) incorporate the provisions of §§ 219.13, 219.14, 219.16 and 219.17 of the 2000 rule which address engaging Federal agencies, State and local governments, interested individuals and

organizations, and private landowners in planning, and paragraph (a)(3) incorporates the provisions of § 219.15 of the 2000 rule, which address engaging federally recognized Tribes in planning.

The 2000 rule at § 219.12(b) requires Forest Service participation with others in efforts to cooperatively develop landscape goals. Although the cooperative development of landscape goals may be of value in some planning efforts, this specific activity should not be a requirement because it will not always be useful and may often be unachievable with participating groups. The proposed rule does not refer to collaboratively developed landscape goals; rather, at § 219.12(b), the proposed rule clarifies that the Responsible Official should consider participating in existing groups to address resource management issues within the community. The agency also feels that the list of objectives for collaboration in the 2000 rule are not necessary as they are more appropriately defined under existing law or through the collaboration process itself.

In contrast to the 2000 Rule at § 219.18, this proposed section on collaboration, cooperation, and consultation does not include a provision for requiring advisory committees. That provision requires that each national forest or grassland have access to an advisory committee. Having considered employee concerns over this provision, the agency now considers this provision to be inadvisable. There are many valid methods for effectively engaging the public. An advisory committee may be the most effective method in some circumstances, the least effective in others.

Each Forest, Grassland, or Prairie Supervisor currently has the option of requesting establishment of an advisory committee under the Federal Advisory Committee Act (FACA) and implementing regulations issued by the General Service Administration (GSA). The 2000 rule requires that each Forest or Grassland Supervisor have access to an advisory committee with knowledge of local conditions and issues. While the rule does not require each planning unit to have its own committee, many believe that the local conditions and issues requirement effectively require a separate committee for most planning units.

The costs of establishing and administering FACA committees is high in terms of Federal employee time and salaries to charter the committees, manage the nomination and selection process, and to set up meetings. There are also meeting facility costs as well as costs for reimbursement of committee members for their transportation, meals, and lodging. While these costs may well be justified to address issues for some planning units, they might be an unwise use of funds on other units. Also, the process for establishing committees can be a long one. The Act and implementing GSA regulations require substantial administrative work including drafting charters, nominating members, checking nominees' backgrounds, giving **Federal Register** notice, considering public input, and giving notice of the committee members selected. By law, committees must be re-chartered every two years.

Requiring most units to undertake the expenditure of time and funds for establishing and re-establishing FACA committees imposes a significant continuing administrative responsibility. Instead of mandating a "one-size-fits-all" national approach to public input, the agency believes that it is better to provide Responsible Officials flexibility to design public involvement strategies to best meet the local needs the most cost effective way.

In summary, the proposed rule reduces the amount of process-related descriptions of the public involvement processes. The agency's intention is to continue and support vigorous and active public interaction and involvement without mandating which process would most effectively support this interaction. Consequently, this proposed rule drops the non-substantive portions of the 2000 rule, such as detailed examples of how people, groups, and organizations can contribute to the planning effort.

Proposed section 219.13—Sustainability. This proposed section contains direction for how the specific social, economic, and ecological components of sustainability are to be applied. This section of the proposed rule replaces § 219.19 through § 219.21 of the 2000 rule. This proposed rule emphasizes the interconnection between the ecological, social, and economic components of sustainability and requires consideration of each in the planning process.

However, the proposed rule departs from the 2000 rule on several important points. Sustainability under this proposed rule is viewed as a single objective with interdependent social, economic, and ecological components. In contrast to the 2000 rule, this concept of sustainability is linked more closely to the MUSYA in that economic and social components are treated as interdependent with ecological aspects of sustainability, rather than as secondary considerations. This change in emphasis is not intended to downplay the importance of ecological sustainability or of maintaining the health and productivity of the land.

The proposed rule also affirms the commitment of the Forest Service to meet the NFMA requirement that plans provide for the diversity of plant and animal communities and tree species and retains the joint focus of the 2000 rule by considering and evaluating both ecosystem diversity and species diversity, in order to reach plan decisions that provide for diversity within the multiple use objectives of the plan.

The proposed rule addresses social and economic sustainability at § 219.13(a). Even though social and economic issues are different they are discussed together because both social and economic components of sustainability address the well-being of communities that are dependent on the National Forests. There are elements of analysis that have implications for both economic and social sustainability. For example, demographics (such as population, age, income, employment, home ownership, school, growth) have implications for both economic and social sustainability. Conversely, there are other elements of social and economic analysis that are clearly distinct. For example, a social analysis might help identify Native American use of medicinal plants to ensure the agency considers how these plants may be protected. A social analysis might also help identify what local people particularly value about National Forest System lands. An economic analysis might identify the interconnectedness between goods and services produced from NFS lands and the economy in surrounding communities in terms of employment and income; for example, the recreation use of NFS lands and service industries. To assess social and economic sustainability, the Forest Service proposes to require the Responsible Official to: (1) Identify values that interested and affected persons want to see sustained; (2) consider how human activities and social and economic conditions and trends affect NFS lands; (3) identify the benefits NFS lands provide; and (4) examine how land management decisions affect social and economic conditions.

The Forest Service understands that sustainable social and economic systems are very complex and that programmatic planning decisions form only a part of the environment in which these systems operate. The agency acknowledges that it cannot assure

sustainability of those systems. The Forest Service can, however, engage the public in planning, identify social and economic issues, and analyze the relationship of planning to social and economic systems, and, thereby, make positive contributions to communities. As stated in the preamble to proposed § 219.1, plans consider the uses of variable renewable resources within the context of multiple use so the resources of the NFS lands are utilized in a combination that will best meet the needs of the American people.

Paragraph (a) of § 219.13 of the proposed rule incorporates the social and economic components of sustainability in § 219.21 of the 2000 rule, but removes the many highly detailed, discretionary elements from the rule. This simplification is proposed in response to concerns that many of the detailed requirements of § 219.21 do not reflect the variety of social and economic issues that arise across the range of National Forest System lands; that available information may not be sufficient to meet these requirements; and that the required level of detail may not meet the needs of an agency whose administrative units vary in funding and staffing levels. Processes for conducting social and economic analysis are already in the agency's Directive System, are most appropriately located there, and are currently being revised and updated.

Two options for the ecological component of sustainability are included in paragraph (b) of § 219.13 of the proposed rule, which incorporates the intent of § 219.20 of the 2000 rule for the ecological component of sustainability. The National Forest Management Act (NFMA) (16 U.S.C. 1604 (g)(3)(b)) requires that plans provide for the diversity of plant and animal communities based on the suitability and capability of the land area, and where appropriate and to the extent practicable, provide for steps to preserve the diversity of tree species similar to that existing in the region controlled by the plan, within the multiple use objectives of the plan (referred to hereafter as the NFMA diversity requirement). There has been extensive, ongoing debate concerning how to meet the NFMA diversity requirement ever since the Act was passed. The proposed rule includes two distinct options for meeting the diversity requirement in § 219.13(b).

The first option in this proposed rule was developed by modifying the 2000 rule and establishes the viability of vertebrates and vascular plants well distributed within their ranges in the plan area as the primary basis for judging achievement of the NFMA diversity requirement. This first option significantly streamlines the 2000 rule by removing many of the prescriptive operational details and making other changes described in this preamble.

Drawing heavily on the expertise of its research scientists, the agency developed a second option on ecological sustainability that provides a clear alternative to Option 1. In Option 2, the primary basis for judging achievement of the NFMA diversity requirement is the requirement that plan decisions foster the maintenance and restoration of biological diversity in the plan area, at ecosystem and species levels, within the range of diversity characteristic of native ecosystems in the larger landscape within which the plan area is embedded.

In preparing two distinct options to meet the NFMA diversity requirement, the agency seeks to stimulate meaningful public discussion and input on this important topic so that the Secretary can make an informed choice at the final rule stage. To ensure that the agency has access to knowledgeable and diverse views on this topic, the Forest Service also plans to host a workshop of subject matter specialists in a variety of policy, management, and resource fields to discuss the strengths and shortcomings of the two proposed options, or variations of these options, for achieving the NFMA diversity requirement. Information regarding this workshop will be provided in a separate **Federal Register** notice.

Comparison to 2000 Planning Rule

Both options in the proposed rule are considerably streamlined and shorter as compared to § 219.20 of the 2000 rule. As discussed earlier in this preamble, the agency's review of the 2000 planning rule judged the section on the ecological component of sustainability to be needlessly complex and overly prescriptive and to lack the flexibility needed to tailor or adapt the required ecological information and analyses to the issues identified by the Responsible Official, the risks to ecological sustainability, and the availability of information relevant to the particular plan area. To respond to this criticism, most of the operational details of the analyses of ecosystem and species diversity in § 219.20(a)(1)(i)(A)–(E), § 219.20(a)(2)(i)(A)–(H), and § 219.20(a)(2)(ii)(A)–(D), as well as the qualifications regarding how plan decisions should be applied in § 219.20(b)(1)(i)–(v) and § 219.20(b)(2)(ii)–(iv), will be transferred, perhaps in modified form, to the Forest Service Directive System or to other technical guidance documents (*e.g.*, white papers), sometimes as requirements but more often as optional methods for the Responsible Official to consider and use as appropriate. Because this shift in approach to sustainability represents a major change from the 2000 rule and because the specific operational details as to how to provide for diversity of plant and animal communities and tree species represent a controversial topic, the agency has posted this preliminary draft material pertinent to both options on the World Wide Web/Internet and made these documents available at the address listed earlier in this document for consideration and review during the public comment period.

Several concepts that were essential features of the required ecological information and analyses in the 2000 rule are now treated as optional elements of the analyses and will be covered in the Directive System or other guidance documents. For example, neither of the diversity options specifically requires broad-scale assessments as did the 2000 rule, but each will make use of information from such assessments, where they represent the best science available, and as stepped down from the assessment area to the plan area. Similarly, neither option specifically requires that focal species be identified for the plan area and evaluated to provide insights concerning the ecological integrity of the larger ecological system with which they are associated. Again, however, both options permit such a use of focal species on an optional basis. Option 2, in particular, states that individual species may be identified for analysis in order to develop a more complete understanding of the condition and trends of ecosystems, which is conceptually equivalent to the manner in which focal species were a required element of the diversity analyses in the 2000 rule. As a final example, neither option specifically requires use of the concept of the range of variability under the natural disturbance regime of the current climatic period, but Option 1 identifies range of variability as being among the approaches that may be used to evaluate ecosystem diversity.

Both options also eliminate language concerning how plan decisions must address federally listed threatened and endangered species because consideration of federally listed species is integral to the consideration of diversity under either option and because the planning rule need not repeat existing requirements of law. The 2000 rule at § 219.20(b)(3) included requirements that plan decisions

promote the recovery of federally listed threatened and endangered species, provide for implementing conservation agreements, and address requirements and recommendations from biological opinions. These requirements are not included under either Option 1 or Option 2 of the proposed rule. The agency reaffirms its commitment to comply with provisions of the Endangered Species Act (ESA), including conducting programs for the conservation of endangered and threatened species consistent with the multiple use objectives of plans, but sees no reason to specify this in the rule itself. The ESA is among the relevant statutes listed under 219.2(c)(1).

Following adoption of a final new planning rule, and contingent on which diversity option is selected, the agency fully intends to develop detailed operational guidance on the means to implement the procedural requirements of the new planning rule, particularly with reference to procedures for meeting the NFMA diversity requirement. This will include detailed guidance in the agency Directive System, as well as "white papers" and other documents.

Option 1—§ 219.13(b) Ecological Component of Sustainability

Option 1 of the proposed rule is most similar to corresponding sections on ecological sustainability in the 2000 rule. In fact, Option 1 was developed from the 2000 rule by significantly streamlining the rule and eliminating significant amounts of procedural detail, as discussed earlier in this preamble. In this option, plan decisions would be developed to provide a high likelihood of supporting, over time, the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. This viability standard serves as the primary basis for judging achievement of the NFMA diversity requirement in Option 1. This option also contains an ecosystem diversity standard, so that plan decisions would be developed to provide measurable progress toward maintenance or restoration of ecological conditions that support the desired characteristics of ecosystem diversity. However, it is the species viability standard that will provide the clearest measure of achievement of the NFMA diversity requirement under Option 1.

Under this option of the proposed rule, analysis of the ecological component of sustainability follows a hierarchical, sequential approach. This option requires ecosystem diversity to be evaluated first, with the goal of ensuring that plan decisions provide measurable progress toward maintaining or restoring ecological conditions that support the diversity of plant and animal communities and tree species,. and other characteristics of ecosystem diversity. Species diversity would be evaluated only after consideration of ecosystem diversity. This hierarchical, sequential approach is based on the assumption that conditions capable of supporting viability for most species are likely to be met through provisions for ecosystem diversity. Where this is not the case, species at risk would be identified and separate analyses of species diversity performed. This approach provides the Responsible Official flexible options for meeting the analytical requirements of Option 1 as the Responsible Official determines the scope and scale of the analysis. There are some required characteristics of ecosystem and species diversity and accompanying evaluation factors, although far fewer than in the 2000 rule. The Responsible Official is not limited to only those characteristics or analytical processes if other information or techniques are available or appropriate.

The desired conditions, objectives, standards, identification of suitable and unsuitable land uses, and any special designations and other management areas of a plan should provide the framework for management that would maintain or restore ecological conditions that the Responsible Official determines will provide a high likelihood of supporting, over time, the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. Note that "high likelihood" is not necessarily a statistical or mathematical determination. Rather, it is an application of expert agency judgment based on a reasonable review and consideration of available information.

Option 2—§ 219.13(b) Ecological Component of Sustainability

The second option for addressing the ecological component of sustainability was developed initially by agency research scientists to provide a clear and distinct alternative to Option 1. Several specific objectives or perspectives influenced development of Option 2, including: (1) Focus required ecological analyses, as well as the final management standard against which plan decisions are to be judged, at both ecosystem and species levels of ecological organization; (2) require analyses of diversity across multiple geographic areas and timeframes, and especially stress the importance of analyses conducted over large geographic areas or long timeframes; (3) emphasize the influence of the ecological condition, structure, and land use history of the surrounding landscape, as well as of natural and human-induced disturbance regimes, on the ability to manage NFS lands to achieve biological diversity objectives; and (4) require a more rigorous and structured set of analyses of diversity than contained in Option 1.

Option 2 focuses attention on the general objective of maintaining and restoring ecological conditions that provide for biological diversity in the plan area and on the more specific objective of maintaining and restoring ecosystem diversity within landscapes, and within the framework of larger-scale ecosystem analyses, of maintaining and restoring species diversity within ecosystems. In this sense, Option 2 adopts an explicitly hierarchical approach to analyses of biological diversity, as does Option 1.

Option 2 focuses attention directly on evaluating and maintaining biological diversity in the planning or assessment area. Biological diversity is an inclusive concept employed in the scientific and conservation literature to refer to the variety of living things together with their interactions and processes. It is defined at various levels of ecological organization, but especially three—genes, species, and ecosystems. The general concept of biological diversity incorporates the concept of the diversity of plant and animal communities and tree species as originally used in the language of the NFMA diversity requirement. However, the term "biological diversity" also reflects significant progress in the sciences of ecology and conservation biology over the past 20–25 years. Scientific progress in these fields has revealed substantial new information such as factors that regulate biological diversity and the relationship between biological diversity and ecosystem function and resilience. As a consequence, and consistent with progress in scientific knowledge and conservation practice, the overriding objective of the approach in Option 2 is to focus planning analyses on factors that foster the maintenance and restoration of biological diversity in the planning or assessment area, at both ecosystem and species levels of ecological organization.

Option 2 directs the Responsible Official, in the planning process, to follow and fully disclose results of a structured approach to considering and assessing biological diversity at two levels of ecological organization: ecosystem and species. Analyses of

biological diversity at these two levels should be tailored to the particular planning or assessment area, to the availability of information, to the issues identified in the planning process, and to the risks to ecological sustainability.

Consideration and evaluation of ecosystem diversity within the framework of biological diversity constitutes the core approach of Option 2 and is the primary focus of ecological information and analyses. Option 2 focuses attention on similar characteristics of ecosystem diversity as Option 1, but adds additional spatial attributes to the list of characteristics to be considered. Similarly, in addition to analyses specified in Option 1, Option 2 focuses evaluations on identification of unique or rare ecosystems and ecosystems at risk, specific threats to these systems, and measures required for their conservation or restoration.

In Option 2, consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to provide a more complete understanding of the effects of past, current, and anticipated future management direction on biological diversity, including the status of species and the ecosystems in which they occur. This second option requires that species should be selected for evaluation to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. In such cases, evaluations under Option 2 should identify specific threats to these species and specific measures required for their conservation or restoration.

In addition to the primary evaluations of biological diversity specified at ecosystem and species levels, Option 2 also requires three additional types of analyses of biological diversity at ecosystem and species levels. First, this option requires that biological diversity be evaluated across multiple geographic areas and time frames, especially over large areas and long time frames, to assess the dynamics of wide-ranging species and cumulative impacts of management actions on, among other factors, biological diversity. Second, Option 2 requires that impacts of natural and human disturbance regimes on biological diversity be evaluated, including consequences of altered disturbance regimes for diversity. Third, this second option requires evaluations of the effects of landscape context on biological diversity, where landscape context refers to the ecological condition, structure, and land use history of the planning or assessment area and effects on biological diversity. Of special interest in these evaluations are differences in ecological structure and condition between NFS lands and surrounding or interspersed ownerships and the consequence of such differences for options and opportunities to manage NFS lands to achieve biological diversity objectives at ecosystem and species levels.

In contrast to Option 1, Option 2 formulates a substantially different and more general biological diversity standard for judging achievement of the NFMA diversity requirement. Specifically, this option requires that plan decisions foster the maintenance and restoration of biological diversity in the plan area at both ecosystem and species levels within the range of biological diversity characteristic of native ecosystems in the surrounding landscape within which the plan area is embedded. When reaching plan decisions regarding biological diversity, Option 2 requires the Responsible Official to consider disturbance regimes and landscape context and the effects of these factors on options and opportunities to manage NFS lands in order to achieve biological diversity objectives.

The biological diversity standard embedded in Option 2 provides a degree of flexibility in managing NFS lands to achieve biological diversity objectives in a multiple use framework. However, this flexibility is clearly bounded. Some amount of change in the abundance, extent, and distribution of components of biological diversity at ecosystem and species levels is acceptable within the intent of fostering the maintenance and restoration of biological diversity in the plan area at ecosystem and species levels within the range of diversity characteristic of native ecosystems in the planning or assessment area. The loss of an ecosystem type or species from all or a significant portion of the plan area or a substantial reduction in abundance, extent, or distribution within all or a substantial portion of the plan area as a result of actions under the direct control of Forest Service land managers, however, is not consistent with, and thus outside the bounds of, the standard established for Option 2.

If Option 2 is selected for inclusion in a final rule, the agency will need to develop detailed guidance in the Directive System and other appropriate outlets (*e.g.*, white papers) regarding how to implement and apply the standard it contains for biological diversity. Determining whether this standard is being achieved and thus whether the NFMA diversity requirement is being met will require monitoring data that will allow an assessment as to whether amounts and components of diversity, at both ecosystem and species levels, are within the bounds or range of what would be expected of natural or native ecosystems located within the larger landscape in which the plan area is embedded. It will also require baseline information that allows clear determination of the range of ecosystem and species diversity that is reasonable to expect for native ecosystems in this larger landscape, relative to the characteristics of ecosystem and species diversity enumerated in Option 2. In this sense, this standard is conceptually similar to the ecosystem diversity standard referenced to the expected range of variability in the 2000 rule, but here it is applied at both ecosystem and species levels of ecological organization. As compared to the 2000 rule, this option explicitly recognizes the important effect that both landscape context and disturbance regimes can have on the ability to maintain or restore biological diversity within the range of diversity that is characteristic of native ecosystems in the surrounding landscape, especially when landscape structure and disturbance regimes have been significantly altered by past human activities.

In reaching plan decisions related to biological diversity, Option 2 requires the Responsible Official to consider the landscape context in which NFS lands exist and to use that information as a basis for identifying the special role and unique contributions of NFS lands for conserving and restoring biological diversity within the larger landscape in which the plan area exists.

Comparison of Option 1 and Option 2

For both options, the consideration and evaluation of diversity is important not only in order to meet the NFMA diversity requirement, but also because diversity is viewed in each option as an important indicator or surrogate for other important characteristics of ecosystems. In addition to diversity (diversity of plant and animal communities and tree species in Option 1, biological diversity in Option 2), both options define the ecological component of sustainability as including the productivity, health, and function of ecosystems and the quality of soil, water, and air resources. In relation to these characteristics of ecosystems, maintaining key ecological processes that are responsible for sustaining the functioning and resilience of ecosystems is of fundamental concern. However, it is difficult to observe or measure

ecological processes directly in a planning or management environment. Thus, information on the presence, distribution, abundance, and spatial relations of the biological and physical components of ecosystems is commonly used to make inferences with reference to ecological processes of interest. In this context, the maintenance and restoration of diversity, as evaluated in both Option 1 and Option 2, is considered to be the primary indicator of the maintenance of key ecological processes of ecosystems.

Both options maintain the agency's fundamental commitment to the conservation and restoration of ecosystems and species through implementation of the NFMA diversity requirement, but adopt different approaches to doing so. Option 1 establishes a clear viability standard as the primary basis for judging achievement of the NFMA diversity requirement, and as the basis against which to evaluate plan decisions. However, it also specifies a less detailed set of analyses, with much of the detail that was found in the 2000 rule to be moved to the Directive System as optional elements of the analysis. Option 2, in contrast, requires a more complete and robust set of analyses, but replaces the very specific viability standard of Option 1 with a more general biological diversity standard, at both ecosystem and species levels. This biological diversity standard, which is the basis in Option 2 for judging achievement of the NFMA diversity requirement requires that plan decisions foster biological diversity in the plan area within the range of diversity that is characteristic of native ecosystems within the landscape in which the plan area is embedded. In this sense, Option 2 is more like the 2000 rule in terms of specifying more detailed and complete analyses of diversity, whereas Option 1 is more like the 2000 rule in terms of establishing species viability as a primary standard for judging achievement of the NFMA diversity requirement.

Both options establish a hierarchical approach to analyses of ecosystem and species diversity, although Option 2 does so more explicitly in the rule language. Some of the comparable details of the relationship between analyses of ecosystem and species diversity in Option 1 have been moved to the Directive System. Both options focus first on analyses and achievement of ecosystem diversity, with attention to analyses of species diversity added to address the needs of species not met by attention to ecosystem diversity. Details of analyses of ecosystem diversity under the two options are similar. Option 2 adds several spatial attributes to the list of characteristics of ecosystem diversity to be considered, and it also gives greater explicit attention to analyses of rare and unique ecosystems and ecosystems at risk, but the differences between the two options in terms of ecosystem analyses are not large.

The two options differ more substantially in their approach to analyses at the species level than at the ecosystem level. Option 1 focuses analyses on species at risk, their habitat requirements, and threats placing them at risk. Option 2 places similar emphasis on requiring detailed analyses for particular species for which continued persistence within the planning or assessment area is a substantive concern. However, such analyses do not emphasize species of vertebrates and vascular plants as they do under Option 1. Option 2 specifies that species may be selected for analysis to address specific planning issues and to develop more complete understanding of the condition and trends of ecosystems. Unlike Option 1, it also includes community analyses to determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the planning or assessment area.

The above comments notwithstanding, the primary focus of analyses under Option 2 is at landscape and ecosystem levels of ecological organization. The primary intent of Option 2 is to complete analyses that lead to provisions for maintaining the broad-scale structure and condition of the landscape in the plan area and the identity, spatial arrangement, and characteristics of ecosystems within that landscape. Most analyses under Option 2 will concentrate on these outcomes. Option 2 does call for detailed analyses of individual species where significant concerns have been raised relative to continued persistence of particular species. Other types of species analyses specified in Option 2, however, are focused on ecosystems rather than on individual species. Community analyses seek to assure that provisions for maintaining ecosystem diversity will maintain the existing pool of species, and some individual species analyses seek to provide more detailed information regarding the condition and trends of ecosystems, similar to the focal species concept of the 2000 rule. Option 1 also requires a variety of ecosystem analyses, but it is less specific regarding a need for landscape scale analyses. Because Option 1 retains a clear species viability standard for vertebrates and vascular plants, it is likely that greater emphasis will be placed on analyses focused on species persistence or viability under this option than under Option 2. While both diversity options are explicitly hierarchical and call for species analyses following and within the framework provided by ecosystem analyses, it is likely that Option 2 would place greater emphasis on ecosystem and landscape level analyses than Option 1, while Option 1 would place greater emphasis on species level analyses than Option 2. However, the exact balance between ecosystem and landscape focused analyses and species focused analyses under either option will vary depending on the nature and condition of the plan area and the identified planning issues.

Option 2 specifies several additional types of ecological information and analyses that should be included in the approach to considering and evaluating biological diversity at ecosystem and species levels. Specifically, Option 2 requires that biological diversity be evaluated with respect to spatial and temporal scales and patterns, natural and human disturbance regimes, and landscape context. Similar details in Option 1 are optional and have been moved to the Directive System.

Option 2 emphasizes more strongly than Option 1 the critical role that landscape context plays in shaping planning decisions and evaluations of biological diversity. Landscape context refers to the ecological condition and structure of ecosystems and landscapes on National Forest System lands as compared with other surrounding and interspersed lands, as well as the land use history of the planning or assessment area (National Forest System and surrounding lands). Landscape context can play a very significant role in limiting or facilitating a land manager's options and opportunities to manage NFS lands to achieve biological diversity objectives. Option 2 requires explicit consideration of landscape context in reaching plan decisions affecting biological diversity.

Option 2 also focuses more explicit attention on addressing spatial scale and patterns, requires evaluations of biological diversity at multiple spatial scales as appropriate, and emphasizes the importance of analyses at large spatial scales, which may require coordination in planning across multiple National Forest System administrative units or Regions. In a similar manner, Option 2 routinely calls for analyses and evaluations of biological diversity at the spatial scale of the planning or assessment area, which is typically larger than the plan area and which includes other

surrounding and interspersed ownerships as appropriate. In contrast, Option 1 specifies analyses and evaluations of diversity at the spatial scale of the plan area.

As noted above, Option 2 does not establish species viability as the primary basis for judging achievement of the NFMA diversity requirement. However, viability analyses may be appropriate under Option 2 for select species for which substantive concerns have been identified regarding continued persistence within the planning or assessment area; such analyses represent a legitimate analytical approach for species at risk of extinction globally or extirpation from the planning or assessment area. Where such concerns exist for particular species, these concerns must be addressed in analyses of biological diversity. Thus, Option 2 recognizes that viability analyses or similar analyses are potentially useful tools. Recognizing limitations of such analyses, however, Option 2 does not prescribe a specific approach for viability analyses. It permits a flexible approach shaped by issues identified in the planning process and by the present state of conservation biology theory and practice. It also does not limit the species for which viability analyses might be appropriate. Species other than vertebrates and vascular plants might be selected for analysis based on specific concerns raised in the planning process.

One final attribute common to both diversity options is the fundamental importance of linking ecological information and analyses completed in the planning process to monitoring and adaptive management. Under the 1982 planning rule, planning has become a costly process that limits resources available for on-the-ground management and monitoring. Reviews of the 2000 rule concluded it would have resulted in even higher planning costs. Moreover, it has become increasingly clear that the agency's ability to forecast future ecological conditions is limited and characterized by considerable uncertainty. As a consequence, both diversity options envision transferring the investment in upfront ecological analyses as part of planning to on-the-ground management, rigorous and scientifically based monitoring of resource conditions with reference to progress in achieving desired conditions, careful evaluation of monitoring results, and adjustment of management direction in an adaptive management context. Thus, inherent in each option is the fundamental premise that planning must be placed more directly into the framework of plan implementation through adaptive management if it is to contribute to progress toward achievement of desired conditions and to sustaining the health and productivity of the land and its resources.

The following questions help define and frame the issues that must be resolved in developing any workable approach to providing for biological diversity in the planning process. The agency encourages those who wish to comment on the diversity options in the proposed rule to consider these questions in formulating their comments:

(1) What elements of biological diversity (*e.g.*, ecosystems, communities, processes, species or species groups, focal species, etc.) should be considered and evaluated in the forest planning process? At what levels of ecological organization (landscape, ecosystem, species, gene, etc.) should these elements be evaluated?

(2) Over what geographic areas and timeframes should diversity be evaluated?

(3) What is an appropriate management standard against which achievement of the NFMA diversity requirement should be judged (*e.g.*, population viability of select taxa or range of biological diversity of native ecosystems in the surrounding landscape)? What is an appropriate baseline or reference state or condition for this standard?

(4) In reaching decisions regarding achievement of the NFMA diversity requirement, how should the planning process consider and evaluate differences in current conditions between NFS lands (the plan area) and the surrounding landscape?

(5) How does a plan provide for diversity of plant and animal communities and tree species within the context of the multiple use objectives of the plan?

(6) What is the capability of the Forest Service to implement Option 1, Option 2, or variations of these options in order to provide for biological diversity in a multiple use context, given limitations of available information, personnel and financial resources?

Table II at the end of this document compares the key features contained in the ecological sustainability section of the 2000 rule with the two options for ecological sustainability in the proposed rule.

Proposed section 219.14—The consideration of science in planning. This section of the proposed rule combines § 219.22 through § 219.25 of the 2000 rule. The proposed rule retains the emphasis on the use of science in planning from the 2000 rule. However, the proposed rule differs from the 2000 rule by focusing on the use of science, rather than on scientists, in the planning process.

Section 219.14 of the proposed rule requires the use of independent peer reviews, science advisory boards, or other appropriate means to evaluate the consistency and application of science used in the planning process. Procedures for these methods will be provided in the agency's Directive System. Section 219.14 provides for a science consistency review process to determine whether scientific information of appropriate content, rigor, and applicability has been considered, evaluated, and synthesized in the documents that underlie the land management plan in a manner that keeps it consistent with that science. In its basic form, a science consistency review is used to evaluate whether a plan has:

- Considered and used the best available scientific information;
- Evaluated and disclosed the uncertainties of that scientific information;
- Evaluated and disclosed the consequences, substantial risks, and uncertainties from applying that scientific information to the proposed management alternatives; and
- Interpreted and applied that information reasonably and accurately.

The goal of the science consistency review is to produce a plan that meets these review criteria and to thus allow the Responsible Official to make a finding that a plan is consistent with available scientific information. The criteria apply to all aspects of the planning process, including the Responsible Official's delineation of the appropriate time frame and geographic extent of the analyses to be conducted, the analyses themselves, and the monitoring plan set up to evaluate the effectiveness of the on-the-ground management to meet the desired conditions in a plan. This science consistency review process encompasses relevant standards of the Data Quality Act concerning quality, objectivity, utility, and integrity of information used in science-related decisionmaking (Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, Sec. 515)).

Both the 2000 rule and the proposed rule require that the Responsible Official ensure that science is considered, correctly interpreted, and applied in planning, and that incomplete or unavailable information,

scientific uncertainty, and risk be evaluated and disclosed. When conducted independently, this evaluation and disclosure of uncertainty and risk provide a crosscheck to an appropriate interpretation and application of science and help to clarify the limitations of the information base, which informs plan decisions. The 2000 and proposed rules are substantively the same in their overall goals of achieving consistent use of scientific information. They differ in that the 2000 rule provides many requirements on how this goal was to be met; the proposed rule does not. The agency will place needed technical detail that provides "how-to" direction in its Directive System. For example, although the 2000 rule provides flexibility for when independent scientific peer reviews should occur, the rule also provides technical detail about how scientific peer reviews should be conducted. This level of detail is not necessary or appropriate for a rule, but the agency will need to provide guidance to its employees on how various scientific reviews may be conducted.

The 2000 rule at § 219.23 requires specific involvement by the Research and Development (R&D) mission area of the Forest Service in broad-scale assessments. As stated in the explanation of § 219.5, the proposed rule does not require that level of assessment, so it does not address who should be involved.

The 2000 rule at § 219.23(c) requires use of scientists to design and evaluate monitoring strategies and requires an independent, scientific peer review of plan monitoring on at least a biennial basis.

The agency often needs scientific expertise in monitoring; however, there are certain types of monitoring where the need for direct scientific expertise is quite limited. For example, monitoring may include surveys of road condition to determine if drainage structures are working properly, or it may involve continuation of use of long-standing inventories such as the Christmas bird count. Thus, monitoring does not always need scientific expertise applied to its design, evaluation, and review. The agency believes that the Responsible Official should be able to determine the appropriate level of involvement of scientists in designing and evaluating monitoring as well as in reviewing monitoring plans. The science review process will clarify if this involvement is at the appropriate level, given the issues involved.

The proposed rule retains the requirement that the Responsible Official document that the new plan, plan amendment, or revision was developed using the best available science in a manner that keeps the plan consistent with that science. In contrast to the 2000 rule, this proposed rule is explicit that the determination of best available science must be made in the context of the issues being considered in a plan development, amendment or revision. These proposed changes will ensure that the Responsible Official uses the best available science pertinent to the resource uses and conditions being addressed in a plan. Again, the science review process will provide an important cross-check on the Responsible Official's appropriate use of science.

There are terms related to science that are used in the 2000 rule and the proposed rule that require additional explanation and context. One term is "uncertainty" as used in the context of scientific uncertainty. If there are uncertainties associated with plan decisions that utilize scientific information, then those uncertainties must be described.

Another term requiring additional explanation is "risk" as used in the context of scientific risk. If there are known risks associated with plan decisions, then those risks must be described. Risk arises from uncertainty in science, from assumptions made in analysis, from occurrences such as catastrophic events, and from trade-offs made in development of the plan. Trade-offs occur when a Responsible Official decides to accept negative impacts to one resource in order to achieve benefits for another resource.

For example, a plan may have a desired condition for streams that includes components of shading, nutrient loading, reduction of sedimentation, and the recruitment of large organic debris to the stream. Science may show that a 100-foot buffer strip prohibiting harvest of trees is optimum to reduce sedimentation in streams. However, science may also show that the trees in that 100-foot buffer should be of a certain size to optimize shading, nutrient loading, and large organic debris to the stream. Allowing thinning within buffer strips may be desirable, depending upon specific stand characteristics, to achieve a stand structure that better meets the desired condition for streams. The Responsible Official may trade off the short term risk of higher sedimentation rates associated with thinning trees for achieving the desired outcomes of shading, nutrient loading, and recruitment of large organic debris in the long term. This risk should be evaluated and disclosed by the Responsible Official.

Substantial risk also occurs when the aggregate sources of risk result in the likelihood that the desired resource or output condition cannot be achieved. For example, in the situation described previously, a large catastrophic fire may cause additional sedimentation, resulting in an inability to achieve the desired condition. This aggregate risk of allowing thinning and potential impacts from catastrophic fire must be evaluated and disclosed.

Appropriate interpretation of science depends upon the applicability of scientific information to the relevant planning issue. For example, if one assumes that there is an issue regarding the growth of Douglas-fir at high elevations on a forest and there is a study on the growth of Douglas-fir at low elevation, that study may be available and relevant to the extent that it relates to the same species of tree, but it could not be correctly interpreted to say that the results of the low elevation study were indicative of high elevation growth. Appropriate interpretation also involves using all of the relevant information, not just selecting part of that information. When the results of two studies relevant to an issue suggest somewhat different outcomes, uncertainty associated with science arises and the risk associated with decisions based on that science may increase. In such cases, the uncertainty in that science needs to be evaluated and disclosed.

The reviews of the 2000 rule indicate that the Forest Service is not likely to have the resources necessary to involve scientists to the degree required by the 2000 rule. Also, there is not necessarily a need for rigorous scientific reviews when levels of anticipated actions are expected to be low with fewer environmental consequences within the control of the agency. Changing the focus from the role of scientists to the appropriate use of science makes the proposed rule more practical and realistic.

The 2000 rule at § 219.23 requires the establishment of science advisory boards and provides that the Responsible Official may use a science advisory board. Again, the agency believes that there is no need in the planning rule to require one specific method to ensure that the best available science is used appropriately. Some may claim that the agency is reducing its emphasis on the use of good science because of the reduction of the many specific detailed requirements on how best to obtain and use the best available science in the proposed rule. The

agency strongly supports the use of science in planning, but believes that the detailed requirements of the 2000 rule added an unnecessary level of bureaucracy and cost to planning.

Proposed section 219.15—Special designations. This section of the proposed rule is very similar to the provisions of § 219.27 of the 2000 rule. In cases where the Congress has made special designations, the planning objective is to provide management direction according to Congressional intent. In other cases, Responsible Officials have the authority to make special designations through the planning process. This section of the proposed rule would also retain the requirement that inventoried roadless areas be evaluated and considered for recommendation as potential wilderness areas during the plan revision process. This section would also retain the provision of the 2000 rule to allow such roadless and wilderness evaluations and recommendations at other times by a plan amendment. The two rules mainly differ primarily in the examples for the different categories of specially designated areas.

Proposed section 219.16—Determination of lands available for timber harvest and suitable for timber production. This section of the proposed rule meets the statutory requirements of the NFMA and retains the intent of § 219.28 of the 2000 rule with one exception. For lands where timber may be harvested for timber production purposes, the 2000 rule at § 219.28(b) requires that not only must these lands be available, capable of being harvested without damage to other resources, and capable of regeneration, but that the analysis must show that the costs of timber production are justified by ecological, social, or economic benefits. This requirement goes far beyond the statutory language of NFMA, and a concern has developed within the agency about how this justification would be developed and documented. Therefore, the proposed rule does not retain this portion of the 2000 rule. Instead, the Responsible Official must consider physical, ecological, economic, social, and other pertinent factors when establishing timber production in a plan for any lands not identified in paragraph (a) of § 219.16.

This proposed section retains the same three categories as § 219.28 of the 2000 rule and retains the requirement that plans identify lands where timber may not be harvested, lands where timber may be harvested with an objective of timber production, and lands where timber may be harvested or cut for the purpose of meeting other multiple use resource management objectives. This section also provides some examples of these other multiple use objectives.

Proposed section 219.16 addresses only the suitability of lands for timber production. Suitability for other purposes is addressed at § 219.4(a)(4) of the proposed rule.

Proposed section 219.17—Limitation on timber harvest. This section of the proposed rule meets the statutory requirements of NFMA and retains the intent of § 219.29 of the 2000 rule with two important changes. The 2000 rule requires the calculation of long-term sustained yield to include all lands where timber may be harvested. Under the proposed rule, the calculation of long-term sustained yield would apply only to those lands where timber production would be a management objective. The intent of estimating long-term sustained yield of potential timber harvest is to ensure that lands where timber production is a management objective can continue to produce sustained levels of harvest in the future. Therefore, it is not reasonable or necessary to calculate sustained yield from lands that are not allocated to that purpose. It is also very difficult to accurately estimate harvest levels when timber is harvested for such purposes as wildlife openings, because these types of harvests are not normally planned on a scheduled basis. Also, in cases such as development of fuel breaks or meadow restoration, it is not desirable to reforest harvested lands, and in these cases, calculation of long-term sustained yield is not logical. In other words, it is not necessary to calculate yield if reforestation and later growth and harvest are not desired.

In addition, the 1982 rule established at § 219.27—Management direction, allowable sale quantity (ASQ) as the quantity of timber that may be sold from the area of suitable land covered by the forest plan for a period specified by the plan. Neither the 2000 rule, nor this proposed rule provides for allowable sale quantity, and in contrast, uses long-term sustained yield as the upper limit of timber that may be harvested during the planning period. This change was made in the 2000 rule and is continued in the proposed rule, primarily because the sustained yield requirement is adequate, and dropping the requirement that planning establish an ASQ reduces the risk of misperception that ASQ is a target to be achieved, rather than a limit to harvest.

In the 2000 rule at § 219.29(a), if a unit has less than 200,000 acres of forested lands, two or more forests may be combined for the purpose of estimating the amount of timber that could be sold annually on a sustained-yield basis. This provision is covered in § 219.17(a) of this proposed rule. It is similar to the provision in the 2000 rule, except that the 200,000-acre unit size is not cited because it is already included in NFMA. The proposed rule also clarifies that the limitation on timber harvest in § 219.17(b) is to be applied on a decadal basis.

Proposed section 219.18—Plan documentation, maintenance, and availability. This section of the proposed rule would retain the requirements of § 219.31 of the 2000 rule for availability of planning records and for establishing a provision for administrative corrections to planning documents that would not be decisions under NEPA. Paragraph (a) of this proposed section also would supercede § 219.30 of the 2000 rule. Like that section, proposed paragraph (a) would provide a description of a plan, but would remove the detailed provisions of § 219.30(a) through (e) of the 2000 rule which requires a summary of the plan, a display of public uses, plan decisions, and a display of actions and outcomes, including projected implementation schedules. The rationale for the simplification in the proposed rule is that much of the information required in the 2000 rule is unnecessarily prescriptive, is already located in the planning record which is readily available, or is already provided for by other means. The 2000 rule requires a summary of the plan and contains considerable detail about what this summary should contain. The agency believes that it is not necessary to provide the Responsible Official detailed instructions about how to summarize a plan. For example, the 2000 rule requires, as part of the summary, a display of public uses. The proposed planning rule at § 219.4 already addresses suitability of certain lands for certain uses. In another example, the 2000 rule requires a display of actions and outcomes. This requirement is already outlined in Forest Service Handbook 1905.15 which requires making available a quarterly schedule of proposed actions that may undergo environmental analysis and documentation, so there is no need to have a separate process to display anticipated projects.

Proposed section 219.19—Objections to new plans, plan amendments or plan revisions. This section of the proposed rule differs from other sections of this rule in that it provides essential detail for the procedures necessary to initiate and carry out the objection process. The

Committee of Scientists, in their 1999 report, recommended that the Forest Service seek to harmonize its administrative appeal process with those of other Federal agencies. Accordingly, the 2000 rule adopted an objection process that provides for a pre-decisional objection opportunity instead of a post decision administrative appeal. The proposed rule modifies the objection process and models it more closely on the protest process used by the Bureau of Land Management (BLM) (found at 43 CFR part 1600). The proposed rule adopts the BLM regulatory approach with some necessary modifications to recognize the different organizational structure of the Forest Service.

The proposed rule differs from the 2000 rule in the following specific ways. The proposed rule does not require publication of objections received. Unlike the 2000 rule, the proposed rule includes specific requirements that the content of the public notice announcing a new plan, amendment, or revision be made for public review and subject to pre-decisional objection process. The 2000 rule does not limit who can file an objection. The proposed rule does not allow other Federal entities to file an objection, because there are other avenues for Federal agencies to work together to resolve concerns. This exclusion of Federal agencies is a long-standing procedure of Forest Service administrative appeal provisions at 36 CFR parts 215 and 251, Subpart C. The Forest Service is required to involve other Federal agencies, at Section 219.12. The proposed objection process, like that in the 2000 rule, is intended primarily other governments, such as federally recognized Indian Tribes, States, and counties, and for the public. Neither the appeal process in the 1982 rule nor the proposed objection process is suitable to resolve concerns between sister agencies in the executive branch. The Forest Service anticipates that other agencies will be able to resolve most planning concerns informally. Where it is anticipated that there may be concerns that are not easily resolved by planners and other agency personnel, various techniques such as establishments of Memorandums of Understanding or local working agreements may be used. Some agencies also have regulatory authority; for example, EPA has review authority pursuant to section 309 of the Clean Air Act. These techniques and authorities are successfully being used now and will continue to be used in the future.

The two rules are similar in what must be in an objection, but the proposed rule, unlike the 2000 rule, specifically requires that an objector provide an explanation of why the objector believes that the environmental disclosure documents and proposed final documents are inconsistent with law, regulation, Executive order, or policy and any recommendations for change. The proposed rule drops the requirement of the 2000 rule that objectors describe their participation in the planning process and provide relevant documents submitted during the process. The 2000 rule allows objectors to request meetings with a Reviewing Officer. The proposed rule does not address meetings, because although nothing prevents an objector from requesting meetings, the agency does not want to set up expectations that meetings should be requested, or that those requests would be granted in every case. The agency has learned that meetings are helpful in many cases, but not in all, and the Forest Service would like to provide flexibility to the Reviewing Officer to work through the review process in an effective manner. The proposed rule also drops the provisions for inclusion of "interested persons" in the meetings between the Forest Service and the objectors. This change occurred in the proposed rule because meetings are not specifically addressed and also so that the objection process would more closely mirror the BLM process, which does not provide for involvement of interested persons.

Proposed section 219.20—Appeals of plan amendments in site-specific project decisions. This proposed section makes clear that the administrative review process established in 36 CFR 215.7(a) applies to site-specific project decisions that include non-significant plan amendments, rather than subjecting such decisions to the objection process for new plans and revisions.

Proposed section 219.21—Notice of plan decisions and effective dates. At paragraph (a), this section of the proposed rule provides direction on where public notification of decisions for new plans, amendments, and revisions is to occur. Proposed paragraph (b) provides that new plans, significant amendments, and plan revisions are effective 30 days after notice of the plan decisions has been published. This proposed paragraph also provides that decisions for nonsignificant amendments are effective immediately. This new section of the proposed rule fills a void in the 2000 rule.

Proposed section 219.22—Transition. This section of the proposed rule is a modification of the transitional procedures of § 219.35 of the 2000 rule. The proposed rule does not explicitly require use of science for implementing and amending existing plans during the transition period, as provided in the 2000 rule at § 219.35(a), because use of science is adequately addressed through an interdisciplinary team approach without specific procedural requirements. The proposed rule does not address lands not suited for timber production in the same manner as the 2000 rule at § 219.35(c). The agency believes that the 1982 rule requirement adequately responded to NFMA and has incorporated similar language from the 1982 rule into the proposed rule.

The proposed rule would remove the provisions for site-specific decisions at § 219.35(d) of the 2000 rule because these decisions are explicitly excluded from the proposed rule. The provisions in the 2000 rule for removal of regional guides (§ 219.35(e)) and establishment of a revision schedule (§ 219.35(g)) are not included in this proposal because the regional guides have already been removed.

The transition requirements for monitoring reports at § 219.35(f) of the 2000 rule are dropped from the proposed rule, because it is acceptable for the monitoring done under the 1982 rule to continue until the plans are completed under the proposed rule. The proposed transition includes the option to continue any amendments or revisions that were initiated under the 1982 rule or to adjust the process to follow this proposed regulation or parts thereof. The Department issued an interim final rule on May 20, 2002, to extend until a new revised planning rule is adopted, the date by which all plan amendments or revisions must be in compliance with the 2000 rule (67 FR 35431).

Proposed section 219.23—Definitions. This section sets out the special terms used in this proposed rule and their definitions. Some definitions are the same as those in the 2000 rule. These are: "Diversity of plant and animal communities," "ecological conditions," "major vegetation types," "native species," "species viability," and "successional stages."

Some terms found in § 219.36 of the 2000 rule are not included because they are not used in the proposed rule or their meanings are self-evident. These are: "Candidate species," "conservation agreement," "current climatic period," "desired condition," "ecological sustainability," "ecosystem composition," "ecosystem processes," "focal species," "inherently rare species," "productive capacity of ecological systems," "reference landscapes," "undeveloped areas," and "unroaded areas."

The terms included in this proposed rule that were not used in the 2000 rule are: "Biological diversity," "culmination of mean annual increment," "cultural/heritage resources," "disturbance regime," "ecosystem diversity," "energy resources," "environmental disclosure document," "federally recognized Indian Tribe," "forest land," "health," "high likelihood of viability," "mean annual increment," "newspaper(s) of record," "plan," "planning area," "productivity," "science consistency," "species diversity," "species persistence," "timber harvest," "visitor opportunities," and "wilderness."

The following explains changes to definitions that are used in this proposed rule and in the 2000 rule.

1. The definition of "adaptive management" is slightly changed for clarity. Also, the 2000 rule discusses the role of adaptive management in sustainability, while the proposed rule discusses the role of adaptive management in terms of efficiency and responsiveness of management.

2. The definition of "assessment or analysis area" is changed in the proposed rule by dropping analysis area and defining assessment areas. Assessment areas are larger than planning areas and typically involve multiple ownerships.

3. The definition of "desired non-native species" is changed in the proposed rule to improve clarity and to make sure the definition is consistent with each of the diversity options and also with the new definition of species.

4. The definition of "ecosystem structure" is changed in the proposed rule to refer to the arrangements and relationships among ecosystem components. This broadened the definition to encompass all of the aspects of structure that are of importance in both of the proposed rule's options for ecological sustainability.

5. The definition in the 2000 rule for "Forest Service NEPA procedures" is shorter and is now identified as "NEPA procedures" in the proposed rule, but contains no substantive changes.

6. The definition for "inventoried roadless areas" is substantially changed. The 2000 rule includes specific criteria for consideration of roadless areas identified as those in the November 2000 Roadless Area Conservation Final Environmental Impact Statement, Volume 2. The proposed rule does address criteria for roadless area consideration and does not limit areas to be considered from the November 2000 Roadless Area Conservation maps. The proposed rule allows information from a variety of sources.

7. The definition of "native species" is changed in the proposed rule to improve clarity and to make sure the definition is consistent with each of the diversity options and also with the new definition of species.

8. The definition for "plan area" is not substantially changed, but is broadened in the proposed rule to make clear that a plan area may have more than one Responsible Official.

9. The definition for "range of natural variability" is retained except that the term "current climatic period" is dropped because of considerable disagreement and confusion regarding the identification and use of this time period.

10. The definition of "Responsible Official" is changed in the proposed rule to conform it with changes made to other sections of the rule and to reflect that the proposed rule addresses only forest planning and not project level decisions.

11. The definition of "species" is changed in the proposed rule to make clear the distinction between the two diversity options in terms of which species may be considered in forest planning.

12. The definition for "species-at-risk" in the proposed rule removes references to species that may, but are not required to, be on the list and removes references to "focal species," a term not used in the proposed rule.

13. The definition of "timber production" is changed in the proposed rule by dropping the reasons for harvest.

Conclusion

This proposed planning rule has been prepared by the Forest Service at the direction of the Office of the Secretary of Agriculture to address problems identified through a Departmental review of the 2000 planning rule. That review focused on the agency's ability to implement the 2000 rule. The concerns identified in the review centered on confusing text contained the 2000 rule as well as on the extensive resources, primarily funding and skilled personnel, that would be required to adequately implement the various new planning concepts and requirements of the 2000 rule.

The intended effects of the proposed rule are to simplify, clarify, and otherwise improve the planning process and to enable the Forest Service to more efficiently implement an improved planning process while retaining the key concepts of the 2000 rule for sustainability, collaboration, monitoring and evaluation, and the use of science. The proposed rule is substantially shorter than the 2000 rule as it removes highly procedural and technical instructions more appropriate for the agency's Directive System. Grounded in both law and practical experience, the proposed rule affirms forest health and sustainability as the overall goal for management of National Forest System lands.

Written comments are requested and will be considered in adoption of a final rule. Reviewers should note that greater weight will be given to original, substantive comments than to form letters, check-off lists, pre-printed post cards, petitions, or similar duplicative materials.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System planning and decisionmaking, this proposed rule has been designated as significant and, therefore is subject to Office of Management and Budget review under Executive Order 12866.

Two studies investigating the costs of land and resource management planning are associated with the proposed rule: (1) A cost-benefit analysis addressing the comparative costs and benefits of the 1982, 2000, and proposed rules, and (2) a comprehensive assessment of the estimated costs of the 2000 and proposed rules.

For the cost-benefit analysis, the cost estimates were developed for planning activities under the 1982 rule with the assistance of Headquarters, Regional, and Forest level planning specialists, using cost data for plan revisions recently completed based on planning as currently practiced under the 1982 rule. These costs were included in a report to the House and Senate Committees on Appropriations entitled, "Forest Service Land and Resource Management Planning: The Status of

Activities," dated January 31, 2002. The costs contained in this report, however, only included planning costs at the forest or grassland level. They did not include the costs incurred at other organizational levels. The cost-benefit analysis relied on results from the costing study to approximate the likely costs of regional office, contracts, and science support to forests or grasslands under the 1982 regulation. An empirical estimate of the per plan cost of resolving appeals under the 1982 regulation was also made.

The results of the 2002 NFMA Costing study were used to estimate the costs associated with planning activities under the 2000 regulation and this proposed 2002 rule. The costing study used a business modeling process and is the most comprehensive study on Forest Service planning costs ever conducted. It identifies and directly compares major cost centers for both the 2000 regulation and this proposed 2002 rule and includes field validation of the estimates by agency planners and interdisciplinary specialists who participate in planning.

The cost-benefit analysis prepared on this proposal focuses on key activities in land and resource management planning for which costs can be estimated under the 1982 rule, the existing 2000 rule, and the proposed rule. The key activities include regional guides, collaboration, science support, effects analysis for the 2000 and proposed rule, and "revise plan" for the 1982 rule, evaluation of sustainability and diversity, and the resolution of disputes over plan decisions. The cost-benefit analysis compares the costs and benefits for these activities with practices under the 1982 planning rule. This proposed rule would reduce costs by eliminating regional guides, shortening the length of the planning process, and providing the Responsible Official with more discretion to decide how to conduct the planning process.

Based on costs that can be quantified, this proposed rule is estimated to save an average $1.1 million annually compared to the expected costs under the 1982 rule. Cost savings under the proposed rule are estimated to be about $27.7 million per year compared to the 2000 rule. The discounted value of the cost savings over the 15-year planning horizon is estimated to be $8.6 million for the proposed rule when compared to the 1982 regulation and approximately $240 million when compared to the 2000 regulation.

As noted in the cost-benefit analysis for the proposed rule, the NFMA costing study assumed traditional application of plan analysis. It also did not take into consideration possible savings if a plan revision analysis was categorically excluded or documented in an Environmental Assessment, rather than an Environmental Impact Statement. Both these areas of potential savings could be substantial. In addition to the analysis of the costs and benefits of this proposed rule, this rule has also been considered in light of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this rule. The rule imposes no requirements on either small or large entities. Rather, the rule sets out the process the Forest Service will follow in planning for the management of the National Forest System. The rule should provide opportunities for small businesses to become involved in national forest, grassland, and prairie plan decisions. Moreover, by streamlining the planning process, small businesses should see more timely decisions that affect outputs of products and services. The recognition of the Multiple-Use Sustained-Yield Act and how it affects the social and economic components of sustainability should provide for better balancing of conflicting impacts and issues.

Environmental Impacts

An environmental assessment was prepared for the 2000 rule. This assessment was not required by law, regulation, or agency policy; however, the agency elected to prepare the extra documentation at that time to ensure that no procedural defects might occur. In the case of this proposed rule, the agency proposes to categorically exclude this action, because it is clearly within an established category, there are no extraordinary circumstances related to the action, and this approach will further the agency's efforts to streamline process. The agency invites public comments on environmental effects of the proposed rule.

This proposed rule would establish the administrative procedures and requirements to guide developing, amending, and revising National Forest System land and resource management plans. As such, the proposed rule has no direct and immediate effects regarding the occupancy and actual use of National Forest System land. Rather, the environmental effects of this proposed rule will not be known until specific plans are created, amended, or revised under the rule. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The action of "establishing procedures for amending or revising Forest Land and Resource Management Plans' is specifically listed as one of the examples of this category. There are no extraordinary circumstances related to this action. Although an environmental assessment will not be prepared, the agency has prepared a cost-benefit analysis and a Civil Rights Impact Analysis (CRIA), because as discussed previously in this section, the Office of Management and Budget has determined that this rule is otherwise significant. Both the cost-benefit analysis and the CRIA may be found on the World Wide Web/Internet at the address listed earlier in this document.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this proposed rule would guide the development, amendment, and revision of National Forest System land and resource management plans. These plans are programmatic documents that set the standards and other parameters for making future project-level resource management decisions. As such, these plans will address access requirements associated with energy exploration and development within the framework of multiple use, sustained-yield management of the surface resources of the NFS lands. These plans may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of these plans on energy supply, distribution, or use are, of necessity, considered on a case-by-case basis as plan amendments or revisions are proposed and adopted. Consistent with the Executive order, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be included in the agency's administrative directives for implementing the proposed rule, notice of which will be given at the time of adoption of a final rule.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.), the information collection or reporting requirements included in § 219.19 of the proposed rule for the objection process were previously approved by the Office of Management and Budget and assigned control number 0596–0158, expiring on October 31, 2003, under the 2000 rule.

This proposed rule retains the objection process established in the 2000 rule but simplifies it. The proposed rule removes the requirements for interested parties, publication of objections, and formal requests for meetings (36 CFR 219.32). These changes would result in a minor reduction in the burden hours from the collection of information that would be insignificant to the total 12,100 annual hours requested by the agency.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12875, Government Partnerships, and Executive Order 13132, Federalism. The agency has made a preliminary assessment that the rule conforms with the Federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

In addition, the agency has reviewed the consultation requirements under Executive Order 13132, which calls for enhanced consultation with State and local governmental officials and emphasizes increased sensitivity to their concerns. Section 219.8 of this proposed rule shows sensitivity to federalism concerns by requiring the Responsible Official to provide opportunities for involvement of State and local governments in the planning process. In the spirit of these requirements, the agency has consulted with the Western Governors' Association and the National Association of Counties to obtain their views on a preliminary draft of this proposed rule. The Western Governors' Association supported the general approach to create a rule that works and placed importance on the quality of collaboration for implementation. Agency representatives also contacted the International City and County Managers Association, National Conference of State Legislators, The Council of State Governments, Natural Resources Committee of the National Governors Association, U.S. Conference of Mayors, and the National League of Cities to share information about the proposed planning rule prior to the publication of this proposed rule. Based on comments received on this proposed rule in response to this notice, the agency will determine if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation With Tribal Governments

Pursuant to Executive Order 13084, Consultation and Coordination with Indian Tribal governments, the agency has assessed the impact of this action on Indian Tribal governments and has determined that the proposed rule does not significantly or uniquely affect communities of Indian Tribal governments. The proposed rule deals with the administrative procedures to guide the development, amendment, and revision of National Forest System land and resource management plans and, as such, has no direct effect regarding the occupancy and actual use of National Forest System land. At § 219.8, the proposed rule requires consultation with federally recognized Tribes when planning.

The agency has also determined that this action does not impose substantial direct compliance cost on Indian Tribal governments. This proposed rule does not mandate Tribal participation in National Forest System planning. Rather, the rules impose an obligation on Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property. This proposed rule only modifies the administrative process for amending and revising land and resource management plans for National Forests, Grasslands, and Prairies.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict were to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

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

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, it is proposed to revise Part 219 of Title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Planning for Land and Resource Management Plans

Sec.

Subpart B—[Reserved]

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

§ 219.1 Purpose and applicability.

(a) The rules of this subpart set forth a process for establishing, amending, and revising land and resource management plans for the National Forest System as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act (16 U.S.C. 1600 *et seq.*). This subpart is based on the principle that planning occurs over multiple time frames and various geographic areas and is a continuous process that reveals when and where plan decisions need to be adjusted. These rules also identify the nature and scope of decisions made in a land and resource management plan and define the required elements of a plan. The provisions of this regulation are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960, the overall goal of managing the National Forest System is to sustain in perpetuity the productivity of the land and the multiple use of its renewable resources. Management of renewable resources is to be in the combination that will best meet the needs of the American people. Achieving sustainability is essential to providing multiple uses over time. Thus, National Forest System management focuses on maintaining or restoring the health of the land in order to provide a sustainable flow of uses, values, benefits, products, services, and visitor opportunities.

§ 219.2 Nature and scope of a land and resource management plan.

(a) *Fundamental purpose of a plan.* A land and resource management plan (also referred to as a plan) establishes the desired conditions to be achieved through the management of the lands and various renewable resources of the National Forest System. A plan guides the Forest Service in fulfilling its responsibilities for stewardship of the National Forest System to best meet the needs of the American people.

(b) *Requirements.* The Responsible Official is responsible for ensuring that the planning process and the plan meet the following requirements:

(1) Planning must address issues at the appropriate time frames and geographic scales using the best available science and other knowledge and information. Analysis shall be proportional to the decisions to be made in a plan and shall focus broadly on the environmental baseline and trends in order to provide information to help develop a plan.

(2) Planning must be conducted using an interdisciplinary, collaborative approach.

(3) Consultation with States and local governments, Federal agencies, and federally recognized Indian Tribes must occur early and often in the development of an initial plan or subsequent amendment or revision.

(4) The planning process must provide opportunities for the interested public, both organizations and individuals, to participate in planning to guide the stewardship of their national forests, grasslands, and prairies, and other units of the National Forest System.

(5) A plan must provide for uses, benefits, products, services, and visitor opportunities that are appropriate to and consistent with the multiple use objectives outlined in the plan.

(6) A plan must address the social, economic, and ecological components of sustainability for the land and resources within the plan area, consistent with the Multiple-Use Sustained-Yield Act of 1960 and with the NFMA diversity requirement that plans provide for the diversity of plant and animal communities and tree species consistent with the multiple-use objectives of the plan.

(7) A plan must identify the monitoring and evaluation necessary to assess the achievement of desired conditions and to indicate whether direction in the plan should be modified, as necessary, to address new issues, new information, and changed conditions.

(8) The management direction in a plan should reflect the limits and likely variability of agency budgets.

(c) *Integration of authorities.* Plans integrate the requirements of statutes, Executive orders, regulations, and agency policy that apply to the lands and resources of the National Forest System.

(1) Statutory authorities related to planning and management of the National Forest System include the Organic Administration Act of 1897, as amended (16 U.S.C. 473 *et seq.*); the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq*); Wilderness Act (16 U.S.C. 1131 *et seq.*); Clean Air Act (42 U.S.C. 7401 *et seq.*); Clean Water Act of 1948, as amended by the Federal Water Pollution Control Act Amendments of 1977 and the Water Quality Act of 1987 and other laws (33 U.S.C. 1251 *et seq.* 1323 *et seq.*); and other relevant laws.

(2) Agency-wide management policy and procedure relevant to planning and resource management are issued through the Forest Service Directive System (36 CFR 200.4).

(d) *Force and effect of plans.* A land and resource management plan prepared under this subpart is strategic and programmatic in nature. A plan provides guidance and direction applicable to future site-specific projects and activities. Plans also may restrict some activities or establish other requirements applicable to particular areas. The direction in a plan does not normally create, authorize, or execute any ground-disturbing activity. A plan, in and of itself, does not grant, withhold, or modify any contract, permit, or other legal instrument, does not subject anyone to civil or criminal liability, and creates no legal rights.

§ 219.3 Levels of planning and planning authority.

(a) The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service Strategic Plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306; 31 U.S.C. 1115–1119; 31 U.S.C. 9703–9704) which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*). The Strategic Plan establishes goals, outcomes, performance measures, and strategies that apply to management of the National Forest System as well as to the other Forest Service mission areas.

(b) The National Forest, Grassland, or Prairie Supervisor is the Responsible Official for development and adoption of a new land and resource management plan for lands under the responsibility of the Supervisor, as well as for amendment or revision of a plan, unless a Regional Forester, the Chief, or the Secretary chooses to act as the Responsible Official for a specific plan, amendment, or revision.

(c) A Regional Forester, the Chief, or the Secretary may amend or revise multiple plans, where social, economic, or ecological issues or opportunities occur on more than one national forest,

grassland, prairie, or other comparable unit and a single, comprehensive planning effort is determined to be the most efficient and effective approach to addressing issues or opportunities. Where National Forest System lands are adjacent, two or more Responsible Officials may undertake joint planning that concludes with each official signing the decision document(s).

(d) Management direction in plans for areas designated as experimental forests must be consistent with the research activity being conducted on these areas and concurred with by the associated Station Director.

§ 219.4 Decisions embodied in plans.

(a) A plan constitutes the programmatic management direction for all or part of a plan area (§ 219.23) and embodies the following decisions:

(1) *Desired conditions.* A plan must describe the desired conditions toward which management of the lands and resources of the plan area is to be directed. Identification of desired conditions is a primary focus of a plan.

(2) *Objectives.* A plan must establish objectives intended to contribute to the achievement of desired conditions. Objectives, which are concise statements of measurable, time-specific outcomes, are pursued through the implementation of programs, projects, and other on-the-ground activities within the plan area.

(3) *Standards.* A plan must establish standards that state the permissions or limitations applicable to land uses and management actions within the plan area. Standards are measurable requirements that are explicitly identified in a plan as "standards." Standards are established to achieve the desired conditions and objectives of a plan and to comply with applicable laws, regulations, Executive orders, and agency directives. In establishment of standards, the Responsible Official must identify, consider, and address special conditions or situations involving hazards to the various resources. Standards generally should be adaptable and assess performance measures. A plan shall include but not be limited to the following standards:

(i) Limitations on even-aged timber harvest methods including provisions to require harvest in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources and the regeneration of the timber resource, including requirements that even-aged harvest may occur only upon a finding that it is appropriate and that clearcutting may occur only upon a finding that it is the optimum method to meet the objectives and requirements of the plan;

(ii) Maximum size openings created by timber harvest according to geographic areas, forest types, or other suitable classifications for areas to be cut in one regeneration harvest operation. This limit may be less than, but will not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. These size opening limits shall include provisions to exceed the established limits after appropriate public notice and review by the officer one level above the Responsible Official provided that such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm;

(iii) Requirements for achieving aesthetic objectives, including requirements that cut blocks, patches, or strips that are shaped and blended to the extent practicable with the natural terrain;

(iv) Requirements for maintaining or restoring ecological conditions that support desired characteristics of ecosystem and species diversity in order to, within the multiple use objectives of the plan, provide for the diversity of plant and animal communities based on the suitability and capability of the plan area and, where appropriate and to the degree practicable, provide for steps to preserve the diversity of tree species similar to that existing in the plan area;

(v) Requirements for maintaining or restoring soil and water resources, including protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, when management activities are likely to seriously and adversely affect water conditions on fish habitat;

(vi) Requirements that timber harvest projects be considered through interdisciplinary review, assessing the potential environmental, biological, aesthetic, engineering, and economic impacts on the sale area, as well as the consistency of the sale with the multiple use of the general area, and that the harvesting system used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(vii) Requirements for assuring that even-aged stands of trees scheduled for harvest during the planning period have generally reached culmination of mean annual increment of growth. This requirement applies only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is a management objective.

(A) The culmination of mean annual increment of growth requirement does not apply to cutting for experimental or research purposes; to non-regeneration harvests, such as thinning or other stand improvement measures; to management of uneven-aged stands or to stands under uneven-aged silvicultural systems; and to salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack.

(B) A plan must identify categories of activities that are exceptions to the culmination of mean annual increment if necessary to meet resource objectives, such as wildlife habitat enhancement, visual enhancement, or riparian area improvement. Exceptions to the culmination of mean annual increment requirement and the reasons for these exceptions must be specifically disclosed during the public participation process for a plan.

(4) *Identification of suitable and unsuitable land uses.* National Forest System lands are generally suitable for a variety of uses such as outdoor recreation, livestock grazing, timber harvest (§ 219.16), energy resource development, mining activities, watershed restoration, cultural and heritage interpretation, and other uses. Rather than determine the suitability of all lands for all uses, a plan should assume that all lands are potentially suitable for a variety of uses except when specific areas are identified and determined not to be suited for one or more uses. A plan must identify National Forest System lands as not suited for a certain use under any of the following circumstances:

(i) If law, regulation, or Executive order prohibits that use;

(ii) If agency resource management directives prohibit the use;

(iii) If the use would result in substantial and permanent impairment of the productivity of the land or renewable resources; or

(iv) If the use is incompatible with the desired conditions established for all or part of the plan area.

(5) *Special designations and other management areas.* Consistent with § 219.15 of this subpart, a plan may

designate specific areas for special management or provide direction for managing previously established special areas such as wilderness, national trails, national monuments, and national recreation areas. Additionally, a plan may establish and provide direction for other types of management areas.

(6) *Monitoring and evaluation requirements.* Each plan must establish monitoring and evaluation requirements, including the establishment of performance measures, in accordance with § 219.11. The primary focus of monitoring is to measure the maintenance of, or progress toward, desired conditions through establishment and assessment of performance measures. The information and conclusions that emerge from monitoring and evaluation provide an important basis for determining whether there is a need to change a plan. Essential components of the monitoring and evaluation process are data collection, analysis, data storage, interpretation of the analyses, and reporting of the results.

(b) Assessments, surveys, analyses, monitoring results, and other studies are not plan decisions nor do they constitute agency proposed or final actions.

§ 219.5 Indicators of need to amend or revise a plan.

The Responsible Official may propose to amend or revise a plan based on the consideration of issues or opportunities.

(a) *Origination of issues or opportunities.* Issues or opportunities may originate from a variety of sources. These may include inventories, user surveys, assessments, analyses, monitoring and evaluation results, and collaborative activities and discussions with those interested in National Forest System management, as well as proposals made by individuals, organizations, Tribes, or government entities. Disturbance events such as floods, wind, fire, and insect infestation may create conditions that require modification of plan direction. New regulations or laws also may necessitate amendment or revision of a plan. Each Responsible Official must obtain appropriate inventory data on the various renewable resources and soil and water, including pertinent maps, graphic material, and explanatory aids.

(b) *Consideration of issues and opportunities.* (1) When an issue or opportunity arises, the Responsible Official has the discretion to determine whether and to what extent the matter is appropriate and timely for consideration in a proposed amendment or revision. Factors that the Responsible Official may weigh to determine whether consideration of an issue or opportunity is appropriate and timely include, but are not limited to, the following:

(i) The scientific basis and merit of available information and analyses, including the results of monitoring and evaluation;

(ii) The scope, complexity, intensity, and geographic scale of the issue or opportunity;

(iii) Statutory requirements or valid existing rights; and

(iv) Organizational and available resources, including current and likely Forest Service budgets.

(2) If the Responsible Official determines that an issue or opportunity should be addressed in an amendment or revision, the Responsible Official should review the best available science and other relevant knowledge and information as part of the planning process. Whenever possible, the Responsible Official should use existing information to address issues or opportunities. However, new information or a supplemental or new inventory, assessment, or analysis may be developed as appropriate to the scope, timeframe, and geographic extent of an issue or opportunity, provided that additional information can be obtained at a reasonable cost and in a timely manner. A decision whether or not to consider an issue or opportunity is not subject to objection under this subpart.

§ 219.6 Compliance with National Environmental Policy Act.

(a) The Responsible Official must comply with NEPA procedures (§ 219.23) and incorporate them as necessary and appropriate throughout the planning process. The Responsible Official must determine how NEPA applies in the development of a new plan, plan amendment, or plan revision. The Responsible Official shall ensure that the level of NEPA analysis for planning is proportional to the decisions being made.

(b) If the Responsible Official determines that a new plan, plan amendment, or plan revision, or a component thereof, would be an action significantly affecting the quality of the human environment, or authorizes an action that commits funding or resources that could have a significant effect on the quality of the human environment, then an environmental impact statement would be required. A new plan, plan amendment, or plan revision may be categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement as provided in agency NEPA procedures.

§ 219.7 Amending a plan.

(a) A plan may be amended to add, modify, or rescind one or more of the plan decisions described in § 219.4. As provided for in § 219.18, administrative corrections and additions are not amendments.

(b) An amendment arises from consideration of issues or opportunities and a determination of a need to change a plan as described in § 219.5.

(c) During the amendment process, the Responsible Official must provide opportunities for consultation and collaboration as required by § 219.12 of this subpart.

(d) A plan amendment for which an EIS is prepared is a significant amendment. The Responsible Official must publish a Notice of Intent to prepare an EIS in the **Federal Register** and provide a 90-day comment period on a draft proposed significant amendment and accompanying Draft EIS.

(e) The Responsible Official must give prior notice of the opportunity to object to any proposed amendment and any associated final environmental disclosure documents that are subject to the objection process established at § 219.19 of this subpart.

(f) An interim amendment may be used to establish plan direction of limited duration as follows:

(1) Only a Regional Forester or a higher level official may be the Responsible Official for an interim amendment;

(2) An interim amendment must specify the duration of the amendment, which is not to exceed four years. An amendment may be renewed in accordance with procedures in § 219.7(f)(3);

(3) The Responsible Official shall notify the public in newspaper(s) of record, and allow public comment, before an interim amendment is renewed beyond the four year period; and

(4) An interim amendment is not subject to the objection process of § 219.19.

§ 219.8 Revising a plan.

(a) *Initiating revision.* Unless otherwise provided by law, a plan must be revised at least every 15 years, or a plan must be revised sooner if a Responsible Official determines that conditions within the plan area have significantly changed.

(1) To initiate the plan revision process, the Responsible Official must prepare the following:

(i) A description of the current management situation for the plan area and an analysis of existing plan direction;

(ii) A summary of issues or opportunities that the Responsible Official determines to be appropriate and timely for consideration (§ 219.5); and

(iii) A summary of any current and new information relevant to the issues or opportunities determined appropriate for consideration.

(2) Using the description prepared under paragraph (a)(1)(i) of this section and the summaries prepared under paragraphs (a)(1)(ii) and (iii) of this section, the Responsible Official must consult with Federally recognized Indian Tribes, State and local governments, and other Federal agencies in conformance with § 219.12 of this subpart.

(b) *Public notice to revise a plan.* After completion of the requirements of paragraph (a) of this section, the Responsible Official must give notice of the initiation of a plan revision. If an EIS is to be prepared, then a Notice of Intent to prepare an EIS must be published in the **Federal Register**. If an EIS is not to be prepared, a notice of initiation of the revision must be published in the newspaper(s) of record. The notice must inform the public of the availability of the documentation listed in paragraph (a) of this section; include a summary of the identified issues and opportunities; invite the public to comment on these issues and opportunities and to identify any other issues and opportunities that they feel should be addressed during revision; include an estimated schedule for the revision process; and specify the time available and process for the public to submit comments.

(c) *Notice of availability of draft proposed revision.* The Responsible Official must provide a 90-day comment period on a draft proposed revised plan and any accompanying environmental disclosure documents. A notice of the availability of the proposed draft revision must be provided as follows:

(1) For any revision for which the Chief or the Secretary is the Responsible Official or for which an environmental impact statement is prepared, notice of the proposed draft revision and availability of the DEIS must be published in the **Federal Register**.

(2) For all other revisions, notice of the availability of the proposed draft revision, specifics regarding the time available, and process for comments must be published in newspaper(s) of record (§ 219.23).

(d) *Notice of objection process.* Before the Responsible Official approves a revised plan, the Responsible Official must give notice that the proposed final revised plan and any final environmental disclosure documents are subject to the objection process at § 219.19 of this subpart.

§ 219.9 Developing a new plan.

(a) If Congress establishes a new National Forest, Grassland, Prairie, or other comparable unit of the National Forest System, the Regional Forester must determine if the unit requires a separate plan or if an existing plan can be amended or revised to apply to the lands within the new unit.

(b) If the Regional Forester determines that a separate plan is required for a new unit of the National Forest System, the Responsible Official for the new unit must develop and approve a plan that establishes the desired conditions, objectives, standards, any special management areas, and monitoring and evaluation requirements and that identifies any suitable or unsuitable land uses within the plan area as provided in § 219.4 of this subpart. The Responsible Official shall initiate and conduct planning and conduct government-to-government consultation and public involvement as provided in §§ 219.8, 219.12, and all other applicable sections of this subpart.

§ 219.10 Application of plan direction.

(a) *Application of a new plan, plan amendment, or plan revision to existing authorizations and approved projects and to project decisions issued after the approval of the plan or amendment.* Permits, contracts, and other instruments authorizing the use and occupancy of National Forest System lands must be consistent with the standards in the plan for that unit. New project decisions must disclose the relationship of the project to applicable plan desired conditions. When changes are proposed to a plan, the Responsible Official must take into consideration the possible effects of the proposed changes on occupancy and use currently authorized through permits, contracts, or other instruments. The decision document accompanying a new plan, plan amendment, or plan revision must address the application of new plan direction to ongoing activities or uses authorized by existing permits, contracts, or other instruments. Any modifications of permits, contracts, or other instruments authorizing occupancy and use of the plan area necessary to make them consistent with the plan as developed, amended, or revised are subject to valid existing rights. Such modifications should be made as soon as practicable following development, amendment, or revision of the plan.

(b) *Application of plan direction during amendment or revision process.* Direction in a plan remains in effect until that direction is changed through amendment or revision.

(c) *Application of plan direction to approved projects in light of new information.* Nothing in this subpart requires deferral, suspension, or modification of approved projects while new information is being assessed. Approved projects are those for which a Responsible Official has signed a decision document.

(d) *Amendments made through site-specific project decisions.* If a proposed site-specific project or action would not be consistent with the standards of the plan (§ 219.4), the Responsible Official may, subject to valid existing rights, take one of the following steps:

(1) Modify the proposed site-specific project or action to make it consistent with the plan;

(2) Reject the proposal; or

(3) As part of the project decision, amend the plan to modify one or more standards or to exempt application of one or more standards to the project or action to allow for its implementation.

(e) *Testing and research.* Management of National Forest System lands and resources should provide the land manager a continuous flow of new information and knowledge. Testing and research projects are integral to gaining this information and knowledge. Projects proposed to test assumptions, management methodologies, or other aspects of resource management must comply with all applicable laws and regulations and must be consistent with the plan standards. Where a research or testing project would not be consistent with plan standards, paragraph (d) of this section applies.

§ 219.11 Monitoring and evaluation.

Monitoring and evaluation should assess, over appropriate timeframes and geographic areas and at a reasonable cost, the effects of activities on achievement of desired conditions and objectives of a plan, the results of adaptive management, and, as provided in § 219.4, contribute to determining whether a plan needs to be changed or whether plan implementation needs to be adjusted.

(a) *Monitoring requirements.* The Responsible Official must ensure the timely collection of information needed to meet the monitoring requirements of a plan as well as the interpretation and evaluation of monitoring information.

Monitoring information should include, but not be limited to, data and other information pertinent to characteristics of ecosystem and species diversity, as determined relevant by the Responsible Official.

(1) *Changes in monitoring methods.* Monitoring methods may be changed in response to new information or changed circumstances without plan amendment or revision.

(2) *Coordination of monitoring.* To the extent practicable, monitoring may be conducted jointly with other Federal agencies, federally recognized Indian Tribes, State and local governments, scientific and academic communities, and others.

(b) *Evaluation requirements.* Evaluation includes, but is not limited to, such activities as:

(1) Identifying trends and conditions;

(2) Validating information and analyses used to adopt, amend, or revise a plan;

(3) Assessing, through the use of identified performance measures and other methods, the effects of programs, projects, and activities in achieving the desired conditions and objectives for the plan; and

(4) Determining the effectiveness of plan standards.

(c) *Data sources.* Data also may come from a variety of sources, including other Federal agencies, Indian Tribes, State and local governments, scientific and academic institutions, and others. Monitoring data also may come from project analysis, surveys, inventories, administrative studies, and research.

(d) *Records and reporting.* Findings and conclusions from monitoring and evaluation must be disclosed annually and made available to the public. The disclosure should summarize the monitoring results for the year; present significant findings and conclusions, if any; discuss implications for current and future management of the administrative unit; and describe actions taken or planned in response to findings made in previous reports. While the monitoring and evaluation disclosure shall be produced annually, specific monitoring items and evaluation of specific resources or conditions may occur at other intervals.

§ 219.12 Collaboration, cooperation, and consultation.

The Responsible Official must use an interdisciplinary, collaborative approach to planning by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other Federal agencies, federally recognized Indian Tribes, State or local governments, or other interested or affected communities, groups, or persons, consistent with applicable laws.

(a) *Providing opportunities for collaboration in Forest Service planning.* The Responsible Official must provide early and frequent opportunities for individuals and entities to participate openly and meaningfully in the planning process, taking into account the discrete and diverse roles, jurisdictions, and responsibilities of interested and affected agencies, organizations, groups, and individuals. The Responsible Official shall determine the methods and timing of opportunities to participate in the planning process.

(1) *Engaging interested individuals and organizations.* The Responsible Official must provide for and encourage participation by interested individuals and organizations, including private landowners whose lands are within, adjacent to, or otherwise affected by management actions on National Forest System lands.

(2) *Engaging State and local governments and Federal agencies.* The Responsible Official must provide opportunities for the coordination of Forest Service natural resource management planning efforts with those of other land management agencies. The Responsible Official also must meet with and provide early opportunities for other government agencies to be involved in the planning process for National Forest System lands. During the planning process, the Responsible Official should seek assistance, where appropriate, from other State, local government, and Federal agencies and scientific and academic institutions to help address management issues or opportunities.

(3) *Engaging Indian Tribes.* The Forest Service shares in the Federal Government's overall trust responsibility for federally recognized Indian Tribes. The Responsible Official must consult with and invite federally recognized Indian Tribes to participate in the planning process and also provide opportunity for coordinated planning efforts. In working with federally recognized Indian Tribes, the Responsible Official must honor the government-to-government relationship between Tribes and the Federal Government.

(b) *Forest Service participation in other planning efforts.* When appropriate, the Responsible Official should consider participating with existing groups organized for public purposes in their land and resource management planning efforts.

§ 219.13 Sustainability.

Consistent with the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Responsible Official must ensure that the plan provides for desired conditions, objectives, standards, special area recommendations, and monitoring based upon consideration of the three interdependent components of sustainability: Social, economic, and ecological. A plan by itself cannot ensure sustainability but provides an overall framework to guide on-the-ground management. Sustaining the productivity of the land and its renewable resources is achievable only by the continuous and dynamic process of planning, implementing projects under the plan, monitoring, adapting management as a result of monitoring, and where necessary and appropriate, amending or revising the plan or modifying proposed site-specific projects to meet the desired conditions.

(a) *Social and economic components of sustainability.* To understand the social and economic contributions that National Forest System lands presently make and may make in the future, the Responsible Official must consider and assess economic and social information at relevant timeframes and geographic areas as appropriate to the issues. Social and economic information may be obtained from others or developed and analyzed through assessments, analyses, inventories, monitoring results, or other methods. In assessing social and economic conditions and trends relevant to the issues being addressed through plan development, amendment, or revision, the Responsible Official should:

(1) Engage and participate with interested and affected parties to identify the values they want to see sustained and the benefits they accrue from National Forest System lands;

(2) Consider how human activities and social and economic conditions and trends affect the ecological component of sustainability on and around National Forest System lands, and how people can contribute to maintaining and restoring the health of National Forest System lands; and

(3) Gather and analyze social and economic information to assess, at the appropriate timeframes and geographic scales, how land management has affected and may affect the contribution of National Forest System lands to social and economic systems. This includes identifying the benefits National Forest System lands provide; analyzing conditions and trends of social and economic systems; and analyzing the relationships between

people and the national forests, grasslands, and prairies.

Option 1 for Paragraph (b)

(b) *Ecological component of sustainability.* The ecological component of sustainability includes, but is not limited to, the following elements: The productivity, health, and function of ecosystems; the diversity of plant and animal communities and tree species; and the quality of soil, water, and air resources. As part of planning, the Responsible Official must follow a hierarchical, sequential approach to consider and assess both ecosystem diversity and species diversity. Ecosystem diversity should be considered and evaluated first, leading to development of plan direction that provides for the needs of most species of plants and animals. Where the needs of particular species, species assemblages, or other species groupings are not likely to be met through plan direction for ecosystem diversity, species diversity should be considered and evaluated for these species, species assemblages, or other species groupings. Consideration and evaluation of ecosystem and species diversity includes development and analysis of information over relevant timeframes and geographic areas as determined by the Responsible Official.

(1) *Ecological information and analyses.* Analyses of ecosystem and species diversity should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the plan area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring. The ecological information and analyses must include the following components:

(i) *Consideration and evaluation of ecosystem diversity.* Characteristics and evaluation of ecosystem diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of National Forest System lands to ecosystem diversity within the area of analysis.

(A) *Characteristics of ecosystem diversity.* Characteristics of ecosystem diversity include, but are not limited to, a description of composition (such as major vegetation types, rare communities, aquatic systems, and riparian systems); structure, including successional stages; principal ecological processes, including historic and current disturbance regimes; and soil, water, and air resources within the area of analysis.

(B) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity should include the status of the characteristics of ecosystem diversity identified in paragraph (b)(1)(i)(A) of this section; a description of the historic and current effects of human activities on characteristics of ecosystem diversity; risks to ecosystem health; an evaluation of water and air quality and soil productivity; and an estimation of current and foreseeable future consumptive and non-consumptive National Forest System water needs and the quantity and quality of water needed to support those uses.

(ii) *Consideration and evaluation of species diversity.* Characteristics and evaluation of species diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of National Forest System lands to species diversity within the area of analysis.

(A) *Characteristics of species diversity.* Characteristics of species diversity include, but are not limited to, the known number and identity of plant and animal species within the area of analysis, and the status, distribution, and geographic ranges of plant and animal species within the area of analysis. Species, species assemblages, or other species groupings may be used to characterize species diversity.

(B) *Evaluation of species diversity.* Evaluations of species diversity should identify species-at-risk, their habitat requirements, and threats placing them at risk, based on current conditions and trends and management direction. The level of detail of the analyses performed should be proportional to the issues identified by the Responsible Official and the associated risk to species viability. Evaluations should include assessments of risk to species viability and identification of ecological conditions capable of supporting species viability over time. Where little information is available for particular species, assessments may be qualitative. The assessment evaluations may be simplified by the use of groups of species or species that serve as surrogates for evaluating species diversity.

(2) *Plan decisions.* The Responsible Official must provide for the diversity of plant and animal communities and tree species within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the information and analyses described in paragraph (b)(1) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:

(i) *Ecosystem diversity.* Plan decisions should provide for measurable progress toward the maintenance or restoration of ecological conditions that will support the diversity of plant and animal communities and tree species and other characteristics of ecosystem diversity. A variety of approaches may be used, such as conservation strategies designed for one or a group of species-at-risk, or management practices that emulate effects of natural disturbance regimes or result in characteristics of ecosystem diversity within the range of variability expected to occur under current disturbance regimes.

(ii) *Species diversity.* Plan decisions should provide for ecological conditions that the Responsible Official determines provide a high likelihood of supporting over time the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. When assessing "high-likelihood" and "well distributed," the Responsible Official shall consider factors under agency authority and relative to species life history and distribution within the plan area. Where conditions capable of supporting viability for particular species or species groups are not likely to be met through provisions for ecosystem diversity, specific plan objectives or standards should be developed for those species or species groupings.

Option 2 for Paragraph (b)

(b) *Ecological component of sustainability.* The ecological component of sustainability includes, but is not limited to, the following elements: The productivity, health, and function of ecosystems; biological diversity at ecosystem and species levels; and the quality of soil, water, and air resources. As part of the planning process, the Responsible Official must ensure that the hierarchical approach described in paragraph (b)(1) of this section is followed to consider and assess biological diversity at two levels of ecological organization, ecosystem and species. Consideration and evaluation of ecosystem diversity constitutes the core approach and is the primary focus of ecological information and analyses. Consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to address specific planning issues. Biological diversity should be considered and evaluated

over appropriate timeframes and geographic areas as determined by the Responsible Official. Assessments of biological diversity at ecosystem and species levels should address effects of natural and human disturbances and of the ecological condition, structure, and land use history of the planning or assessment area.

(1) *Ecological information and analyses.* Analyses of biological diversity at ecosystem and species levels should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the planning or assessment area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring and, where appropriate, should extend to the larger landscape in which the plan area is embedded. Ecological information and analyses must be based upon an assessment of the components described in the following paragraphs and tailored to the particular planning or assessment area and the specific issues identified in the planning process:

(i) *Consideration and evaluation of ecosystem diversity.* Characteristics and evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of National Forest System lands to ecosystem diversity in the planning or assessment area.

(A) *Characteristics of ecosystem diversity.* Characteristics of ecosystems that should be considered within the planning or assessment area include, but are not limited to: ecological composition, structure, and processes; spatial extent, distribution, and relations; geology and landforms; and soil, water, and air resources.

(B) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity should identify ecosystems in the planning or assessment area and characterize their ecological structure, composition, processes, and spatial relations.

(*1*) Analyses should evaluate the status of the characteristics of ecosystem diversity identified in paragraph (b)(1)(i)(A) of this section and risks or threats to these characteristics, including impacts of past, current, and anticipated management direction on ecosystem diversity.

(*2*) Analyses should evaluate the condition and quality of water and air resources, the condition of stream networks and channels and of watersheds, and the quality and productivity of soils, and should estimate current and foreseeable future consumptive and non-consumptive National Forest System water needs and the quantity and quality of water needed to support those uses.

(*3*) Evaluations should identify unique areas, including rare ecosystems, compositional or structural elements, and ecosystems at risk, specific risks or threats to these areas, and measures required for their conservation or restoration.

(ii) *Consideration and evaluation of species diversity.* Characteristics and evaluation of species diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of National Forest System lands to species diversity in the planning or assessment area. Analyses of species and species groups should be undertaken to provide a more complete understanding of impacts of past, current, and anticipated management direction on biological diversity, including the status of species and the ecosystems in which they occur. In a hierarchical context, species analyses should be conducted within the framework of, and should incorporate information from, larger-scale ecosystem analyses.

(A) *Characteristics of species diversity.* Characteristics of species diversity that should be considered within the planning or assessment area include, but are not limited to, the composition and richness (number of species) of the existing pool of species and the abundance, distribution, geographic range, and status of individual species chosen for analysis.

(B) *Evaluation of species diversity.* Individual species should be identified for evaluation to address a particular planning issue, to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. Evaluations of species diversity should be conducted along two tracks with related purposes. Community analyses should determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the planning or assessment area. Individual species analyses should evaluate impacts of past, current, and anticipated management direction on individual species selected for analysis.

(*1*) Evaluations should identify species or species groups found within the planning or assessment area, including native and non-native species, and, where feasible, compile information on species status, spatial distribution, geographic range, abundance, and population trends.

(*2*) Evaluations should analyze the composition and distribution of communities and species assemblages across the planning or assessment area; examine relations of community or assemblage measures to underlying biophysical conditions, with particular attention to attributes affected by management actions; and analyze impacts of past, current, and anticipated management direction on individual species selected for analysis.

(*3*) Evaluations must identify species for which substantive evidence exists that continued persistence in the planning or assessment area is at risk, specific risks or threats to these species, and measures required for their conservation or restoration.

(iii) *Further analyses of biological diversity.* In addition to the information and analyses identified in paragraphs (b)(1)(i) and (ii) of this section, the following additional information and analyses should be included in the approach to considering and assessing biological diversity at ecosystem and species levels.

(A) *Consideration and evaluation of spatial and temporal scales and patterns.* Biological diversity at ecosystem and species levels should be evaluated across multiple timeframes and geographic areas. The Responsible Official should follow a spatially explicit approach to assessments of biological diversity, by considering such factors as abundance, extent, patch size, distribution, and interspersion of ecosystems and species populations over time and by focusing on specific landscape features as well as their sizes, shapes, and spatial relationships. Where appropriate, detailed analyses should be conducted over large geographic areas and long timeframes, which extend beyond the plan area and planning time horizon of specific National Forest System administrative units. Analyses at these large scales are appropriate for evaluating dynamics of wide-ranging species and cumulative impacts of management actions on biological diversity. Evaluations of biological diversity over large geographic areas should be coordinated across multiple National Forest System administrative units.

(B) *Consideration and evaluation of disturbance regimes.* The Responsible Official should consider and evaluate

impacts of disturbance regimes, natural and human-induced, on biological diversity at ecosystem and species levels over appropriate geographic areas and timeframes. Evaluation of disturbance regimes should help clarify the land manager's opportunities and options for achieving biological diversity objectives. Analyses should characterize current and recent disturbance regimes in terms of spatial extent and distribution, periodicity, type, and intensity and should evaluate impacts on biological diversity in the planning or assessment area. Evaluations should consider impacts of past, current, and anticipated management direction on disturbance regimes and consequences of altered disturbance regimes for biological diversity in the planning or assessment area.

(C) *Consideration and evaluation of landscape context.* The Responsible Official should consider and evaluate the landscape context for assessments of biological diversity at ecosystem and species levels. Analyses of landscape context should evaluate and characterize the ecological condition, structure, and land use history of the planning or assessment area and evaluate effects on biological diversity. Analyses also should consider and evaluate differences in the ecological condition and spatial structure of ecosystems and landscapes between National Forest System lands and adjacent ownerships. Based on these differences, the Responsible Official should identify and evaluate options for and any special role of National Forest System lands to contribute to maintenance or restoration of biological diversity in the planning or assessment area, especially unique or rare elements of biological diversity, as well as factors that would limit options and opportunities for managing National Forest System lands to achieve biological diversity objectives.

(2) *Plan decisions.* The Responsible Official must provide for biological diversity at ecosystem and species levels within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the limits of agency authorities and must consider and fully disclose results of the ecological information and analyses described in paragraphs (b)(1)(i) through (iii) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:

(i) *Biological diversity.* Plan decisions, to the extent feasible, should foster the maintenance or restoration of biological diversity in the plan area, at ecosystem and species levels, within the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded. In reaching plan decisions, the Responsible Official should consider current and recent disturbance regimes as well as the ecological condition, structure, and land use history of the planning or assessment area, and effects of these factors on options and opportunities to manage National Forest System lands to achieve biological diversity objectives.

(ii) *Contributions of NFS lands.* When reaching plan decisions, the Responsible Official must identify and evaluate the special role and unique contributions of National Forest System lands in maintaining and restoring biological diversity within the larger landscape in which the plan area is embedded.

§ 219.14 The consideration of science in planning.

(a) Decisions embodied in a plan must be consistent with the best available science. As part of the planning record, the Responsible Official must:

(1) Demonstrate how the planning process considered and made use of the best available science within the context of the issues being considered;

(2) Evaluate and disclose any substantial uncertainties in that science;

(3) Evaluate and disclose substantial risks associated with plan decisions based on that science; and

(4) Validate that the science was appropriately interpreted and applied.

(b) To meet the requirements of paragraph (a) of this section, the Responsible Official must use independent peer review, a science advisory board, or other appropriate means to evaluate the consistency and application of science used in the planning process.

§ 219.15 Special designations.

(a) A plan is the mechanism by which the Responsible Official may allocate specific areas to special designations and recommend areas for special designation by higher-level authorities. The plan also provides management direction for specially designated areas and areas recommended for special designation within the plan area.

(b) Special designations are areas within the National Forest System that are identified for their unique or special characteristics and include the following:

(1) *Congressionally designated areas.* Congressionally designated areas may include, but are not limited to, wilderness, wild and scenic rivers, national trails, scenic areas, recreation areas, and national monuments.

(2) *Administratively designated areas.* These areas include, but are not limited to, geological areas, significant caves, botanical areas, cultural/heritage areas, research natural areas, and scenic byways.

(3) *Inventoried roadless areas.* Unless otherwise provided by law, inventoried roadless areas within the National Forest System must be evaluated and considered for recommendation as potential wilderness areas during the initial plan development or the plan revision process. As part of this evaluation, the Responsible Official must review and validate the maps of inventoried roadless areas within the plan area or adjust them as necessary and appropriate. The Responsible Official also may evaluate these areas at other times as determined appropriate.

§ 219.16 Determination of lands available for timber harvest and suitable for timber production.

(a) *Lands not suitable for timber production.* The plan must identify lands within the plan area not suitable for timber production. These lands include, but are not limited to the following:

(1) Land that is not forest land (as defined at § 219.23);

(2) Land where technology is not available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions or substantial and permanent impairment of the productivity of the land;

(3) Lands where there is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest;

(4) Lands where timber production would violate statute, Executive order, regulation, or agency directives;

(5) Those lands that have been withdrawn from timber production by the Secretary of Agriculture or the Chief of the Forest Service; and

(6) Lands where timber production would not be justified after considering physical, ecological, social, economic, and other pertinent factors. However, lands not suited for timber production may be available for timber harvest pursuant to paragraph (c) of this section.

(b) *Lands suitable for timber production.* After considering physical, ecological, social, economic, and other pertinent factors to the extent feasible, a Responsible Official may establish

timber production as an objective in a plan for any lands not identified in paragraph (a) of this section. The Responsible Official must review lands not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine their suitability for timber production. As a result of this 10-year review, timber production may be established as a plan objective for any lands found to be suitable for such purpose through amendment or revision of the plan.

(c) *Lands where trees may be harvested for multiple use values other than timber production.* Designation of lands as unsuitable for timber production does not preclude the harvest of trees for other multiple use values. Except for lands described at (a)(2) of this section, trees may be harvested to create temporary or permanent openings for wildlife habitat improvement; to establish fuel breaks or reduce fuels; to create vistas; to enhance recreation use; to manage cultural/heritage sites; to salvage dead or dying trees; or to achieve other multiple use purposes not related to timber production.

§ 219.17 Limitation on timber harvest.

(a) *Estimate of the long-term sustained-yield capacity.* The Responsible Official must estimate the amount of timber that could be harvested annually in perpetuity on a sustained-yield basis from National Forest System lands identified as suitable for timber production (§ 219.16(b)). This estimate must be based on the yield of timber that could be harvested consistent with achievement of objectives or desired conditions in the applicable plan and a specified management intensity consistent with these multiple use objectives. Increased harvest levels may be based on intensified management practices, such as reforestation, thinning, and tree improvement if such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act. Such estimates of yield shall be adjusted downward if anticipated practices are not successfully implemented to achieve objectives or desired conditions. The Responsible Official may combine one or more administrative units, or parts of administrative units, for the purpose of estimating the amount of timber that could be harvested annually on a sustained-yield basis.

(b) *Limitation on timber harvest.* Within any decade, the Responsible Official must limit the average annual quantity of timber sold during that decade from the lands identified as suitable for timber production to a quantity equal to or less than that estimated in paragraph (a) of this section.

(c) *Exceptions to limitations of timber harvest.* The Responsible Official may sell timber from areas that are substantially and adversely affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease, and may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the limit established in paragraph (b) of this section. If departure from the quantity of timber established in paragraph (b) of this section is necessary to meet overall multiple use objectives of the plan, the requirements in 16 U.S.C. 1611 must be followed.

§ 219.18 Plan documentation, maintenance, and availability.

(a) *Plan description.* A plan is a set of documents that integrates and displays the desired conditions, objectives, standards, and other management direction that apply to a unit of the National Forest System. Included among the documents in a plan are text, maps, tables, charts, and other information relevant to how the plan area is to be managed. Other records considered or created during the planning process, such as the science review (§ 219.14), are not part of the plan, but these records must be made available for public review as provided in paragraph (c) of this section.

(b) *Maintenance of the plan.* The following administrative corrections and additions may be made at any time, are not plan amendments or revisions, and do not require public notice or the preparation of an environmental document under NEPA procedures:

(1) Corrections and updates of data and maps;

(2) Corrections of typographical errors or other non-substantive changes; and

(3) Changes in monitoring methods (§ 219.11).

(c) *Availability of planning documents.* Each National Forest, Grassland, or Prairie Supervisor must maintain a complete set of the planning documents that constitute the plan for the unit. The planning records must be available to the public during the planning process as well as after adoption of a plan, plan amendment, or revision.

§ 219.19 Objections to new plans, plan amendments, or plan revisions.

(a) *Exceptions.* Before approving a new plan, plan amendment, or plan revision, the Responsible Official shall provide the public, both individuals and entities, at least 30 calendar days for pre-decisional review of a proposed plan, amendment, or revision. Where an EIS or EA is prepared, the FEIS or EA shall also be made available for review. Written objections to a proposed plan, amendment, or revision may be submitted to the Reviewing Officer, except as follows:

(1) When an amendment is made in conjunction with a site-specific project decision as provided in § 219.20;

(2) When the amendment is an interim amendment as provided in § 219.7;

(3) When the entity is a Federal agency; or

(4) When the Responsible Official for the decision is the Secretary of Agriculture.

(b) *Public notice of the objection period.* Public notice of the availability of a proposed plan, amendment, or revision and the objection period must be provided as follows:

(1) For any proposed plan, amendment, or revision for which the Chief or the Secretary is the Responsible Official, the notice must be published in the **Federal Register**.

(2) For all other proposed plans, amendments, or revisions, legal notice must be published in newspaper(s) of record as defined in § 219.23 of this subpart.

(c) *Content of public notice of the objection.* Public notice of the opportunity to file objections and of the objection period published pursuant to this section must include the following:

(1) A concise identification of the proposed plan, amendment, or revision;

(2) The name, title, and address of the Responsible Official;

(3) Information on the availability of the proposed plan, amendment, or revision and the final environmental disclosure document, if any;

(4) Identification of when the objection period begins (the day following the notice's publication) and the date the objection period ends; and

(5) The name of the Reviewing Officer and the addresses where an objection must be sent.

(d) *Submitting objections.* (1) Except as provided in paragraph (a) of this section, any person or non-Federal entity may submit written objections regarding a proposed plan, amendment, or revision to the Reviewing Official. Only original substantive comments that meet objection content requirements set out in paragraph (d)(2) of this section will be accepted. Form letters, check-off lists, pre-printed post cards, or similar duplicative materials will not be accepted as objections. Objections that

are mailed must be postmarked no later than the last day of the specified time period. Objections that are submitted by any means other than U.S. mail must be received by the Reviewing Official within the time period described in the public notice. When the objection period would expire on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day. No other extension of the time period may be granted.

(2) An objection must contain the following:

(i) The name, mailing address, and if possible, telephone number of the objector. Where an objection is filed by an organization or other entity on behalf of multiple objectors, the objection must indicate the representative contact, who will notify the other objectors of the objection response and any other written correspondence related to the objection that may occur;

(ii) An identification of the specific proposed plan, amendment, or revision that is the subject of the objection; and

(iii) A concise statement explaining how the environmental disclosure documents, if any, and proposed plan, amendment, or revision are inconsistent with law, regulation, Executive order, or policy and any recommendations for change.

(e) *Responding to objections.* (1) The Reviewing Officer must review the objections and relevant information to determine whether or not the proposed plan, amendment, or revision and any accompanying environmental disclosure documentation, if any, are consistent with law, regulation, Executive order, or policy with respect to the issue(s) raised in the objection. In conducting a review under this section, the Reviewing Official may discuss the objection with the Responsible Official or the objectors. The Reviewing Officer may render one response to multiple objections. The Reviewing Officer's response must be in writing and must be sent to the objecting party by certified mail, return receipt requested, and to the Responsible Official.

(2) If the Reviewing Officer concludes that the proposed plan, amendment, or revision and accompanying environmental disclosure documents, if any, are consistent with law, regulation, Executive order, and policy, the Responsible Official may proceed to make a decision.

(3) If the Reviewing Officer concludes that the proposed plan, amendment, or revision, and accompanying environmental disclosure documents, if any, are not consistent with law, regulation, Executive order, and policy, in whole or in part, the Reviewing Officer must describe what further action is required by the Responsible Official prior to approving the new plan, amendment, or revision. Upon approval of the plan, amendment, or revision, no further objection is available.

(f) *Use of other administrative review processes.* Where the Forest Service is a participant in a multi-Federal agency effort that is subject to objection under this part, the Responsible Official may waive the objection procedures of this part and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the Responsible Official for the Forest Service must have agreement with the Responsible Official of the other agency or agencies to provide a joint response to those who file for administrative review of the multi-agency effort.

(g) *Compliance with the Paperwork Reduction Act.* The information collection requirements associated with submitting an objection have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.20 Appeals of plan amendments in site-specific project decisions.

If a plan amendment is made in conjunction with a site-specific decision, a person may appeal the plan amendment and the site-specific decision only as described in 36 CFR 215.7(a).

§ 219.21 Notice of plan decisions and effective dates.

(a) *Notice of decision.* Following approval of a plan, amendment, or revision the Responsible Official must provide notice of the decision in the newspaper(s) of record (§ 219.23), or, if the Chief or Secretary is the Responsible Official, in the **Federal Register**, and by other appropriate means, as needed.

(b) *Effective date.* A new plan, significant plan amendment, or revised plan is effective 30 days after publication of notice of the decision. Any other amendment is effective immediately upon publication of notice of the decision.

§ 219.22 Transition.

(a) For the purposes of this paragraph, the reference to a new plan, amendment, or revision initiated before the effective date of this rule, means that the agency has issued a Notice of Intent or other public notice announcing the commencement of a plan amendment or revision as provided for in the Council on Environmental Quality regulations at 40 CFR 1501.7 or in Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, section 11.

(b) Until 90 days after the effective date of this rule, a Responsible Official may elect to initiate an amendment, continue an amendment or a revision under the planning regulations in effect prior to November 9, 2000, or the Responsible Official may conform the amendment or revision process to the provisions of this subpart.

(c) For new plans, amendments, or revisions initiated under the November 2000 rule, the Responsible Official must adjust the planning process to conform to this subpart.

(d) In conforming a previously initiated planning process to the requirements of this subpart, the Responsible Official is not required to halt the process and start over. Rather, the Responsible Official should integrate the requirements of this subpart into the future steps and procedures of plan development, amendment, or revision process.

(e) The Responsible Official shall give notice of how the planning process will be adjusted to conform to the requirements of this subpart in the newspaper(s) of record.

§ 219.23 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section:

Adaptive management: An approach to natural resource management where actions are designed and executed and effects are monitored for the purpose of learning and adjusting future management actions, which improves the efficiency and responsiveness of management.

Assessment area: A geographic area within which ecosystems or their components or processes are analyzed. An assessment area may include multiple ownerships and is typically much larger than a planning area.

Biological diversity: A general and inclusive concept that refers to the variety of living things together with their interactions and processes. Biological diversity is defined at various levels of ecological organization, but especially three: genes, species, and ecosystems. In the context of land and resource management planning, attention is focused specifically on the diversity of ecosystems within landscapes and of species within ecosystems.

Culmination of mean annual increment: The age in the growth cycle of an even-aged stand at which the mean annual increment for volume of wood is at a maximum. Mean annual increment shall be based on expected

growth of stands, according to intensities and utilization standards assumed in the forest plan or its supporting document. Mean annual increment shall be expressed in cubic measure.

Cultural/Heritage resources: Archeological, historic, or architectural sites, structures, places, objects, ideas, traditions, etc. identified by field inventory, historical documentation, or evidence that are of importance to specified social or heritage groups and/or scientific and management endeavors.

Desired non-native species: Those species of plants or animals that are not indigenous to an area but are highly valued for social, cultural, economic, or ecological reasons.

Disturbance regime: Actions, functions, or events that influence or maintain the structure, composition, or function of terrestrial or aquatic ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused effects include, among others, actions such as recreational use, livestock grazing, mining, road construction, timber harvest, and the introduction of exotic species.

Diversity of plant and animal communities and tree species: The distribution and relative abundance or extent of plant and animal communities and their component species, including tree species, occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities and tree species, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecosystem diversity: The variety and relative extent of ecosystem types, including their composition, structure, and processes, within all or part of a planning area.

Ecosystem structure: The horizontal, vertical, and numerical arrangement and relationships among the components of ecosystems. Possessing both physical and biological aspects, structure is the result of interactions among species and with the physical environment.

Energy resources: Renewable energy resources include biomass, hydropower, wind, solar and geothermal, and non-renewable energy resources include coal, oil and gas, and coal bed methane.

Environmental disclosure document: Environmental assessment, environmental impact statement, finding of no significant impact and notice of intent.

Federally recognized Indian Tribe: An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Forest land: Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest uses. Lands developed for non-forest use include areas for crops, improved pasture, residential, or administrative areas, improved roads of any width, and adjoining road clearing, and power line clearing of any width.

Health: A condition wherein a forest, grassland, or prairie has the capacity across the landscape for renewal, for recovery from a wide range of disturbances, and for retention of its ecological resilience while meeting current and future needs of people for desired levels of values, uses, products, and services.

High likelihood of viability: Habitats are of sufficient quality, distribution, and abundance to allow species populations to be well-distributed and interactive and to have a high probability of persisting over multiple generations (within the bounds of the life history of the species and the capability of the landscape) within the plan area. The focus is on providing habitat for species resilience, long-term survival over multiple generations, and long-term adaptability.

Inventoried roadless areas: Areas identified in a set of inventoried roadless area maps, contained in Forest Service records, or any subsequent update or revision of those maps.

Major vegetation types: Plant communities, which are typically named after dominant plant species that are characteristic of the macroclimate and geology of the region or sub-region.

Mean annual increment: The total increment of a stand (standing crop plus thinning) up to a given age divided by that age.

Native species: Species indigenous to the plan, planning or assessment area.

NEPA procedures: The term used to refer to the requirements of 40 CFR parts 1500 through 1508, as supplemented by Forest Service NEPA directives issued in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which implement the National Environmental Policy Act of 1969.

Newspaper(s) of record: Those principal newspapers of general circulation annually identified and published in the **Federal Register** by each Regional Forester to be used for publishing notices as required by 36 CFR 215.5.

Plan: A plan is a repository that integrates and displays the desired conditions, objectives, standards, and other plan decisions that apply to a unit of the National Forest System. The plan also contains maps and other information relevant to how the plan area is to be managed.

Plan area: The geographic area of National Forest System administered lands covered by an individual plan and subject to the programmatic direction of a plan. The area may include all or part of one or more administrative units and may be administered by one or more Responsible Officials. The Responsible Official's decision is only for the plan area.

Planning area: The geographic area considered during analysis and development of one or more plans. A planning area is typically larger than a plan area but smaller than an assessment area.

Productivity: Use of this term is derived from the MUSYA and subsequent statutes, which require that NFS lands be administered to provide various renewable resources (recreation, range, timber, watershed, wildlife, and fish) without impairment of the productivity of the land. In this context, productivity means the capacity of NFS lands and the ecological systems thereon to provide the various renewable resources in certain amounts over time. In this sense, it is an ecological term, not an economic one.

Range of variability: The expected range of variation in ecosystem composition and structure that would be expected under current natural disturbance regimes. These regimes include the type, frequency, severity, and magnitude of disturbance in the absence of fire suppression and extensive commodity extraction.

Research Natural Areas: An area in as near a natural condition as possible, which exemplifies typical or unique vegetation and associated biotic, soil, geologic, and aquatic resources. The area is set aside to preserve a representative sample of an ecological community primarily for scientific and educational purposes.

Responsible Official: The Official with the authority and responsibility to oversee the planning process and to make plan decisions.

Reviewing Officer: The supervisor of the Responsible Official who is proposing adoption of a new plan, plan amendment, or revision.

Species: For purposes of this rule, potentially any member of the currently accepted and scientifically defined kingdoms of organisms, which is described as a species in a peer-reviewed scientific publication. The term "species," as identified here, includes all species listed under the Endangered Species Act as threatened, endangered, candidate, or proposed for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Under diversity Option 1, with the exception of species-at-risk, consideration of species under this rule is explicitly limited to vertebrates and vascular plants. Under diversity Option 2, species may include any described species belonging to any of the defined kingdoms of organisms.

Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area.

Species diversity: The variation in the number and relative abundance of species within all or part of a planning area.

Species persistence: The likelihood that a species will continue to exist or occur within a geographic area of interest and over a defined period of time as a functioning member of the species pool of that area. In the context of land management planning, species persistence is the likelihood that actions or factors under the direct control of land managers will not directly cause the extinction, globally or locally within the planning or assessment area, of a species of interest, or will not cause the density or total population size of that species to decline to such a low level that the risk of extinction due to factors outside the control of the land manager, including chance events, is deemed to be unacceptably high.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient diversity to display the array of life history strategies and forms to provide for their long-term persistence and adaptability over multiple generations.

Successional stages: The different structural and compositional phases of vegetation development of forests and grasslands that occur over time following disturbances that kill, remove, or reduce vegetation and include the major developmental or seral stages that occur within a particular environment.

Timber harvest: The removal of trees for wood fiber utilization.

Timber production: The sustained long-term management, harvest and regeneration of trees for wood fiber utilization. For purposes of this regulation, the term timber production includes the production of fuel wood and wood for other products.

Visitor opportunities: The spectrum of settings, landscapes, scenery, facilities, services, access points, information, learning-based recreation, wildlife, natural features, cultural and heritage sites, etc. that are available for National Forest System visitors to use and enjoy.

Wilderness: Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136, section 2(c)).

Dated: November 26, 2002.

Dale N. Bosworth,

Chief.

Note: The following tables will not appear in the Code of Federal Regulations.

TABLE I.—SECTION-BY-SECTION COMPARISON OF THE 2000 RULE WITH THE PROPOSED RULE

2000 Rule	Proposed rule
§ 219.1 Purpose	§ 219.1 Purpose and Applicability.
§ 219.1 Purpose	§ 219.2 Nature and scope of a land and resource management plan.
§ 219.3 Overview.	
§ 219.2 Principles	§ 219.2 Nature and scope of a land and resource management plan.
§ 219.3 Overview.	§ 219.3 Levels of planning and planning authority.
§ 219.4 Identification and consideration of issues	§ 219.5 Indicators of need to amend or revise a plan.
§ 219.5 Information development and interpretation	§ 219.5 Indicators of need to amend or revise a plan.
§ 219.6 Proposed actions	§ 219.4 Decisions embodied in plans.
§ 219.7 Plan decisions	§ 219.4 Decision embodied in plans
	§ 219.6 Compliance with National Environmental Policy Act.
§ 219.8 Amendment	§ 219.7 Amending a plan.
§ 219.9 Revision	§ 219.8 Revising a plan
	§ 219.9 Developing a new plan.
§ 219.10 Site-specific decisions	§ 219.10 Application of plan direction.
§ 219.11 Monitoring and evaluation for adaptive management	§ 219.11 Monitoring and evaluation.
§ 219.12 Collaboration and cooperatively developed landscape goals	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.13 Coordination among federal agencies	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.14 Invoivement of state and local governments	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.15 Interaction with American Indian Tribes and Alaska Natives	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.16 Relationships with interested individuals and organizations	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.17 Interaction with private landowners	§ 219.12 Collaboration, cooperation, and consultation.
§ 219.18 Role of advisory committees.	Removed.
§ 219.19 Ecological, social, and economic sustainability	§ 219.13 Sustainability.
§ 219.20 Ecological sustainability.	§ 219.13 Sustainability.
§ 219.21 Social and economic sustainability	§ 219.13 Sustainability.
§ 219.22 The overall role of science in planning	§ 219.14 The consideration of science in planning.
§ 219.23 The role of science in assessments, analysis, and monitoring	§ 219.14 The consideration of science in planning.
§ 219.24 Science consistency evaluations	§ 219.14 The consideration of science in planning.
§ 219.25 Science advisory boards	§ 219.14 The consideration of science in planning.
§ 219.26 Identifying and designating suitable uses	§ 219.4 Decisions embodied in plans.

TABLE I.—SECTION-BY-SECTION COMPARISON OF THE 2000 RULE WITH THE PROPOSED RULE—Continued

2000 Rule	Proposed rule
§ 219.27 Special designations	§ 219.15 Special designations.
§ 219.28 Determination of land suitable for timber harvest	§ 219.16 Determination of lands available for timber harvest and suitable for timber production.
§ 219.29 Limitation on timber harvest.	§ 219.17 Limitation on timber harvest.
§ 219.30 Plan documentation.	Removed.
§ 219.31 Maintenance of the plan and planning records	§ 219.18 Plan documentation, maintenance, and availability.
§ 219.32 Objections to amendments or revisions	§ 219.19 Objections to new plans, plan amendments, or plan revisions.
§ 219.33 Appeals of site-specific decisions	§ 219.20 Appeals of plan amendments in site-specific project decisions.
§ 219.34 Applicability	§ 219.1 Purpose and applicability
	§ 219.21 Notice of plan decisions and effective dates.
§ 219.35 Transition	§ 219.22 Transition.
§ 219.36 Definitions	§ 219.23 Definitions.

Table II - Side-by-Side Comparison of Options for Ecological Sustainability

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
§219.19 Ecological, social, and economic sustainability. Sustainability, composed of interdependent ecological, social and economic elements, embodies the Multiple Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).	**§219.13 Sustainability.** Same as 2000 rule	**§219.13 Sustainability.** Same as 2000 rule
The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.	Does not recognize ecological sustainability as a stand-alone entity. Recognizes sustainability as having three interdependent components: social, economic, and ecological.	Same as 2002 Option 1
§219.20 Ecological sustainability. Ensure that plans provide for maintenance or restoration of ecosystems at appropriate spatial and temporal scales to be determined by the Responsible Official.	**§219.13 (b) Ecological component of sustainability.** The ecological component of sustainability includes, but is not limited to, the following elements: the productivity, health, and function of ecosystems; the diversity of plant and animal communities and tree species; and the quality of soil, water, and air resources As part of planning, the Responsible Official must follow a hierarchical, sequential approach to consider and assess ecosystem and species diversity. Provides flexibility for Responsible Official to determine appropriate methods.	**§219.13 (b) Ecological component of sustainability.** The ecological component of sustainability includes, but is not limited to, the following elements: the productivity, health, and function of ecosystems; biological diversity at ecosystem and species levels; and the quality of soil, water, and air resources. As part of the planning process, the Responsible Official must ensure that a hierarchical approach is followed to consider and assess biological diversity at two levels of ecological organization, ecosystem and species. Assessments of biological diversity at ecosystem and species levels should address effects of natural and human disturbances and of the ecological condition, structure, and land use history of the planning or assessment area.
§219.20(a) Ecological information and analyses. Ecosystem diversity and species diversity are components of ecological sustainability.	**§219.13(b)(1) Ecological information and analyses.** Analyses of ecosystem and species diversity should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the plan area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring.	**§219.13(b)(1) Ecological information and analyses.** Analyses of biological diversity at ecosystem and species levels should be proportional to the issues identified by the Responsible Official, risks to ecological sustainability, and availability of information relevant to the planning or assessment area. Information and analyses may be identified, obtained, or developed through a variety of methods, including assessments, analyses, and monitoring, and where appropriate should extend to the larger landscape in which the plan area is embedded. Ecological information and analyses must be based upon an assessment of two main components, ecosystem diversity and species diversity, and additional analyses

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		considering three factors, spatial and temporal scales and patterns, disturbance regimes, and landscape context.
The planning process must include the development and analysis of information regarding these components at a variety of spatial and temporal scales.	Consideration and evaluation of ecosystem and species diversity includes development and analysis of information over relevant timeframes and geographic areas as determined by the Responsible Official.	Biological diversity should be considered and evaluated over appropriate timeframes and geographic areas as determined by the Responsible Official.
(1) Characteristics of ecosystem and species diversity. Characteristics of ecosystem and species diversity must be identified for assessing and monitoring ecological sustainability.	**(1)(i) Consideration and evaluation of ecosystem diversity.** Ecosystem diversity should be considered and evaluated first, leading to development of plan direction that provides for the needs of most species of plants and animals. Characteristics and evaluation of ecosystem diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of NFS lands to ecosystem diversity within the area of analysis.	**(1)(i) Consideration and evaluation of ecosystem diversity.** Consideration and evaluation of ecosystem diversity constitutes the core approach and is the primary focus of ecological information and analysis. Characteristics and evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of NFS lands to ecosystem diversity in the planning or assessment area.
(i) Ecosystem diversity. Characteristics of ecosystem diversity include, but are not limited to: **(A)** Major vegetation types **(B)** Water resources **(C)** Soil resources **(D)** Air resources and	**(1)(i)(A) Characteristics of ecosystem diversity.** Characteristics of ecosystems include, but are not limited to, a description of composition, structure, and processes; and soil, air, and water resources within the area of analysis.	**(1)(i)(A) Characteristics of ecosystem diversity.** Characteristics of ecosystems that should be considered within the planning or assessment area include, but are not limited to, ecological structure, composition, and processes; spatial extent, distribution, and relations; geology and landforms; and soil, water, and air resources.
(E) Focal species: focal species that provide insights to the larger ecological systems with which they are associated.	Addresses species-at-risk and native and desired non-native vertebrates and vascular plants.	Species may be selected for analysis to develop more complete understanding of condition and trends of ecosystems.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
ii) Species diversity. Characteristics of species diversity include, but are not limited to, the number, distribution, and geographic ranges of plant and animal species, including focal species and species-at-risk that serve as surrogate measures of species diversity. Species-at-risk and focal species must be identified for the plan area.	**(1)(ii) Consideration and evaluation of species diversity.** Where the needs of particular species, species assemblages, or other species groupings not likely to be met through plan direction for ecosystem diversity, species diversity should be considered and evaluated. Characteristics and evaluation of species diversity should be identified and completed at the scope and scale determined to be appropriate by the Responsible Official. Evaluations should describe the contribution of NFS lands to species diversity within the area of analysis.	**(1)(ii) Consideration and evaluation of species diversity.** Consideration and evaluation of species diversity is a complementary approach that extends ecosystem analyses to address specific planning issues. Characteristics and evaluation of evaluation of ecosystem diversity should be identified and completed over timeframes and geographic areas determined to be appropriate by the Responsible Official. Analyses should describe and assess the contributions of NFS lands to ecosystem diversity in the planning or assessment area. Analyses of species and species groups should be undertaken to provide a more complete understanding of impacts of past, current, and anticipated management direction on biological diversity, including the status of species and the ecosystems in which they occur. In a hierarchical context, species analyses should be conducted within the framework of, and should incorporate information from, larger-scale ecosystem analyses.
	(1)(ii)(A) Characteristics of species diversity. Similar to 2000 rule, except there is no requirement for identifying focal species. Species, species assemblages, or other species groups may be used to characterize species diversity.	**(1)(ii)(A) Characteristics of species diversity.** Characteristics of species diversity include, but are not limited to, the composition and richness (number of species) of the existing pool of species, and the abundance, distribution, geographic range, and status of individual species chosen for analysis.
(2) Evaluation of ecological sustainability. Evaluations of ecological sustainability must be conducted at the scope and scale determined by the Responsible Official to be appropriate.	Evaluations must be conducted at the scope and scale determined by the Responsible Official to be appropriate to the issues being addressed in the planning process.	Evaluations of ecological sustainability should be tailored to the particular planning or assessment area and the issues identified in the planning process.
(i) Evaluation of ecosystem diversity. **(A) Information about focal species.**	**(1)(i)(B) Evaluation of ecosystem diversity.** No specific requirement for focal species.	**(1)(i)(B) Evaluation of ecosystem diversity.** No specific requirement for focal species, but species may be selected for analysis to develop a more complete understanding of the condition and trends of ecosystems.
(B) A description of the biological and physical properties of the ecosystem.	An evaluation of water and air quality and soil productivity.	Analyses should evaluate the condition and quality of water and air resources, the condition of stream networks and channels and of watersheds, and the quality and productivity of soils.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
(C) A description of the principal ecological processes occurring at the spatial and temporal scales. Descriptions must include disturbance regimes of the current climatic period.	Evaluations of ecosystem diversity should include the status of the characteristics of ecosystem diversity in (1)(i)(A) of this section, and risks to ecosystem health. Includes disturbance regimes but does not reference the climatic period.	Evaluations of ecosystem diversity should identify ecosystems in the planning or assessment area and characterize their ecological structure, composition, processes, and spatial relations.
(D) A description of the effects of human activities on ecosystem diversity.	A description of the historic and current effects of human activities on the characteristics of ecosystem diversity.	Analyses should evaluate the status of the characteristics of ecosystem diversity identified in (1)(i)(A) of this section and risks or threats to these characteristics, including impacts of past, current, and anticipated management direction on ecosystem diversity. Evaluations should identify unique areas, including rare ecosystems, compositional or structural elements, and ecosystems at risk, specific risks or threats to these areas, and measures required for their conservation or restoration.
(E) An estimation of the range of variability of the characteristics of ecosystem diversity.	No requirement to establish range of variability.	No requirement to establish range of variability, but must be able to identify and describe the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded.
(F) An evaluation of the effects of air quality on ecological systems including water.	No specific requirement - the need to evaluate effects of air quality on ecological systems driven by identified issues.	Same as 2002 Option 1
(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses.	An estimation of current and foreseeable future consumptive and non-consumptive National Forest System water needs, and the quantity and quality of water needed to support those uses.	Analyses should estimate current and foreseeable future consumptive and non-consumptive National Forest System water needs, and the quantity and quality of water needed to support those uses.
(H) An identification of reference landscapes.	No requirement for identifying reference landscapes.	No requirement for identifying reference landscapes.
(ii) Evaluations of species diversity. Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability.	**(1)(ii)(B) Evaluation of species diversity.** Evaluations of species diversity should identify species-at-risk, their habitat requirements, and threats placing them at risk, based on current conditions and trends and management direction.	**(1)(ii)(B) Evaluation of species diversity.** Individual species should be identified for evaluation to address a particular planning issue, to develop a more complete understanding of the condition and trends of ecosystems, or where substantive concerns exist regarding the continued persistence of the particular species within the planning or assessment area. Evaluations of species diversity should be conducted along two complementary tracks with related purposes. Community analyses should determine whether maintenance of ecosystem diversity is sufficient to maintain the existing pool of species within the

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		planning or assessment area.
(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.	Evaluations should include assessments of risk to species viability and identification of ecological conditions capable of supporting species viability over time.	Individual species analyses should evaluate impacts of past, current, and anticipated management direction on individual species selected for analysis.
(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used.	The level of detail of the analyses performed should be proportional to the issues identified by the Responsible Official and the associated risk to species viability.	Evaluations should identify species or species groups found within the planning or assessment area, including native and non-native species, and, where feasible, compile information on species status, spatial distribution, geographic range, abundance, and population trends.
(C) Except as provided in paragraph (A), assessments of functional, taxonomic, or habitat groups rather than individual species may be appropriate.	The assessment evaluations may be simplified by the use of groups of species or species that serve as surrogates for evaluating species diversity.	Evaluations should analyze the composition and distribution of communities and species assemblages across the planning or assessment area; examine relations of community or assemblage measures to underlying biophysical conditions, with particular attention to attributes affected by management actions; and analyze impacts of past, current, and anticipated management direction on individual species selected for analysis.
(D) In analyzing viability, species assessments may rely on general conservation principles and expert opinion.	Where little information is available for particular species, assessments may be qualitative.	Evaluations must identify species for which substantive evidence exists that continued persistence in the planning or assessment area is at risk, specific risks or threats to these species, and measures required for their conservation or restoration.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii) Further analyses of biological diversity.** In addition to the information and analyses identified in (b)(1)(i)-(ii) of this section, the following additional information and analyses should be included in the approach to considering and assessing biological diversity. **(1)(iii)(A) Consideration and evaluation of spatial and temporal scales and patterns.** Biological diversity should be evaluated across multiple timeframes and geographic areas.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	The Responsible Official should follow a spatially explicit approach to assessments of biological diversity, by considering such factors as abundance, extent, patch size, distribution, and interspersion of ecosystems and species populations over time, and by focusing on specific landscape features as well

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		as their sizes, shapes, and spatial relationships.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Where appropriate, detailed analyses should be conducted over large geographic areas and long time frames. Analyses at these large scales are appropriate for evaluating dynamics of wide-ranging species and cumulative impacts of management actions on biological diversity. Evaluations of biological diversity over large geographic areas should be coordinated across multiple National Forest System administrative units.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii)(B) Consideration and evaluation of disturbance regimes.** The Responsible Official should consider and evaluate impacts of disturbance regimes, natural and human-induced, on biological diversity at ecosystem and species levels over appropriate geographic areas and timeframes. Evaluation of disturbance regimes should help clarify the land manager's opportunities and options for achieving biological diversity objectives.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Analyses should characterize current and recent disturbance regimes in terms of spatial extent and distribution, periodicity, type, and intensity and should evaluate impacts on biological diversity in the planning or assessment area. Evaluations should consider impacts of past, current, and anticipated management direction on disturbance regimes and consequences of altered disturbance regimes for biological diversity in the planning or assessment area.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	**(1)(iii)(C) Consideration and evaluation of landscape context.** The Responsible Official should evaluate the landscape context for assessments of biological diversity at ecosystem and species levels. Analyses of landscape context should evaluate and characterize the ecological condition, structure, and land use history of the planning or assessment area, and evaluate effects on biological diversity.
No specific section on this topic. Included in other parts of the required evaluations.	No specific section on this topic. Included in other parts of the required evaluations.	Analyses should consider and evaluate differences in the ecological condition and spatial structure of ecosystems and landscapes between National Forest System lands and adjacent ownerships. Based on these differences, the Responsible Official should identify and evaluate options for and any special role of National Forest System

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
		lands to contribute to maintenance or restoration of biological diversity in the planning or assessment area, as well as factors that would limit options and opportunities for managing NFS lands to achieve biological diversity objectives.
(b) Plan decisions. When making plan decisions that will affect ecological sustainability, the Responsible Official must use the information developed under §219.20 (a) The following requirements must apply at the spatial and temporal scales that the Responsible Official determines to be appropriate to the plan decision:	**§219.13 (b)(2) Plan decisions.** The Responsible Official must provide for the diversity of plant and animal communities and tree species within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the information and analyses described in (b)(1) of this section. The following requirements apply over relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:	**§219.13 (b)(2) Plan decisions.** The Responsible Official must provide for biological diversity at ecosystem and species levels within the plan area consistent with the multiple use objectives of the plan while sustaining the productivity of the land. When developing plan decisions, the Responsible Official must consider the limits of agency authorities, and must consider and fully disclose results of the ecological information and analyses described in (b)(1)(i)-(iii) of this section. The following requirements apply over the relevant timeframes and geographic areas that the Responsible Official determines to be appropriate:
No specific section on this topic.	No specific section on this topic.	**(2)(i) Biological diversity.** Plan decisions, to the extent feasible, should foster the maintenance or restoration of biological diversity in the plan area, within the range of biological diversity characteristic of native ecosystems within the larger landscape in which the plan area is embedded. In reaching plan decisions, the Responsible Official should consider current and recent disturbance regimes as well as the ecological condition, structure, and land use history of the planning or assessment area, and effects of these factors on options and opportunities to manage NFS lands to achieve biological diversity objectives.
No specific section on this topic.	No specific section on this topic.	**(2)(ii) Contributions of NFS lands.** When reaching plan decisions, the Responsible Official must identify and evaluate the special role of and unique contributions of NFS lands in maintaining and restoring biological diversity within the larger landscape in which the plan area is embedded.
Provides for a two part plan decision - one for ecosystem diversity and one for species viability.	Same as 2000 Rule.	Provides for one integrated decision on biological diversity.
(1) Ecosystem Diversity. Plan decisions affecting ecosystem diversity must provide for maintenance or restoration of the characteristics of ecosystem	**(2)(i) Ecosystem diversity.** Plan decisions should provide for measurable progress toward the maintenance or restoration of ecological conditions that will	See above – §219.13(b)(2); ecosystem diversity is an integral component of biological diversity. Use of the range of variability is not specified, but may be used if appropriate.

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period in accordance with (i) through (v).	support the diversity of plant and animal communities and tree species and other characteristics of ecosystem diversity. A variety of approaches may be used, such as conservation strategies designed for one or a group of species-at-risk, or management practices that emulate effects of natural disturbance regimes or result in characteristics of ecosystem diversity within the range of variability expected to occur under the current disturbance regimes.	
Provisions (i), (ii), (iii), (iv), (v)	Forest Service Directives as appropriate	Forest Service Directives as appropriate
(2) Species diversity. (i) Plan decisions affecting species diversity must provide for ecological conditions that the Responsible Official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, except as provided in (ii) - (iv).	**(2)(ii) Species diversity.** Plan decisions should provide for ecological conditions that the Responsible Official determines provide a high likelihood of supporting over time the viability of native and desired non-native vertebrates and vascular plants well distributed within their ranges in the plan area. When assessing "high-likelihood" and "well distributed," consider factors under agency authority and relative to species life history and distribution within the plan area. Where conditions capable of supporting viability for particular species or species groups are not likely to be met through provisions for ecosystem diversity, specific plan objectives or standards should be developed for those species or species groupings.	See above – §219.13(b)(2); species diversity is an integral component of biological diversity.
Exceptions (ii), (iii), (iv)	Forest Service Directives as appropriate	Forest Service Directives as appropriate
219.20(b)(3) Federally listed threatened and endangered species. (i) Plan decisions must provide for implementing actions in conservation agreements with the Fish and Wildlife Service or the National Marine Fisheries Service that provide a basis for not needing to list a species.	See above – 219.13(b)(2)(ii); recovery of federally listed species is an integral component of species diversity. Endangered Species Act requirements are not restated in the proposed rule.	See above – 219.13(b)(2)(i); recovery of federally listed species is an integral component of biological diversity. Endangered Species Act requirements are not restated in the proposed rule.
(ii) Plan decisions must include, at the scale determined by the Responsible Official to be appropriate to the plan decision, reasonable and prudent measures and associated terms and conditions contained in final biological opinions. Plan decision documents must provide a rationale for adoption or		

2000 Rule	2002 Proposed Rule- 219.13(b) Option 1	2002 Proposed Rule- 219.13(b) Option 2
rejection of discretionary conservation recommendations contained in final biological opinions.		

[FR Doc. 02–30683 Filed 12–5–02; 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AAB86

National Forest System Land and Resource Management Planning; Diversity Options Workshop

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; notice of workshop.

SUMMARY: Elsewhere in this part of today's **Federal Register**, the Forest Service is publishing a proposed rule to revise the land and resource management planning process for National Forest System lands. As part of that rule, the agency is proposing two options that would fulfill the statutory requirements of the National Forest Management Act that forest plans provide for the diversity of plant and animal communities consistent with the multiple-use objectives of the land and resource management plan. To provide further comment on the diversity options presented in the proposed rule, the agency will hold a Diversity Options Workshop, scheduled for February 18–20, 2003, in the general Washington, DC area. The agency will invite up to 80 persons who represent a variety of interests, expertise, backgrounds, and perspectives to participate in the workshop. The agency hereby requests nominations of persons to invite to the workshop.

DATES: The workshop is scheduled for February 18–20, 2003, in the general Washington, DC area. The workshop begins the evening of February 18, 2003, and an evening session may also be held on February 19, 2003. The workshop is scheduled to adjourn at 3:30 p.m. on February 20, 2003. Nominations for the workshop must be received no later than January 6, 2003.

ADDRESSES: The agency has contracted with the Meridian Institute to plan, organize, and facilitate the workshop. It is strongly suggested that nominations be submitted electronically via the Internet at *www.merid.org/diversityoptions*. Those wishing to submit nominations by other means must contact the Meridian Institute at (202) 354–6450 for further instructions.

FOR FURTHER INFORMATION CONTACT: Questions regarding the workshop should be directed to Shawn Walker, Meridian Institute, (202) 354–6450 or at *shawnwalker@merid.org*. Questions regarding the proposed rule should be directed to Jody Sutton, Content Analysis Team Program Coordinator, Forest Service at (801) 517–1023.

SUPPLEMENTARY INFORMATION: The workshop will address scientifically sound and practical forest planning approaches to implementing the statutory requirements of the National Forest Management Act (NFMA) with respect to diversity as well as the advantages and disadvantages of the two proposed diversity options or variations of these options. The two proposed diversity options are presented in the proposed land and resource management planning rule published elsewhere in this part of today's **Federal Register**. The discussion and information generated by workshop participants will aid the Forest Service in determining how to meet the diversity requirements of the NFMA. The workshop is designed for participants to remain on site to encourage informal discussions as well as attendance at the planned plenary and breakout sessions.

Selection Process

Workshop participants will be selected and invited through an open nomination process. Both self-nominations and nominations of others will be accepted from anyone wishing to submit a nomination based on the criteria described below.

- Balanced representation of interests among the selected participants to include highly qualified individuals from the variety of scientific disciplines relevant to a discussion of the diversity options; and
- Balanced representation of individuals from a diversity of geographic regions and circumstances who have practical experience in the land and resource management planning process and plan implementation.

To assist in evaluating the nomination process the following information on nominees would be helpful:

1. Background/Expertise
   a. Scientific or technical expertise
   b. Legal or policy experience with diversity of plant and animal communities
   c. Direct experience with the land and resource planning process and plan implementation
2. Relevant Affiliations
   a. Government
   b. Industry Sectors
   c. Non-Governmental Organizations
   d. Other
3. Geographic Location of Relevant Work Experience: Local, State, Regional (eastern U.S., western U.S., etc.), or National
4. Scope of Work: Local, State, Regional, or National

Conclusion

The agency invites nomination of qualified persons to attend the Diversity Options Workshop described in this notice. Both self-nominations and nominations of others for the workshop will be accepted and will be reviewed using the preceding participant selection criteria.

Dated: November 27, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–30682 Filed 12–5–02; 8:45 am]
BILLING CODE 3410–11–P

Federal Register

Friday,
December 6, 2002

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Regulations; Proposed Rule and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7416–6]

RIN 2060–AI23

Control of Air Pollution from New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Regulations; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). Today's action proposes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it proposes to modify the Tier 2 program to provide for cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

In the "Rules and Regulations" section of this **Federal Register**, we are making these technical amendments as a direct final rule without prior proposal because we view these technical amendments as noncontroversial revisions and anticipate no adverse comment.

We have explained our reasons for these technical amendments in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the portions of the direct final rule receiving such comment and those portions will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: If we do not receive a request for a public hearing, written comments are due January 6, 2003. Requests for a public hearing must be received by December 23, 2002. If we do receive a request for a public hearing, it will be held on January 9, 2003, starting at 10 a.m. In that case, the public comment period will close on February 10, 2003.

ADDRESSES:

Comments: All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hearing: If we do receive a request for a public hearing, it will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, Michigan.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Roberts French, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4380, fax (734) 214–4050, e-mail *french.roberts@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is proposing to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (65 FR 6698, February 10, 2000, hereinafter referred to as the Tier 2 rule). Today's action proposes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it proposes to modify the Tier 2 program to provide for the certification of cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

However, in the "Rules and Regulations" section of today's **Federal Register**, we are promulgating these revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the "Rules and Regulations" section of this **Federal Register** publication. The direct final rule will be effective on March 6, 2003, unless we receive adverse comment by January 6, 2003, or if we receive a request for a public hearing by December 23, 2002. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

I. Regulated Entities

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111 336112	3711	Automobile and light truck manufacturers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

II. Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not have any adverse economic impact on small entities. Today's proposed rule proposes to amend certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action proposes to make minor revisions to clarify the regulations governing compliance with the Tier 2 rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute,

unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

III. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–30842 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7416–7]

RIN 2060–AI23

Control of Air Pollution From New Motor Vehicles: Amendments to the Tier 2 Motor Vehicle Emission Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (hereinafter referred to as the Tier 2 rule). Today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule, and it modifies the Tier 2 program to provide for the certification of cleaner diesel engines than were anticipated during the interim Tier 2 program (through the 2006 model year).

DATES: This direct final rule is effective on March 6, 2003, without further notice, unless we receive adverse comments by January 6, 2003, or if we receive a request for a public hearing by December 23, 2002. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number A–97–10 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Roberts French, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4380, fax (734) 214–4050, e-mail *french.roberts@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on March 6, 2003, without further notice unless we receive adverse comment by January 6, 2003, or a request for a public hearing by December 23, 2002. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

Regulated Entities

Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111 336112	3711	Automobile and light truck manufacturers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

I. Overview of Technical Amendments

The technical amendments described below pertain to the Tier 2/Gasoline Sulfur regulations finalized by EPA on February 10, 2000 (65 FR 6698), hereafter referred to as the Tier 2 rule or the Tier 2 program. Although we attempt to provide some context in the following discussions, the emission control program that we are amending is very complex and detailed and cannot be described completely in this direct final rule. Readers are advised to consult the documents associated with this rulemaking if they require more information than is provided in this direct final rule. Information regarding the Tier 2 rule that readers may be interested in consulting may be found on the EPA Web site at *http://www.epa.gov/otaq/tr2home.htm*.

The Tier 2/Gasoline Sulfur program is designed to significantly reduce the

emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. The program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. The program, which begins in model year 2004, phases in a single set of exhaust emission standards that will, for the first time, apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, the Tier 2 program also requires reduced gasoline sulfur levels nationwide. The Tier 2 program did not require similar changes for diesel fuel sulfur levels, but a separate rule mandated the reduction of highway diesel fuel sulfur levels beginning in September, 2006 (66 FR 5001, January 18, 2001). The program will bring about major reductions in annual emissions responsible for ozone and particulate matter problems.

A. Light-duty Diesel Provisions Under the Interim Tier 2 Program

The Tier 2 rule when fully phased in contains eight emission standards "bins" (bins 1 through 8). Each bin is a set of emission standards to which manufacturers can certify their vehicles, provided that each manufacturer meets a specified fleet average NO_X standard. Two additional bins—bins 9 and 10—are available only during the interim program (2004 through the 2006 model year for light-duty vehicles (LDVs) and light light-duty trucks (LLDTs), and through the 2008 model year for heavy light-duty trucks (HLDTs) and medium-duty passenger vehicles (MDPVs)).[1] [2] This direct final rule clarifies some aspects of the interim program requirements for light-duty diesel vehicles certifying to bins 9 and 10.

In addition to bins of exhaust emission standards for the Federal Test Procedure (FTP), the Tier 2 rule also established exhaust emission standards for the Supplemental Federal Test Procedure (SFTP). The SFTP procedures are intended to control emissions that occur during types of driving that are not well-represented on the FTP, including rapid accelerations and decelerations, high speed driving, and driving with the air conditioner operating.

With the exception of some adjustments to the interim program to account for the lack of availability of low sulfur diesel fuel, an overarching principle of the Tier 2 program is the applicability of the same Tier 2 standards to all LDVs and LDTs, regardless of the fuel they are designed to use. Diesel powered LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and we believe that they should therefore meet the same standards. We stated in the Tier 2 final rule that major technological innovations will not be required for gasoline vehicles to meet the Tier 2 standards, but that the standards will be especially challenging for diesel vehicles and will likely require the application of advanced aftertreatment technologies. These aftertreatment technologies are dependent on the availability of clean diesel fuel, without which they are not effective and may be susceptible to damage. For this reason, we included some provisions in the initial years of the Tier 2 program to enable diesels to meet the interim requirements without the availability of low sulfur diesel fuel. We also allowed manufacturers to certify vehicles to an interim bin 10 during the initial years of the program. We stated that we believed diesel engines could meet the full useful life requirements in bin 10 without the need for low sulfur diesel fuel (65 FR 6739). Beyond the interim program, however, we have provided for the availability of clean diesel fuel starting in mid-2006 (66 FR 5001, January 18, 2001), and thus the program was structured so that diesels will be treated no differently than gasoline vehicles when the final Tier 2 program is effective and applicable to the entire fleet.

Section IV.B.4.a of the Tier 2 rule preamble (65 FR 6740) briefly explains the bin 10 provisions as they relate to diesel vehicles. Specifically, we stated that diesel vehicles "may opt not to meet the intermediate life standards associated with this bin." In addition, a footnote to the table of Tier 2 intermediate useful life standards for the Federal Test Procedure (FTP) reads "Intermediate life standards are optional for diesels certified to bin 10" (65 FR 6741). Although not specifically stated in this language, it was EPA's intent to exempt diesel vehicles from the intermediate life standards of both the FTP and SFTP. As was noted in the Tier 2 rule, low sulfur diesel fuel may be needed for diesels to meet the intermediate useful life standards of the interim Tier 2 program, yet low sulfur diesel fuel will not be widely available during the time frame of the interim program (65 FR 6740). This exemption was intended to apply only for the temporary duration of bin 10. The Tier 2 rule provided the option for diesels of opting out of the intermediate life standards of bin 10 in order to enable light-duty diesels to continue to be manufactured in the absence of low sulfur fuel, while their gasoline-fueled counterparts will already be able to enjoy the advantages of clean low sulfur fuel in meeting the interim standards. Further, the intermediate useful life standards for diesels certifying to bin 10 during the interim program are not necessary because diesel engine-out emissions (*e.g.*, emissions from diesel vehicles not equipped with aftertreatment emission control devices) are typically stable or decreasing as mileage is accumulated.

Although we intended to make optional for diesels the FTP intermediate useful life standards, the SFTP 4,000-mile standards, and the SFTP intermediate useful life standards during the interim program, the regulatory language does not capture this intent and requires diesel vehicles certifying to bin 10 to comply with full useful life SFTP standards and either the 4,000-mile or intermediate life SFTP standards. Specifically, the regulations currently require that all vehicles subject to SFTP standards must meet a 4,000-mile standard and a full useful life standard. The regulations currently provide that diesel vehicles have the option of complying with an intermediate useful life standard instead of the 4,000-mile standard through the 2006 model year.

In this direct final rule, we are amending the regulations to be consistent with the original intent that for diesel vehicles certifying to bin 10, compliance with the intermediate useful life standards of both the FTP and the SFTP be optional. This optional compliance will only be available as long as bin 10 is available. In the case of the SFTP standards, this means that, like the FTP, diesel vehicles will only be required to meet a full useful life standard. This change primarily applies to NO_X emissions, as there is no

[1] One additional temporary bin (bin 11) is available that applies only to MDPVs through the 2008 model year.

[2] "Light-duty vehicle" means a passenger car or a derivative of a passenger car, seating 12 persons or less. "Light-duty truck" means a vehicle with a gross vehicle weight rating of up to 8500 pounds and a curb weight of up to 6000 pounds that is designed primarily for transportation of property or more than 12 persons, or that has off-road capabilities. "Light light-duty truck" means a light-duty truck" with a gross vehicle weight rating of to 6000 pounds, and a "heavy light-duty truck" is a light-duty truck with a gross vehicle weight rating of more than 6000 pounds. A "medium-duty passenger vehicle" is a new class of vehicle introduced in the Tier 2 program that includes sport-utility vehicles and passenger vans rated at between 8500 and 10,000 pounds gross vehicle weight rating.

intermediate useful life standard for particulate matter (PM) on either the FTP or SFTP.[3]

This direct final rule also revises the regulations applicable to diesel vehicles certified to bin 9 so that the intermediate useful life FTP and SFTP standards will also be optional for bin 9 diesel vehicles. When the Tier 2 rule was finalized more than two years ago, we limited the diesel intermediate life option to bin 10 because the information available at the time suggested that it would be challenging for diesel vehicles to meet the bin 10 standards in the absence of low sulfur diesel fuel, and no vehicle manufacturers were predicting that diesels would be able to meet the standards of more stringent bins during the interim program. However, in the time since the finalization of the Tier 2 rule we have learned that light-duty diesel vehicles are under development that are capable of meeting the bin 9 exhaust emission standards and could be introduced during the interim Tier 2 program. One manufacturer of these vehicles has therefore requested that the regulations be modified such that the bin 9 requirements for diesels mirror those of bin 10 by providing diesels the option of opting out of meeting the intermediate useful life standards. Certification to the bin 9 standards would be a significant achievement in the advancement of light-duty diesel technology in the initial years of the Tier 2 program, as the NO_X standard is one-half that of the bin 10 NO_X standard (0.3 grams per mile for bin 9 and 0.6 grams per mile for bin 10). Further, the PM standard for bin 9 is 0.06 grams per mile, whereas the bin 10 PM standard is 0.08 grams per mile. If we had anticipated at the time of finalizing the Tier 2 rule that diesels would be capable of meeting the bin 9 standards in the absence of low sulfur diesel fuel, we would have extended the intermediate life opt-out option to diesels certifying to both bin 9 and bin 10 standards.

Therefore, in this direct final rule we are modifying the provisions of the Tier 2 interim program such that the bin 9 provisions are consistent with bin 10. We are doing this by extending the intermediate life opt-out option to diesels certifying to bin 10 or bin 9. Diesel vehicles require this additional flexibility for bin 9 during the interim period for the same reasons that this option was provided for bin 10, as discussed above (*i.e.*, the lack of availability of low sulfur diesel fuel). As discussed, this option would allow diesel light-duty vehicles to comply with only the full useful life standards of both the FTP and SFTP during the interim program. This change will likely result in the introduction of cleaner diesels than otherwise would be the case (during the interim period), and furthermore, we view the possibility of diesels being able to certify to the bin 9 standards as a great success story for clean diesels that will facilitate the transition of diesel vehicles to successfully meeting the Tier 2 standards. We believe this revision will encourage development and application of diesel engines with engine-out emissions even lower than initially expected when the Tier 2 rule was promulgated. This could stimulate implementation of technological advances that may reduce diesel emissions in future years.

[3] In general, limits or emissions of other regulated pollutants (*e.g.*, HC, CO) are not as significant a challenge for diesel vehicles as are NO_X and PM standards.

B. Definition of Small Volume Manufacturer

The Tier 2 rule added a new definition to 40 CFR part 86, subpart S for "U.S. Sales." This new definition specifies that the term means sales in the United States, excluding sales in California and in states that have adopted the California emissions control program for motor vehicles under section 177 of the Clean Air Act. This new definition became necessary to ensure that vehicles sold in states not subject to the federal emissions control program would not be included in the determination of a manufacturer's fleet average emissions level. However, the new definition inadvertently changed the intended use of the term in some other sections of the Tier 2 regulations. In particular, the term "U.S. sales" is used to determine the eligibility of manufacturers for provisions applicable to small volume manufacturers (see 40 CFR 86.1801–01(d), 86.1838–01(b)(1), and 86.1838–01(b)(2)). Applying the new definition of U.S. sales in these cases could result in an incorrect determination of eligibility for small volume manufacturer provisions, because the small volume provisions intended to use the term to mean sales in all U.S. states and territories, including California and the section 177 states. Therefore, this direct final rule is amending 40 CFR 86.1801–01(d), 86.1838–01(b)(1), and 86.1838–01(b)(2) such that the term "U.S. sales" is replaced with "sales in all states and territories of the United States." The word "state" is used in this context consistently with the definition of "State" in section 302(d) of the Clean Air Act, and includes the District of Columbia, Puerto Rico, and other parts of the United States that are not formally considered to be states.

C. Supplemental Federal Test Procedure Requirements for Interim Non-Tier 2 Vehicles

40 CFR 86.1811–04(f)(4) currently states that "[i]nterim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards * * * may meet the gasoline Tier 1 SFTP requirements found at § 86.1811–01(b)." The effect of the language in the current regulations is to apply the Tier 1 SFTP standards for LDVs to LDT1s *and* LDT2s (since LLDT encompasses both LDT1s and LDT2s). However, the Tier 1 SFTP regulations applicable to LDT2s are different from the SFTP standards applicable to LDVs and LDT1s. In addition, the Tier 1 SFTP emission standards in § 86.1811–01(b) are applicable only to LDVs. The Tier 1 standards for LDT1s are in 86.1812–01, and those for LDT2s are in § 86.1813–01. The intent of paragraph 40 CFR 86.1811–04(f)(4) was to, in the specific cases noted in the paragraph, provide the option of meeting the Tier 1 SFTP standards in a manner consistent with the type and definition of the vehicle. Therefore, in this direct final rule we are amending 40 CFR 86.1811–04(f)(4) to state, in its entirety:

> Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811–01(b), 86.1812–01(b), 86.1813–01(b), for LDVs, LDT1s, and LDT2s, respectively.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A motor vehicle manufacturer with fewer than 1000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's direct final rule on small entities, we have determined that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not have any adverse economic impact on small entities. Today's rule revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), such that regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action makes minor revisions to clarify the regulations governing compliance with the Tier 2 rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control vehicle emissions and gasoline fuel sulfur levels. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 6, 2003.

III. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—[Amended]

2. Section 86.1801–01 is amended by revising paragraph (d) to read as follows:

§ 86.1801–01 Applicability.

* * * * *

(d) *Small volume manufacturers.* Special certification procedures are available for any manufacturer whose projected or actual combined sales in all states and territories of the United States of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509) are fewer than 15,000 units for the model year in which the manufacturer seeks certification. The small volume manufacturer's light-duty vehicle and light-duty truck certification procedures and described in § 86.1838–01.

* * * * *

3. Section 86.1811–04 is amended by:

a. Revising paragraph (c)(4)(iv);

b. Revising Table S04–2 in paragraph (c)(6);

c. Revising paragraph (f)(4); and

d. Adding paragraph (f)(7).

The revisions and additions read as follows:

§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

(c) * * *

(4) * * *

(iv) For diesel vehicles certified to bin 9 or bin 10, intermediate life standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

* * * * *

(6) * * *

TABLE S04–2.—TIER 2 AND INTERIM NON-TIER 2 INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST MASS EMISSION STANDARDS

[grams per mile]

Bin No.	NO_x	NMOG	CO	HCHO	PM	Notes
11	0.6	0.195	5.0	0.022		a c f h
10	0.4	0.125/0.160	3.4/4.4	0.015/0.018		a b d f g h
9	0.2	0.075/0.140	3.4	0.015		a b c f g h
8	0.14	0.100/0.125	3.4	0.015		b f h i
7	0.11	0.075	3.4	0.015		f h
6	0.08	0.075	3.4	0.015		f h
5	0.05	0.075	3.4	0.015		f h

Notes:
[a] This bin deleted at end of 2006 model year (end of 2008 model year for HLDTs and MDPVs).
[b] Higher NMOG, CO and HCHO values apply for HLDTs and MDPVs only.
[c] This bin is only for MDPVs.
[d] Optional NMOG standard of 0.195 g/mi applies for qualifying LDT4s and qualifying MDPVs only.
[e] Optional NMOG standard of 0.100 g/mi applies for qualifying LDT2s only.
[f] The full useful life PM standards from Table S04–1 also apply at intermediate useful life.
[g] Intermediate life standards of this bin are optional for diesels.
[h] Intermediate life standards are optional for vehicles certified to a useful life of 150,000 miles.
[i] Higher NMOG standard deleted at end of 2008 model year.

(f) * * *

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 10 FTP exhaust emission standards from Table S04–1 in paragraph (c) of this section may meet the gasoline Tier 1 SFTP requirements found at §§ 86.1811–01(b), 86.1812–01(b), 86.1813–01(b), for LDVs, LDT1s, and LDT2s, respectively.

* * * * *

(7) For diesel vehicles certified to the bin 9 or bin 10 standards of paragraph (c) of this section, 4000 mile SFTP and intermediate life SFTP standards are optional regardless of whether the manufacturer certifies the test group to a full useful life of 120,000 miles or 150,000 miles.

* * * * *

4. Section 86.1838–01 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) to read as follows:

§ 86.1838–01 Small volume manufacturer certification procedures.

* * * * *

(b) * * *

(1) * * *

(i) The optional small-volume manufacturers certification procedures apply to LDV/Ts and MDPVs produced by manufacturers with sales in all states and territories of the United States, including all vehicles and engines imported under provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (LDV/Ts, MDPVs, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated sales in all states and territories of the United States of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) * * *

(i) If the aggregated sales in all states and territories of the United States, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

* * * * *

[FR Doc. 02–30843 Filed 12–5–02; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 67, No. 235

Friday, December 6, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

71443–71796 2
71797–72088 3
72089–72362 4
72363–72550 5
72551–72826 6

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7631 72089
7632 72551

Administrative Orders:
Memorandums:
Memorandum of November 27, 2002 71795

Presidential Determinations:
No. 2003–04 72363

7 CFR

718 71797
905 71798
989 71803

Proposed Rules:
246 71774

8 CFR

103 71443
212 71443
214 71443
235 71443
264 71443
286 71443
299 71443

10 CFR

Chapter 1 72091
431 72274

Proposed Rules:
50 71490

12 CFR

Proposed Rules:
226 72618
701 72444
791 72113

13 CFR

Proposed Rules:
120 72622

14 CFR

39 ..... 71450, 71452, 71455, 71808, 71810, 71812, 71814, 72091, 72553
71 ..... 71457, 71458, 71459, 71460, 71815, 72365, 72441
97 ..... 71816, 72553
119 72726
121 72726
129 72726
135 72726
183 72726

Proposed Rules:
23 71490
39 ..... 71493, 71495, 71497, 71500, 71503, 71505, 71904, 72115, 72119
71 ..... 71507, 71508, 71509, 71906
121 71908
399 72396
1260 72121

15

50 72095

17 CFR

Proposed Rules:
205 71670
240 71909
270 71915

18 CFR

284 72098

19 CFR

Proposed Rules:
101 71510
122 ..... 71510, 71512
123 71512

20 CFR

Proposed Rules:
604 72122

21 CFR

5 71461
16 71461
101 71461
336 72555
338 72555
341 72555
510 72365
520 ..... 71819, 72365
522 ..... 72366, 72367
556 72367
558 ..... 71820, 71821, 72368, 72369, 72370

26 CFR

1 ..... 71821, 72274

29 CFR

1611 72373
4011 71470
4022 71470
4044 71472

30 CFR

915 72375
924 71826
948 71832

33 CFR

100 71840
117 ..... 71473, 71474, 71840, 72099, 72100, 72559, 72560
165 ..... 71475, 71840, 72561
175 72100

177.....72100
179.....72100
181.....72100
183.....72100
Proposed Rules:
117.....71513, 72126
165.....71513

34 CFR

200.....71710

36 CFR

1200.....72101
Proposed Rules:
219.....72770, 72816

37 CFR

259.....71477

38 CFR

21.....72563

39 CFR

501.....71843
Proposed Rules:
111.....72626

40 CFR

52.....72379, 72573, 72574, 72576, 72579
61.....72579
63.....72330, 72580
86.....72821
70.....71479
131.....71843
180.....71847, 72104, 72585
1065.....72724
Proposed Rules:
52.....71515
63.....72276
86.....72818
141.....71520
451.....71523
764.....71524

42 CFR

Proposed Rules:
73.....71528

44 CFR

64.....72593
65.....71482

45 CFR

Proposed Rules:
31.....72128

46 CFR

2.....72100
10.....72100
15.....72100
24.....72100
25.....72100
26.....72100
30.....72100
70.....72100
90.....72100
114.....72100
169.....72100
175.....72100
188.....72100
199.....72100

47 CFR

64.....71861
73.....71891, 71892, 71893, 71894
Proposed Rules:
73.....71924, 71925, 71926

49 CFR

1.....72383
573.....72384
577.....72384
Proposed Rules:
171.....72034
172.....72034
173.....72034
175.....72034
176.....72034
178.....72034
180.....72034

50 CFR

222.....71895
223.....71895
229.....71900
300.....72110, 72394
622.....71901, 71902, 72112
635.....71487
648.....71488
679.....71489, 72595
Proposed Rules:
17.....71529, 72396, 72407
635.....72629
648.....72131

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 6, 2002

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Incidental taking—
Atlantic Large Whale Take Reduction Plan; published 12-3-02

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Privacy Act; implementation; published 12-5-02

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Application fees schedule; published 11-5-02
Radio stations; table of assignments:
Ohio; published 11-6-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Lasalocid; published 12-5-02
New drug applications—
Decoquinate; published 12-5-02
Tilmicosin; published 12-5-02
Oxytetracycline; published 12-5-02
Oxytetrcycline injection; published 12-5-02
Salinomycin and tylosin; published 12-5-02
Sponsor name and address changes—
Neomycin sulfate soluble powder; published 12-5-02

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Iowa; published 12-5-02

NUCLEAR REGULATORY COMMISSION
Electronic maintenance and submission of information; published 9-6-02

TRANSPORTATION DEPARTMENT
Organization, functions, and authority delegations:
Maritime Administrator; published 12-5-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canadian border ports; Blaine and Lyden, WA; removal as ports of entry; comments due by 12-9-02; published 11-8-02 [FR 02-28476]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Oriental fruit fly; comments due by 12-9-02; published 10-8-02 [FR 02-25537]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Principal and interest; payment extensions; comments due by 12-9-02; published 10-8-02 [FR 02-25209]

COMMERCE DEPARTMENT
Census Bureau
Foreign trade statistics:
Commerce Control List and U.S. Munitions List; items requiring Shipper's Export Declaration; Automated Export System mandatory filing; comments due by 12-9-02; published 10-9-02 [FR 02-25667]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation—
Shrimp trawling requirements; waters off Louisiana and Alabama; limited tow times use as alternative to turtle excluder devices; comments due by 12-9-02; published 11-7-02 [FR 02-28281]
Shrimp trawling requirements; waters off Mississippi; limited tow times use as alternative to turtle excluder devices; comments due by 12-9-02; published 11-7-02 [FR 02-28280]
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies and monkfish; comments due by 12-10-02; published 11-25-02 [FR 02-29895]
Summer flounder, scup, and black sea bass; comments due by 12-12-02; published 11-27-02 [FR 02-30229]
West Coast States and Western Pacific fisheries—
Coastal pelagic species; comments due by 12-10-02; published 11-25-02 [FR 02-29894]
Marine mammals:
National Marine Mammal Tissue Bank; access to tissue specimen samples; protocol; comments due by 12-12-02; published 11-12-02 [FR 02-28512]

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity pool operators; otherwise regulated persons excluded from term definition; comments due by 12-12-02; published 10-28-02 [FR 02-27309]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Government Printing Office; printing and duplicating procurement; comments due by 12-13-02; published 11-13-02 [FR 02-28668]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Small generator interconnection agreements and procedures; standardization; comments due by 12-9-02; published 11-21-02 [FR 02-29401]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Benzene waste operations; comments due by 12-12-02; published 11-12-02 [FR 02-28499]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Benzene waste operations; comments due by 12-12-02; published 11-12-02 [FR 02-28500]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Pennsylvania; comments due by 12-12-02; published 11-12-02 [FR 02-28495]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Pennsylvania; comments due by 12-12-02; published 11-12-02 [FR 02-28496]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
South Carolina; comments due by 12-13-02; published 11-13-02 [FR 02-28698]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
South Carolina; comments due by 12-13-02; published 11-13-02 [FR 02-28699]
Virginia; comments due by 12-12-02; published 11-12-02 [FR 02-28695]
Air quality planning purposes; designation of areas:
District of Columbia et al.; comments due by 12-13-02; published 11-13-02 [FR 02-28845]
Radiation protection programs:
Disposal regulations; Waste Isolation Pilot Plant compliance; certification and recertification criteria—
Alternative provisions; comments due by 12-9-

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 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html.* Some laws may not yet be available.

H.R. 3833/P.L. 107–317

Dot Kids Implementation and Efficiency Act of 2002 (Dec. 4, 2002; 116 Stat. 2766)

H.R. 5504/P.L. 107–318

Anton's Law (Dec. 4, 2002; 116 Stat. 2772)

Last List December 4, 2002

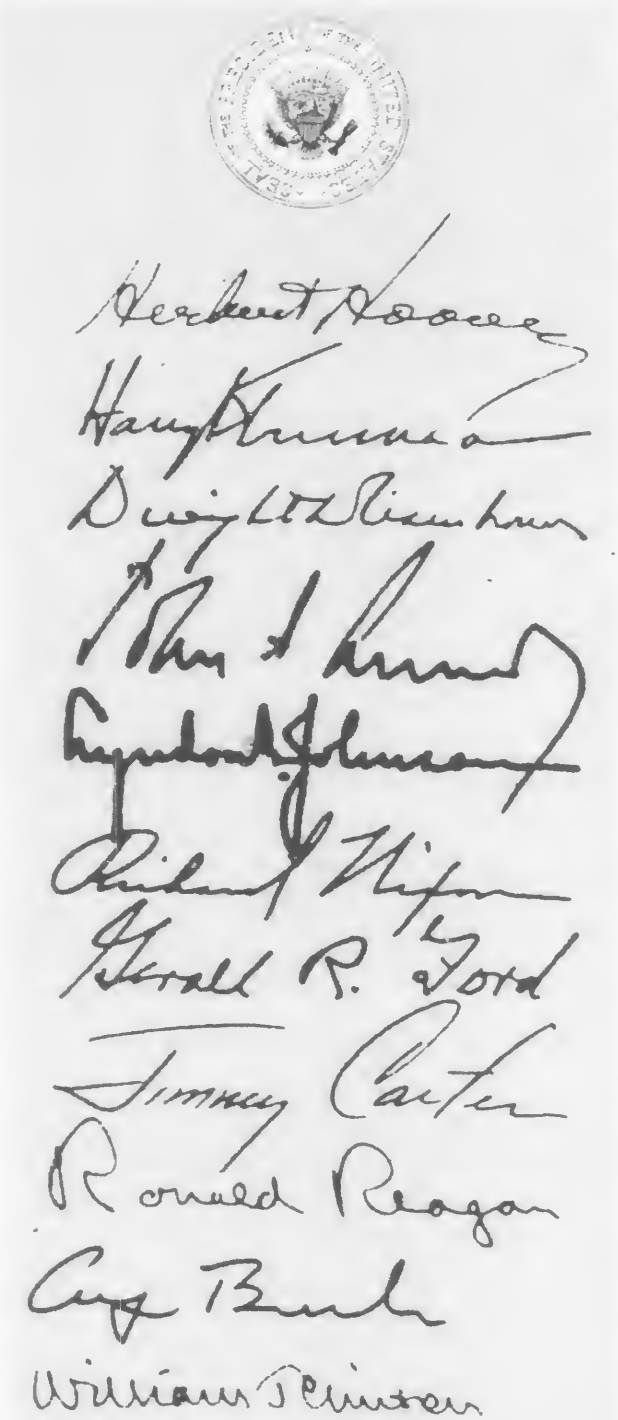
Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service.

PENS cannot respond to specific inquiries sent to this address.



Public Papers of the Presidents of the United States

William J. Clinton

1993 (Book I)	$51.00
1993 (Book II)	$51.00
1994 (Book I)	$56.00
1994 (Book II)	$52.00
1995 (Book I)	$60.00
1995 (Book II)	$65.00
1996 (Book I)	$66.00
1996 (Book II)	$72.00
1997 (Book I)	$69.00
1997 (Book II)	$78.00
1998 (Book I)	$74.00
1998 (Book II)	$75.00
1999 (Book I)	$71.00
1999 (Book II)	$75.00
2000–2001 (Book I)	$68.50
2000–2001 (Book II)	$63.00
2000–2001 (Book III)	$75.00

Published by the Office of the Federal Register,
National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA (Rev. 5/02)

Would you like to know. . .

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

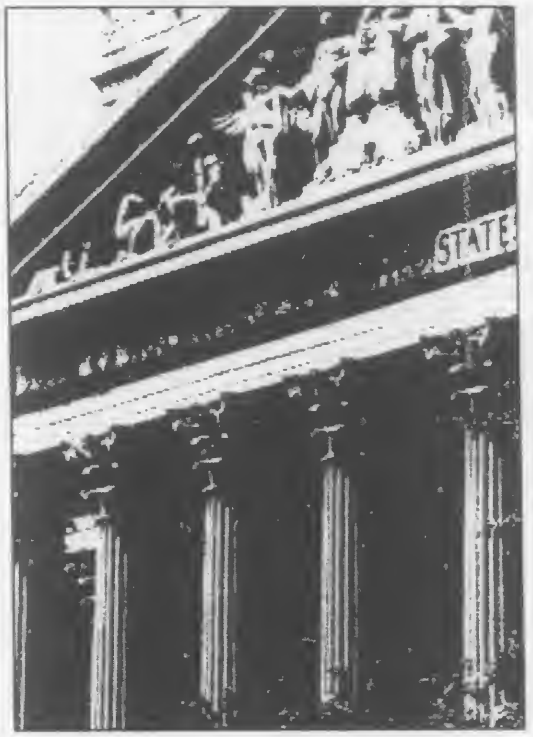
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $35 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $30 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date-of publication in the Federal Register.



Superintendent of Documents **Subscription** Order Form

Order Processing Code:
*** 5421**

☐ **YES**, enter the following indicated subscriptions for one year:

——— **LSA (List of CFR Sections Affected)**, (LCS) for $35 per year.
——— **Federal Register Index** (FRUS) $30 per year.

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing Signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example:*

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFR SMITH212J                      DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

A renewal notice will be sent approximately 90 days **before the shown date.**

```
                                        /
AFRDO SMITH212J                    DEC97 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20704
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To order a new subscription: Please use the order form provided below.

Superintendent of Documents **Subscription** Order Form

Order Processing Code
*** 5468**

Charge your order. It's Easy!

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **Federal Register (FR);** *including* the daily Federal Register. monthly Index and List of CFR Sections Affected (LSA), at $764 each per year.

_____ subscriptions to **Federal Register**, *daily only* (FRDO), at $699 each per year.

The total cost of my order is $_____. **Price includes regular domestic postage and handling**. and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐

☐ VISA ☐ MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 1001

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $264.00
Six months: $132.00

Code of Federal Regulations:

Current year (as issued): $298.00

Superintendent of Documents **Subscription** Order Form

Order Processing Code
* 5419

☐ **YES**, enter the following indicated subscription in 24x microfiche format:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ **Federal Register** (MFFR) ☐ One year at $264 each
☐ Six months at $132.00

_____ **Code of Federal Regulations** (CFRM7) ☐ One year at $298 each

The total cost of my order is $_____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 10/01

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

107th Congress

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 107th Congress.

Individual laws also may be purchased from the Superintendent of Documents, U.S. Government Printing Office. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws or access the online database at http://www.access.gpo.gov/nara005.html

---

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512–2250
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 107th Congress for $225 per subscription.

The total cost of my order is $ _____. **Price includes regular domestic postage and handling** and is subject to change. International customers please add 25%.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, ZIP code

Daytime phone including area code

Purchase order number (optional)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

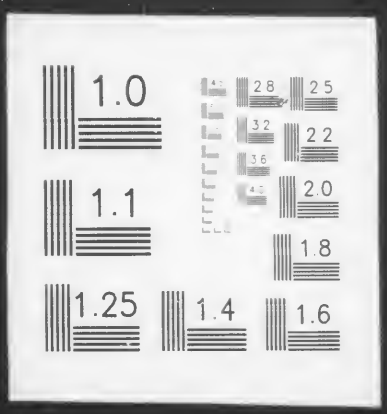
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

Authorizing signature 5/02

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0