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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15457; Airspace Docket No. 03–ACE–55]

Modification of Class E Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Waterloo, IA revealed discrepancies in Waterloo, IA Class E airspace areas and their legal descriptions. This action corrects the discrepancies, modifies Class E airspace areas at Waterloo, IA to the appropriate dimensions for protecting aircraft executing instrument approach procedures at Waterloo Municipal Airport and incorporates the changes into the legal descriptions of Waterloo, IA Class E airspace areas.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 28, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15457/Airspace Docket No. 03–ACE–55, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area designated as an extension to a Class D or Class E Surface Area at Waterloo, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Waterloo, IA and the legal descriptions of both airspace areas. An examination of controlled airspace for Waterloo, IA revealed discrepancies in the dimensions of Class E airspace areas and their legal descriptions. A discrepancy in the location of the collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) serving Waterloo Municipal Airport and used to describe these airspace areas was also noted. This action corrects the discrepancies, modifies Class E airspace areas at Waterloo, IA to the appropriate dimensions for protecting aircraft executing instrument approach procedures at Waterloo Municipal Airport and incorporates the changes into the legal descriptions of Waterloo, IA Class E airspace areas. This action brings the legal descriptions of Waterloo, IA controlled airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as extensions to a Class D or Class E Surface Area are published in paragraph 6004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15457/Airspace Docket No. 03–ACE–55." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

ACE IA E4 Waterloo, IA

Waterloo Municipal Airport, IA
(Lat. 42°33′25″ N., long. 92°24′01″ W.)
Waterloo VORTAC
(Lat. 42°33′23″ N., long. 92°23′56″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Waterloo VORTAC 079° radial extending from the 4.3-mile radius of Waterloo Municipal Airport to 7 miles east of the VORTAC and within 2.4 miles each side of the VORTAC 202° radial extending from the 4.3-mile radius of the airport to 7 miles south of the VORTAC, and within 2.4 miles each side of the VORTAC 238° radial extending from the 4.3-mile radius of the airport to 7 miles southwest of the VORTAC and within 2.4 miles each side of the VORTAC 313° radial extending from the 4.3-mile radius of the airport to 7 miles northwest of the VORTAC and within 2.4 miles each side of the VORTAC 351° radial extending from the 4.3-mile radius of the airport to 7 miles north of the VORTAC.

* * * * *

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

* * * * *

ACE IA E5 Waterloo, IA

Waterloo Municipal Airport, IA
(Lat. 42°33′25″ N., long. 92°24′01″ W.)
Waterloo VORTAC
(Lat. 42°33′23″ N., long. 92°23′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Waterloo Municipal Airport and within 2.6 miles each side of the Waterloo VORTAC 120° radial extending from the 6.8-mile radius of the airport to 8 miles southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19157 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15458; Airspace Docket No. 03–ACE–56]

Modification of Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Webster City, IA revealed discrepancies in the Webster City Municipal Airport airport reference point and in the location of the Webster City nondirectional radio beacon (NDB), both used in the legal description for the Webster City, IA Class E airspace. A discrepancy in the Webster City NDB bearing of the Class E airspace extension was also discovered. This action corrects the discrepancies by modifying the Webster City, IA Class E airspace and by incorporating the current Webster City Municipal Airport airport reference point and the current location of the Webster City NDB in the Class E airspace legal description.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 28, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15458/Airspace Docket No. 03–ACE–56, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Webster City, IA. It incorporates the current airport reference point for Webster City Municipal Airport and the current location of the Webster City NDB. It corrects the bearing from the Webster City NDB of the Class E airspace extension and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handing Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless

a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15458/Airspace Docket No. 03–ACE–56." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

ACE IA E5 Webster City, IA

Webster City Municipal Airport, IA
(Lat. 42°26′12″N., long. 93°52′08″W.)
Webster City NDB
(Lat. 42°26′29″N., long. 93°52′09″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport and within 2.6 miles each side of the 153° bearing from the Webster City NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19158 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15459; Airspace Docket No. 03–ACE–57]

Modification of Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for West Union, IA revealed a discrepancy in the dimensions of the extension to the Class E airspace area corrects the discrepancy by modifying the West Union, IA Class E airspace area and by incorporating the revised dimensions into the Class E airspace area. This action corrects the discrepancy by modifying the West Union, IA Class E airspace area and by incorporating the revised dimensions into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before September 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15459/Airspace Docket No. 03–ACE–57, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at West Union, IA. It expands the Class E airspace extension by .4 of a mile and

brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriated aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15459/Airspace Docket No. 03–ACE–57." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE IA E5 West Union, IA

West Union, George L. Scott Municipal Airport, IA

(Lat. 42°59′06″ N., long. 91°47′26″ W.)
West Union NDB
(Lat. 42°56′38″ N.. long. 91°46′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of George L. Scott Municipal Airport and within 2.6 miles each side of the 172° bearing from the West Union NDB extending from the 6.4-mile radius to 9.6 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19162 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15460; Airspace Docket No. 03–ACE–58]

Modification of Class E Airspace; Aurora, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Aurora Memorial Municipal Airport, Aurora, MO, has been renamed Jerry Summers Sr. Aurora Municipal Airport. The intended effect of this rule is to replace "Aurora Memorial Municipal Airport" in the legal descriptions of Aurora, MO Class E airspace area with "Jerry Summers Sr. Aurora Municipal Airport" and to bring the legal description into compliance with FAA Orders.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the rules Docket must be received on or before September 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15460/Airspace Docket No. 03–ACE–58, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the rule, any comments received, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone

1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Aurora, MO. It replaces "Aurora Memorial Municipal Airport," the former name of the airport, with "Jerry Summers Sr. Aurora Municipal Airport," the new name of the airport, in the legal description. It brings the legal description of the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15460/Airspace Docket No. 03–ACE–58." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 1312.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

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

* * * * *

ACE MO E5 Aurora, MO

Jerry Summers Sr. Aurora Municipal Airport, MO
(Lat. 36°57′44″ N., long. 93°41′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jerry Summers Sr. Aurora Municipal Airport and within 2 miles each side of the 181° bearing from the Jerry Summers Sr. Aurora Municipal Airport extending from the 6.3-mile radius to 9.3 miles north of the airport.

* * * * *

Issued in Kansas City, MO on July 17, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19165 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD27

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, (DOT).

ACTION: Final rule.

SUMMARY: This rule adjusts the amount of compensation available to two classes of carriers under the Air Transportation Safety and System Stabilization Act. The effect of the change permits increased compensation for some small air carriers.

DATES: This rule is effective July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone (202) 366–1213.

SUPPLEMENTARY INFORMATION:

Background

As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act.

Under section 101(a)(2)(A)–(B) of the Stabilization Act, a total of $5 billion in compensation is provided for "direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks."

Section 103 of the Stabilization Act established the basis for determining the amount of compensation payable to each carrier. Under section 103(b), that amount, for each passenger and combination passenger-cargo carrier, was the lesser of (1) the amount of its direct and incremental losses, or (2) the product of $ 4.5 billion and the ratio of the number of available seat miles reported for the month of August 2001 by the particular carrier to the number of available seat miles of all such air carriers reported for that month.

Thereafter, a number of carriers expressed concern that the Stabilization Act's use of approximate market share ratios as one of the alternate tests for compensation—*i.e.*, measuring each carrier's available seat miles (ASMs) against the total number of industry ASMs—would not adequately compensate some classes of carriers for their losses. Since ASMs are the product of the number of seats available for revenue use and the miles they are flown, 14 CFR 330.3, these carriers pointed out that those who operate aircraft having relatively few seats and/or fly for relatively short distances, such as air ambulances and air tour operators, do not accumulate ASMs as quickly as carriers operating large aircraft and flying longer distances. They argued that an ASM ratio formula, if used as a ceiling for compensation, would place such carriers at a disadvantage to larger carriers and result in compensation payments that were well below the losses these carriers had sustained from the attacks.

Subsequently, Congress enacted Section 124(d) of the Aviation and Transportation Security Act (Pub. L. 107–71, Nov. 19, 2001), which amended section 103 of the Stabilization Act. The purpose of this amendment, according to the Conference Report (H.R. REP. No. 107–296 at 79), was "to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry-wide losses." The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-Aside—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,000,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

On January 2, 2002 (67 FR 263), the Department requested comments concerning whether it should utilize this discretionary authority to set-aside a portion of funds, and if so, in what manner and to what classes of air carriers. Following receipt and consideration of written comments, the Department determined that the statutory formula in the Stabilization Act did result in disproportionately smaller recoveries for smaller passenger carriers, and that it would be appropriate to use the set-aside authority to address that situation. In analyzing the financial information submitted to that point by smaller carriers, the Department found that air taxi, commuter, and regional carriers reporting fewer than 10 million ASMs would receive disproportionately less relative to their losses under the Stabilization Act formula than carriers that had higher ASM levels. Moreover, the smallest of these—those who reported an average of 10,000 or fewer per day, or 310,000 for the reporting period of August 2001—seemed to fall even further behind in compensation levels relative to their expected losses.

Therefore, in its final rule on the subject (67 FR 18468–78, April 16, 2002) the Department established a set-aside program and created two classes of small carrier for purposes of prospective compensation under that program. A Class I air carrier was defined as an air taxi, regional, or commuter air carrier that reported 310,000 or fewer available seat miles to the Department for the month of August 2001. A Class II air carrier was defined as an air taxi, regional, or commuter air carrier that reported between 310,001 and 10 million available seat miles to the Department for that month. 67 FR 18477, codified at 14 CFR 330.43. (Indirect carriers reporting 310,000 or fewer, and from 310,001 to 10 million ASMs, were added to these two classes in a final rule published on August 20, 2002, 67 FR 54058–83.) The rule further stated that compensation for Class I carriers would be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation. Compensation for Class II carriers would be calculated using a graduated ASM rate equivalent to (i) the mean loss per ASM for all Class I carriers applying for compensation, for each of the first 310,000 ASMs reported and (ii) the mean loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000. 67 FR 18478, codified at 14 CFR 330.45(b).

Another subsection of the regulation set a "floor" for payment to qualifying set-aside carriers, equivalent to 25% of their direct and incremental transportation-related losses, to ensure that even air carriers with very high loss/ASM ratios would receive compensation at a rate more consistent with those being paid to larger carriers having high loss/ASM ratios. A further provision was necessary to ensure that carriers under the set-aside would not receive a higher percentage of compensation for losses, on average, than non set-aside carriers. Thus, we provided that compensation for set-aside carriers would not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination passenger-cargo air carriers that were not eligible for the set-aside funds. Finally, we provided that if a set-aside carrier would receive more

compensation under the Stabilization Act formula than under the set-aside formula, it would receive compensation at the higher amount (14 CFR 330.35(c)).

Important to these calculations are, of course, the amounts that represented the mean losses per ASM for Class I and Class II carriers. In the Preamble to the April rule, the Department made clear that these amounts could be calculated only after all applications had been received from Class I and II carriers, and only after the amounts of actual losses could be verified. However, for purposes of illustration, the Department offered estimates of the basis upon which each Class would be compensated, relying upon the forecasted losses made by the air carriers that had already applied and would qualify for Class I and Class II. As an example, for Class I carriers, the Department estimated that the mean loss per ASM was $0.82, based upon this preliminary data. Thus, for Class I carriers, the Department projected that a carrier with 100,000 ASMs might receive $82,000 in total compensation if this formula were used. For Class II carriers, the average losses might be expected to be in the range of 25 to 50 cents per ASM, but to achieve consistency with the compensation rates for the Class I carriers this amount would need to be averaged over the first 310,000 ASMs and those between 310,000 and 10 million. The Department projected that if the $0.82 per ASM rate were used for the initial 310,000 ASMs, the overall mean, based on these forecast data, would be reached by applying a rate of $0.19 per ASM for those over the first 310,000 ASMs. As an example, we estimated that a carrier with 750,000 ASMs might receive approximately $337,800 in total compensation under this formula. Again, we cautioned that these were estimates, and that, depending on the actual losses and ASMs that would be validated for set-aside applicants, the ASM rates for both Class I and Class II carriers could change. *See* 67 FR 18470.

The Department has now received and processed the carrier applications under the set-aside program. We have determined that the losses incurred by Class I carriers were significantly lower than our earlier estimates, averaging only $0.42 per ASM. This was primarily due to carriers reporting actual losses lower than they had forecast earlier, although disallowance of some claimed losses also played a part. Losses for Class II carriers, on the other hand, were more consistent with earlier estimates, ranging generally from 25 to 32 cents per ASM. We also found that the smallest carriers in Class I, those reporting fewer than 75,000 ASMs, reported losses that were on average significantly higher per ASM than the larger carriers in Class I.

As a result, air carriers in Class I have been processed for payments in amounts that are often less than anticipated. Also, the smallest of the carriers, because they have, on average, reported comparatively higher losses per ASM than other set-aside eligible carriers, still seem to have received disproportionately smaller amounts relative to those other carriers. On the other hand, because the verified loss amounts on a cumulative basis have been less than those we estimated, the Department has flexibility to modify the set-aside rule to provide more equitable treatment for the smaller set-aside carriers without disadvantaging the larger ones.

The Department published a Notice of Proposed Rulemaking on May 5, 2003, at 68 FR 23627. No comments were received in response to that notice. This final rule adopts the proposed rule without change.

The Rule

This action amends the definitions for the two classes of set-aside air carrier in 14 CFR 330.43. Class I will now consist of those carriers reporting 75,000 or fewer ASMs to the Department for the month of August 2001, while Class II will consist of those reporting between 75,001 and 10 million ASMs for that month. The set-aside formula for Class I carriers will be based on a mean ASM rate for that class of $0.984 per ASM. The formula for Class II carriers will be based on the rate of $0.984 for each of the first 75,000 ASMs, and $0.24 for each ASM from 75,001 to 10 million. Use of these mean ASM rates will not reduce the payments any set-aside carrier has received. They will increase the maximum possible payment for set-aside carriers that reported 310,000 or fewer ASMs, but, primarily, will increase payments to the smallest carriers in that group.

In addition to use of this formula for compensation, the Department may utilize several other alternatives as bases for compensation of set-aside carriers. These other alternatives are currently available under 14 CFR 330.45(c), and no change is being made to that subsection. Thus, the compensation paid to qualifying set-aside carriers will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses that they demonstrate to the satisfaction of the Department were incurred as result of the terrorist attacks. This will ensure that there is a "floor" of compensation at the 25 percent level available for extreme cases of loss.

In that same subsection, the Department had set a ceiling rate for compensation to ensure that set-aside carriers are not compensated at levels that would be excessive relative to other carriers. Passenger and combination passenger-cargo air carriers that were not eligible for the set-aside have received compensation computed at a mean of 71 percent of their losses. Accordingly, the Department will compensate set-aside carriers at that level if the amount that would be received is less than that computed under the set-aside formula.

Finally, the Department has noted that, in some unusual circumstances, the ASM-based formula established originally under the Stabilization Act would provide a greater level of compensation to a set-aside carrier than the 71 percent calculation based on the mean level of compensation for non set-aside carriers noted above. Because Congress afforded discretion to the Department in the Security Act to assist, not disadvantage, smaller carriers, we will provide compensation in this case based on the Stabilization Act formula, up to, but not to exceed, compensation for all air transportation-related losses.

Regulatory Analyses and Notices

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include approximately 50 small air carriers. The Department certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule will increase payouts to such a limited number of small air

carriers. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

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 Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does 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. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

Immediate Effective Date

The Department is making this rule effective immediately upon publication. The Department finds good cause to do so based on the importance of implementing this rule immediately to be able to enable the Department to make payments under the adjusted compensation formula to eligible air carriers. These eligible air carriers are typically among the smallest and most economically vulnerable participants in the industry, who have been awaiting compensation payments for many months.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs-Transportation, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 330 as follows:

PART 330—[AMENDED]

■ 1. The authority citation for 14 CFR part 330 continues to read as follows:

Authority: Pub. L. 107–42. 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 155 Stat. 631 (49 U.S.C. 40101 note).

■ 2. Revise § 330.43 (a) and (b) as follows:

§ 330.43 What classes of air carriers are eligible under the set-aside?

* * * * *

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

■ 3. Revise § 330.45 (b)(2) (i) and (ii) as follows:

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

* * * * *

(b) * * *

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to—

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

* * * * *

Issued in Washington, DC this 22nd day of July, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–19240 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–025]

RIN 1625–AA00

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. This temporary safety zone is necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. (PDT) on August 31, 2003 until 10 p.m. (PDT) on August 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–025] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date close in time to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. The fireworks will be launched from an area on land, however, the fallout area will be over a section of the Colorado River and a safety zone on this section of the river is necessary to provide for the safety of the users of this waterway.

Discussion of Rule

The Coast Guard proposes to establish this temporary rule to provide for the safety of the participants, spectators and other users of the waterways. The temporary safety zone is specifically defined as that portion of the Colorado River 1000 yards north of Veterans Bridge. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

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

Due to the temporary safety zone's short duration of two hours, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 10 p.m. on August 31, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The temporary safety zone's short duration of two hours on one day, The late hour when traffic is low, and the ability of the COTP to authorize entry if necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are required for this rule and can be viewed in the docket.

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

■ 2. Add a new § 165.T11–043 to read as follows:

§ 165.T11–043 Safety Zone: Colorado River, Laughlin, Nevada.

(a) *Location.* The safety zone includes that portion of the Colorado River extending 1000 yards north of Veterans Bridge.

(b) *Enforcement period.* This section will be in enforced from 8 p.m. (PDT) on August 31, 2003 until 10 p.m. (PDT) on August 31, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the designated representative. The designated representative may be contacted via VHF-FM channel 16. The designated representative for this event will be Frank Shaves of the Nevada Division of Wildlife.

Dated: July 17, 2003.

Stephen P. Metruck,

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

[FR Doc. 03–19256 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7543]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim 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.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Montgomery.	City of Montgomery.	May 28, 2003, June 4, 2003, *Montgomery Advertiser.*	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, City Hall, P.O. Box 1111, Montgomery, Alabama 36101–1111.	August 5, 2003	010174 G
Connecticut: Tolland.	Town of Coventry	June 24, 2003, *The Chronicle.*	Mr. John Elsesser, Manager of the Town of Coventry, Coventry Town Hall, 1712 Main Street, Coventry, Connecticut 06238.	September 25, 2003.	090110 C
Delaware: New Castle.	Unincorporated Areas.	July 3, 2003, July 10, 2003, *The News Journal.*	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	October 9, 2003 ...	105085 G&H
Florida: Dade	City of Miami	July 7, 2003, July 14, 2003, *The Miami Herald.*	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	July 26, 2003	120650 J
Florida: Santa Rosa.	Unincorporated Areas.	June 4, 2003, June 11, 2003, *The Press Gazette.*	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	May 28, 2003	120274 C
Georgia: Bryan	Unincorporated Areas.	June 19, 2003, June 26, 2003, *Bryan County News.*	Mr. Brooks Warnell, Chairman of the Bryan County Board of Commissioners, P.O. Box 430, Pembroke, Georgia 31321.	September 25, 2003.	130016 A
Maine: Camden	Town of Camden	June 26, 2003, July 3, 2003, *The Camden Herald.*	Ms. Roberta Smith, Camden Town Manager, P.O. Box 1207, Camden, Maine 04843.	June 18, 2003	230074 B
Pennsylvania: Chester.	Township of East Fallowfield.	July 2, 2003, July 9, 2003, *Daily Local News.*	Mr. Earl Emel, Chairman of the Township of East Fallowfield Board of Supervisors, 2264 Strasburg Road, East Fallowfield, Pennsylvania 19320.	June 25, 2003	421479 D
Pennsylvania: Lebanon.	Township of North Cornwall.	June 13, 2003, June 20, 2003, *Lebanon Daily News.*	Ms. Robin Getz, Lebanon County Planning and Zoning Department, 400 South Eight Street, Lebanon, Pennsylvania 17042.	September 19, 2003.	420576 C
South Carolina: Richland.	Unincorporated Areas.	May 20, 2003, May 27, 2003, *The State.*	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box 192, Columbia, South Carolina 29202.	May 12, 2003	450170 H
South Carolina: Richland.	Unincorporated Areas.	June 5, 2003, June 12, 2003, *The State.*	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box 192, Columbia, South Carolina 29202.	May 29, 2003	450170 H

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19243 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective date for these modified base flood elevations are indicated on the following table and review the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to polices established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland:					
Harford (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 10, 2003, Jan. 17, 2003 *The Aegis.*	Mr. James M. Harkins, Harford County Executive, 220 South Main Street, Bel Air, Maryland 21014.	April 18, 2003	240040 D
Washington (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 17, 2003, Jan. 24, 2003, *The Herald Mail.*	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	April 25, 2003	240070 B
New Jersey:					
Union (FEMA Docket No. D–7535).	Township of Berkeley Heights.	Jan. 15, 2003, Jan. 22, 2003, *The Courier-News.*	The Honorable David A. Cohen, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922.	April 23, 2003	340459 E
Middlesex (FEMA Docket No D–7537).	Borough of South Plainfield.	Feb. 21, 2003, Feb. 28, 2003, *The Observer.*	The Honorable Daniel Gallagher, Mayor of the Borough of South Plainfield, Municipal Building, 2480 Plainfield Avenue, South Plainfield, New Jersey 07080.	May 30, 2003	340279 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Commonwealth (FEMA Docket No. D–7535).	Puerto Rico	Jan. 7, 2003, Jan. 24, 2003, *The San Juan Star.*	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902.	April 25, 2003	720000 C
West Virginia: McDowell (FEMA Docket No. D–7535).	Unincorporated Areas.	Feb. 21, 2003, Feb. 28, 2003, *The Welch News.*	Mr. B. G. Smith, McDowell County Administrator, 90 Wyoming Street, Suite 109, Welch, West Virginia 25801.	April 16, 2003	540114 B
Wisconsin: Pierce (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 15, 2003, Jan. 22, 2003, *Pierce County Herald.*	Mr. Richard Truax, Pierce County Board Chairman, P.O. Box 128, Ellsworth, Wisconsin 54011.	April 21, 2003	555571 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19244 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ◊Elevation in feet (NAVD) Modified
Illinois	Monmouth (City) Warren County (FEMA Docket No. 7623).	Unnamed Creek		*766
Maps are available for inspection at the Zoning Office, 100 East Broadway, Monmouth, Illinois.				
Iowa	Hancock County (Unincorporated Areas) (FEMA Docket No. 7623).	Bear Creek Winnebago River.		*1,205
Maps are available for inspection at Hancock County Courthouse, 855 State Street, Garner, Iowa.				
Kansas	Manhattan (City) Riley County (FEMA Docket No. 7401).	Kansas River	Approximately 3,600 feet downstream of State Highway 177	*1,013
			Approximately 2,000 feet downstream of State Highway 177 (at County Boundary)	*1,015
			Approximately 1,600 feet upstream of State Highway 177	*1,018
		Wildcat Creek	Just downstream of the Union Pacific Railroad	*1,020
			Just upstream of K–18 Highway	*1,025
			Approximately 9,200 feet upstream of confluence with Little Kitten Creek	*1,060
		Little Kitten Creek	Approximately 1,750 feet above confluence with Wildcat Creek	*1,055
			Approximately 3,700 feet upstream of Kimball Avenue	*1,144
Kansas	Manhattan (City) Riley County (Cont'd) (FEMA Docket No. 7401).	Virginia-Nevada Tributary	At confluence with Wildcat Creek	*1,038
			At upstream side of Dickens Avenue	*1,068
		CI–CO Tributary	At Anderson Avenue	*1,051
			Approximately 1,560 feet upstream of Clafin Road	*1,076
Maps are available for inspection at the Community Development Office, 1101 Poyntz Avenue, Manhattan, Kansas.				
Kansas	Riley (City) Riley County (FEMA Docket No. 7254).	Wildcat Creek Tributary	Just downstream of Chestnut Street	*1,270
			Approximately 450 feet upstream of Walnut Street	*1,281
Maps are available for inspection at the City of Riley, City Hall, 902 North Noble, Riley, Kansas.				
Kansas	Riley County (Unincorporated Areas) (FEMA Docket No. 7401).	Kansas River	At downstream county boundary	*900
			Approximately 5,700 feet upstream of confluence with Big Blue River	*1,013
Kansas	Riley County (Cont'd) (Unincorporated Areas) (FEMA Docket No. 7401).	Kansas River	Approximately 11,800 feet downstream of the confluence with Dry Branch	*1,041
			Approximately 1,000 feet downstream of Wildcat State Highway 18	*1,048
		Wildcat Creek	At confluence with Kansas River	*1,019
			Approximately 4,600 feet upstream of confluence with Little Kitten Creek	*1,055
			Approximately 1,000 feet downstream of North Scenic Drive	*1,062
		Little Kitten Creek	At confluence with Wildcat Creek	*1,051
			Just downstream of Anderson Avenue	*1,061
	Eureka Valley Tributary	At confluence with Sevenmile Creek.		*1,034
			Approximately 300 feet upstream of State Highway 18	*1,037
			Just downstream of Wildcat Creek Road	*1,073

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ◊Elevation in feet (NAVD) Modified
Kansas	Riley County (Cont'd) Unincorporated Areas) FEMA Docket No. 7401).	CI–CO Tributary	At confluence with Wildcat Creek	*1,045
			Just upstream of Missouri, Kansas, and Texas Railroad	*1,051
Maps are available for inspection at the Riley County Planning and Zoning Office, 110 Courthouse Plaza, Manhattan, Kansas.				
Louisana	Delcambre (Town) Iberia and Vermilion Parishes (FEMA Docket No. 7609).	Gulf of Mexico	Intersection of South Railroad Street and East Charity Street	*10
			Intersection of North Railroad Street and Kirk Street	*9
Maps are available for inspection at the Office of the Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre, Louisiana.				
Wisconsin	Darlington (City) Lafayette County (FEMA Docket No. 7623).	Pecatonica River	Approximately 200 feet downstream of Main Street	*823
			At upstream corporate limit, approximately 1,650 feet upstream of the Union Pacific Railroad	*827
Maps are available for inspection at City Hall, 627 Main Street, Darlington, Wisconsin.				
Wisconsin	Lafayette County (Unincorporated Areas) (FEMA Docket No. 7623).	Pecatonica River	Approximately 1,000 feet upstream of the confluence of Vinegar Branch at the City of Darlington corporate limits	*822
			Just downstream of the Union Pacific Railroad, approximately 2,500 feet downstream of Ferndale Road	*841
Maps are available for inspection at Lafayette County Courthouse, 627 Washington Street, Darlington. Wisconsin.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19247 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
ALABAMA	
Pike Road (Town), Montgomery County (FEMA Docket No. D–7558)	
Little Catoma Creek:	
Approximately 1.5 miles upstream of the confluence of Little Catoma Creek Tributary 1	*226
Approximately 2.7 miles upstream of the confluence of Little Catoma Creek Tributary 1	*232
Little Catoma Creek Tributary 1:	
Approximately 4,400 feet upstream of the confluence with Little Catoma Creek	*225
Approximately 3,300 feet downstream of Carter Mill Road	*239
Maps available for inspection at the Pike Road Town Office, 915 Meriweather Road, Pike Road, Alabama.	
WEST VIRGINIA	
Smithers (Town), Fayette and Kanawha Counties (FEMA Docket No. D–7556)	
Smithers Creek:	
Approximately 60 feet upstream of confluence with Kanawha River	*626
Approximately 640 feet upstream of County Route 22	*652
Maps available for inspection at the Smithers Town Hall, 175 Michigan Avenue, Smithers, West Virginia	
WEST VIRGINIA	
White Sulphur Springs (City), Greenbrier County (FEMA Docket No. D–7564)	
Howard Creek:	
Approximately 850 feet downstream of Greenbrier Avenue	*1,839
At upstream corporate limits	*1,887
Dry Creek:	
At the confluence with Howard Creek	*1,848
Approximately 0.45 mile of Interstate Route 64	*1,883
Maps available for inspection at the White Sulphur Springs City Hall, 34 West Main Street, White Sulphur Springs, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19245 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed.

These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) Modified	Communities affected
Joe's Lake: Entire shoreline	*952	FEMA Docket No. 7625. City of Cambridge, OK. Isanti County, OK. (Unincorporated Areas).
Long Lake: Entire shoreline	*919	Isanti County, OK. (Unincorporated Areas).

*National Geodetic Vertical Datum
Addresses:
Unincorporated Areas of Isanti County, Minnesota:
Maps are available for inspection at Isanti County Courthouse, 555 18th Avenue SW, Cambridge, Minnesota.
City of Cambridge:
Maps are available for inspection at City Hall, 626 N. Main Street, Cambridge, Minnesota.

Grand Lake O'the Cherokees Entire shoreline	*756	(FEMA Docket No. 7619). Town of Grand Lake Towne.
Unnamed Tributary to Spavinaw Creek approximately 750 feet upstream of the confluence with Spavinaw Creek.	*637	Town of Spavinaw, OK.
Neosho River/Lake Hudson Entire shoreline	*639	Town of Strang, OK.

*National Geodetic Vertical Datum
Addresses:
Town of Grand Lake Towne:
Maps are available for inspection at the Town Hall, Grand Lake Towne, Oklahoma.
Town of Spavinaw:
Maps are available for inspection at the Town Hall, 215 Lake Avenue, Spavinaw, Oklahoma.
Town of Strang:
Maps are available for inspection at the Town Hall, Strang, Oklahoma.

Big Cabin Creek: Just upstream of the confluence with Neosho River	*639	(FEMA Docket No. 7611). Mayes County, OK. (Unincorporated Areas).
Big Cabin Creek: Approximately 550 feet upstream of Abandoned County Road	*642	(FEMA Docket No. 7611). Mayes County, OK. (Unincorporated Areas).
Lake Hudson: Entire shoreline	*637	Mayes County, OK. (Unincorporated Areas). Town of Salina, OK.
Neosho River:		

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) Modified	Communities affected
Approximately 2,500 feet downstream of Strang Road	*637	Mayes County, OK. (Unincorporated Areas). Town of Langley, OK.
Just downstream of Pensacola Dam	*649	Town of Disney, OK.
Summerfield Creek:		
At the confluence with Neosho River	*648	Mayes County, OK. (Unincorporated Areas).
Approximately 6,200 feet upstream of N4475 Road	*658	Town of Disney, OK.
Salt Branch Creek:		
Just upstream of Maple Street	*611	Mayes County, OK. (Unincorporated Areas).
Approximately 100 feet downstream of N4330 Road	*633	City of Pryor Creek, OK.

*National Geodetic Vertical Datum

Addresses:

Unincorporated Areas of Mayes County, Oklahoma:

Maps are available for inspection at the Mayes County Courthouse, Pryor Creek, Oklahoma.

City of Pryor Creek:

Maps are available for inspection at the City Hall, 6 North Adair Street, Pryor Creek, Oklahoma.

Town of Disney:

Maps are available for inspection at the Town Hall, 101 Main Street, Disney, Oklahoma.

Town of Langley:

Maps are available for inspection at City Hall, 3rd Street and Osage Avenue, Langley, Oklahoma.

Town of Salina:

Maps are available for inspection at the Town Hall, Salina, Oklahoma.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19246 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 587

[Docket No. NHTSA–03–15742]

RIN 2127–AI05

Federal Motor Vehicle Safety Standards; Side Impact Protection; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Pursuant to the agency's grant of a petition for rulemaking from Mr. James E. Stocke, NHTSA updates the Federal motor vehicle safety standards on side impact protection and fuel system integrity by providing that radial tires of certain specifications, instead of bias ply tires, be used on the moving barriers specified in these standards. In conjunction with that update, NHTSA also deletes certain outdated or inaccurate specifications for the moving barriers in the fuel system integrity standard.

DATES: This final rule is effective September 29, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 12, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *For technical and policy issues:* Dr. William Fan, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4922. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On February 3, 2000, Mr. James E. Stocke, a retired automotive safety engineer, submitted a petition for rulemaking requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 301, *Fuel System Integrity* (49 CFR 571.301), to provide that the moving barrier assembly be equipped with P205/75R15 radial tires inflated to 207 kPa (30 psi), replacing the currently specified G78–15 bias ply tires inflated to 165 kPa (24 psi). Mr. Stocke stated that the bias tire size designation referenced in FMVSS No. 301 was outdated 15 years ago and that bias tires are no longer readily available because they have been replaced with radial tires. Mr. Stocke noted that the Society of Automotive Engineers, Inc. (SAE) J972 Recommended Practice "Moving Rigid Barrier Collision Tests" was revised (in August 1997) to specify both P205/75R15 radial tires and G78–15 bias ply tires for use on moving barriers. In a letter dated August 16, 2000, NHTSA granted Mr. Stocke's petition for rulemaking.

FMVSS No. 214, *Side impact protection* (49 CFR 571.214), and FMVSS No. 301 specify impact tests using moving barriers. Paragraph S6.10 of FMVSS No. 214 contains specifications for a 1,367 kilogram

(3,000 pound) moving deformable barrier. FMVSS No. 301 contains specifications for two 1,814 kilogram (4,000 pound) moving rigid barriers: a moving flat rigid barrier (Paragraphs S7.2 and S7.3), and a moving contoured rigid barrier (Paragraph S7.5). Both FMVSS No. 301 moving barriers are used to assess vehicle fuel system integrity. The FMVSS No. 301 moving flat rigid barrier is used for testing passenger cars, multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less. The FMVSS No. 301 moving contoured rigid barrier is used for testing large school buses with a GVWR greater than 4,536 kilograms (10,000 pounds). The FMVSS No. 214 moving deformable barrier is used for side impact testing of passenger cars, and multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. G78–15 bias ply tires are currently specified for the FMVSS No. 301 barriers.[1]

The tire specifications for the FMVSS No. 214 moving barrier are not specified in FMVSS No. 214. Instead, S6.10 of FMVSS No. 214 incorporates by reference the moving barrier specified in 49 CFR part 587, subpart B, Side Impact Moving Deformable Barrier. The tire specifications for that barrier are contained in Drawing DSL–1278, Sheet 2 of 2, Item -11 and Note 8. Item -11 specifies "Bias belted tire (BF Goodrich—G78–15 CLM)." In October 1991, Note 8 was added to drawing DSL–1278 that states "Bias belted tire, size P215/75B15, may be substituted for that specified in -11. Inflate to recommended pressure."

II. Summary of the Notice of Proposed Rulemaking (NPRM)

On October 10, 2001, the agency published a NPRM proposing amendments to FMVSS Nos. 214 and 301 to require radial tires of certain specifications and also proposing to delete certain outdated or inaccurate specifications for the moving barriers in FMVSS No. 301. (66 FR 51629, Docket No. NHTSA–01–10435). In that notice, NHTSA discussed several considerations regarding Mr. Stocke's petition.

First, the agency noted that with the increased use of the radial tire design over the past 30 years in the U.S., the bias ply tire design had become virtually obsolete. Consequently, bias ply tires were not currently or readily available to testing laboratories and would become even more difficult for the laboratories to obtain in the future. Also, the agency noted that the SAE J972 Recommended Practice "Moving Rigid Barrier Collision Tests" now includes specifications for radial tires as well as for bias ply tires. Both P205/75R15 and P215/75R15 radial tires are readily available at present and are widely recommended for use by vehicle manufacturers on passenger cars, small passenger vans, and small sport utility vehicles.

Another consideration discussed by the agency was the potential effect on ride height (the height of the center of gravity) and vertical motion (bounce) of a moving barrier if tires different from those currently specified in FMVSS Nos. 214 and 301 were used on those barriers. Bias ply tires and radial tires are different in design and construction; therefore, they exhibit different performance characteristics. The radial construction creates a tread that is stiffer and a sidewall that is more flexible than that of a bias ply tire. These factors would affect the performance of moving barriers.[2]

In addition to discussing considerations arising out of the petition, the agency summarized related barrier tire research conducted by Ford Motor Company (Ford) and the revised SAE J972 Recommended Practice. After careful review of the study and the SAE Recommend Practice, NHTSA tentatively concluded that the P215/75R15 radial tire inflated to 221 kPa (32 psi) would be an appropriate alternative to the G78–15 bias ply tire for use on the FMVSS No. 214 moving deformable barrier and that the P205/75R15 tires inflated to 207 kPa (30 psi) would be appropriate for use on both moving rigid barriers specified in FMVSS No. 301.

As a result of these conclusions, NHTSA proposed specifying either P215/75R15 tires inflated to 221 kPa (32 psi) or P205/75R15 tires inflated to 207 kPa (30 psi) for use on FMVSS Nos. 214 and 301 moving barriers. NHTSA stated that it would pick one of these tires and specify it in the final rule for all moving barriers.

The agency also indicated that prior to making a final decision, the agency would assess the extent to which the substitution of a tire may have unintended effects on either (1) the ride height, or (2) the impact performance of the FMVSS Nos. 214 and 301 moving barriers. For example, in attempting to find a set of appropriate radial tires (tire size and inflation pressure) for use on the FMVSS No. 214 barrier, NHTSA expressed concern that a set of four incorrectly inflated tires could result in excessive barrier vertical motion during the towing process, which could have made it difficult to stay within the +/ 20 mm (0.8 inch) vertical displacement guideline.[3] NHTSA solicited comments and laboratory test data concerning these matters.

In conjunction with the proposal, NHTSA proposed that the tread width specification be deleted from the tire specifications in FMVSS No. 301. The tread width specification for radial tires is unnecessary because the radial tire size designation is sufficient to define tread width.

Finally, the agency proposed that the moment of inertia specifications for the moving contoured barrier be removed from FMVSS No. 301 because, based on the current measurements, excepting the moments of inertia, the FMVSS No. 301 moving contoured barrier could be constructed to the barrier specifications with the dimensional drawings and the specified center of gravity. In addition, there are no moments of inertia specified for the FMVSS No. 301 moving flat barrier.

III. Summary of Comments on the NPRM

NHTSA received comments on the October 2001 NPRM from General Motors North America (GM), Ford Motor Company (Ford), and Volkswagen (VW). The comments are summarized below.

All three commenters generally supported the amendments proposed in the NPRM.

With regard to tire-type and inflation pressure, GM commented that either tire-type proposed by the agency would be appropriate for use on FMVSS Nos. 214 and 301 moving barriers and

[1] Paragraph S7.5.4 of FMVSS No. 301 specifies G78–15 bias ply tires for use on the moving contoured rigid barrier. The requirements for the FMVSS No. 301 moving flat rigid barrier do not specify bias ply tires, but, in practice, the moving flat rigid barrier utilizes the identical under-structure and G78–15 bias ply tires as the moving contoured rigid barrier.

[2] The moving barrier tests in FMVSS Nos. 214 and 301 specify a static barrier ride height, an important impact parameter measurement. Further, the Laboratory Test Procedure in FMVSS No. 214 provides a guideline for barrier vertical displacement. Because a radial tire has a lower profile and a more flexible sidewall than a bias ply tire, the use of radial tires, rather than bias ply tires, on the moving barriers specified in FMVSS Nos. 214 and 301 could affect the barrier ride height (the center of gravity height and/or barrier contact height). Additionally, if an improper tire inflation pressure is used, it may affect the barrier's vertical motion as it is being towed during the test.

[3] To control the impact height in the impact test in FMVSS No. 214, NHTSA's Office of Vehicle Safety Compliance specifies a vertical displacement guideline of +/ 20 mm (0.8 inch) in its Laboratory Test Procedure. (This guideline only applies to NHTSA contractors conducting FMVSS No. 214 side impact compliance tests.)

suggested an inflation range between 179 kPa and 221 kPa (26 psi–32 psi). Ford said that either proposed tire-type and respective inflation pressure would perform satisfactorily, but recommended that the P215/75R15 tire, inflated to 221 kPa (32 psi), be adopted for use on all moving barriers specified in FMVSS Nos. 214 and 301. Both Ford and GM provided data supporting their conclusions. VW supported the use of the P205/75R15 tire inflated to 207 kPa (30 psi) on all moving barriers specified in FMVSS Nos. 214 and 301.

With respect to the tread width specification, GM and Ford supported the agency's proposal to delete the outdated specification from FMVSS No. 301.

GM and Ford both concurred with the agency's proposal to delete the inaccurate moment of inertia specified in FMVSS No. 301. GM, however, recommended that NHTSA request test laboratories to provide moments of inertia for their moving barriers for further examination. Ford recommended that NHTSA consider specifying the moments of inertia for the common carriage of moving barriers prescribed in FMVSS No. 301.

Finally, GM recommended that NHTSA standardize the language of the moving barrier standards so that the text of FMVSS No. 301 would read similarly to that of S6.10 of FMVSS No. 214.

IV. Agency Decision Regarding the Final Rule

A. Tire-type and Inflation Range

Based on test data presented by GM and Ford, tire inflation pressure, rather than tire-type, appears to be a more critical element for various test facilities conducting moving barrier tests. GM has conducted FMVSS No. 214 tests using P205/75R15 tires inflated to 193 kPa (28 psi) with satisfactory results and at present is using 215/75R15 tires inflated to 193 + − 14 kPa (28 + − 2 psi) in all of its FMVSS No. 301 moving barrier tests. Pursuant to its testing, Ford recommends P215/75R15 tires inflated to 221 kPa (32psi) for use on the FMVSS No. 214 moving barrier. However, Ford believes that either tire-type would work well. Based on the comments and the data, NHTSA concludes that either tire-type, inflated to a pressure between 179 kPa and 221 kPa (26 psi–32 psi), would perform satisfactorily. Since either tire-type is reported to do well when properly inflated and since SAE J972 has already incorporated a specification for P205/75R15 radial tires inflated to 207 kPa (30 psi) for use on moving barriers, NHTSA adopts P205/75R15 tires inflated to between 179 kPa and 221 kPa (26 psi–32 psi) for use on all moving barriers specified in FMVSS Nos. 214 and 301.

B. Tread Width Specifications

Commenters supported the agency's proposal to delete the tread width specification in FMVSS No. 301. Therefore, the agency adopts the proposal to delete the tread width specification from FMVSS No. 301.

C. Moments of Inertia

Both GM and Ford concurred with the agency's proposal to delete the inaccurate moments of inertia for the moving contoured barrier from FMVSS No. 301. However, Ford recommended that NHTSA consider specifying moments of inertia for the common carriage of the moving barriers. GM recommended that NHTSA ask test laboratories to provide the moment of inertia of their moving barriers and that NHTSA consider these specifications, as appropriate, in a future rulemaking.

In response to Ford's recommendation, NHTSA notes that the moments of inertia of the common carriage are only a part of, and do not have a critical effect on, the resultant moments of inertia of the moving flat and contoured barriers specified in FMVSS No. 301. Because the moment of inertia of a concentrated mass is the product of the mass and the square of the distance between the mass and the axis of rotation, the distance between a component mass and the center of gravity of the moving barrier is more important than the mass itself in determining the moments of inertia of the moving barrier. Because of this distance from the center of gravity of the moving barrier, components such as the contoured contact face of the barrier and the ballast weights would have a greater influence than the common carriage on the moments of inertia of the moving barrier. Therefore, the agency concludes that it is unnecessary to define the moments of inertia for the common carriage.

In response to GM's suggestion that NHTSA request test laboratories to provide moment of inertia data for further rulemaking, NHTSA does not believe that re-defining the moment of inertia of the moving contoured barriers would affect testing results. The moments of inertia of the moving contoured barrier are a dynamic structural property of, rather than a primary design criterion for, the moving barrier. Therefore, the moving barrier structure, as constructed according to FMVSS No. 301 specifications, determines the moments of inertia. FMVSS No. 301 specifies the component cross-section, the structure dimension, the weight distribution, the ballast location, and the center of gravity for the moving contoured barrier. Based on these specifications, the construction of all moving barriers is very similar. Consequently, the moments of inertia of the moving contoured barrier would also be very similar. For this reason, the agency has decided not to pursue GM's recommendation.

D. Standardizing Language

The agency believes that GM's suggestion to standardize the language in all moving barrier standards has merit. Because the agency has not considered the effects of standardizing this language, it will not adopt the suggestion in this final rule. The agency, however, will consider this suggestion in the course of future rulemakings concerning moving barriers.

V. Effective Date

The bias ply tires currently specified in FMVSS No. 301 are not readily available to testing laboratories at present and will be even more difficult to obtain in the future. Vehicle manufacturers currently recommend both P205/75R15 and P215/75R15 radial tires proposed in the NPRM for use on passenger cars, multi-purpose passenger vehicles, and light trucks. The agency has noted that certain laboratories have adopted the aforesaid radial tires for use on moving barriers specified in FMVSS Nos. 214 and 301. In view of this, the agency has decided to make that final rule effective September 29, 2003.

VI. Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This final rule has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to update regulatory procedures that have been in effect for over 25 years. In most cases, the effect of the proposed amendments will be to relax or eliminate burdens on regulated entities. The tires specified in the proposed rule are more readily available than those currently specified. Further, they are already widely recommended by voluntary standards organizations for use by vehicle manufacturers for testing. Accordingly, there will be no increase in the cost of tires used for testing. Further, we do not

anticipate any impact on the ability to conduct valid tests or any other impact on the cost or ease of testing. Thus, the impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. NHTSA certifies that this action would not have a significant economic impact on a substantial number of small entities. This action merely replaces an outdated tire specification for testing devices with an equivalent current tire specification.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. NHTSA has reviewed this final rule and determined that it does not contain collection of information requirements.

Unfunded Mandates Reform Act of 1995

This rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12778 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this action 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 safety that may disproportionately affect children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide explanations when we decide not to use available and applicable voluntary consensus standards. We note that the radial tire specifications contained in SAE J972 Recommended Practice "Moving Rigid Barrier Collision Tests" are a voluntary consensus standard and that we have incorporated them into FMVSS Nos. 214 and 301.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

E.O. 13132 requires NHTSA 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." E.O. 13132 defines the term "Policies that have federalism implications" 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 E.O. 13132, NHTSA may not issue a regulation that has federalism implication, 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 NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The rule 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 E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

VII. Regulatory Text

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

49 CFR Part 587

Incorporation by reference, Motor vehicle safety.

■ In consideration of the foregoing, 49 CFR parts 571 and 587 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.301 is amended by revising S7.5.2, S7.5.4 and S7.5.5; by removing S7.5.6; and by adding S7.6 to read as follows:

§ 571.301 Standard No. 301, Fuel system integrity.

* * * * *

S7.5.2 The moving contoured barrier, including the impact surface, supporting structure, and carriage, has a mass of 1,814 kg ± 23 kg with the mass distributed so that 408 kg ± 11 kg is at each rear wheel and 499 kg ± 11 kg is at each front wheel. The center of gravity is located 1,372 mm ± 38 mm rearward of the front wheel axis, in the vertical longitudinal plane of symmetry, 401 mm +/ − 13 mm above the ground.

* * * * *

S7.5.4 The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with American Society of Testing and Materials Method E: 274–65T at 64 km/h, omitting water delivery as specified in paragraph 7.1 of that method.

S7.5.5 The barrier assembly is released from the guidance mechanism immediately prior to impact with the vehicle.

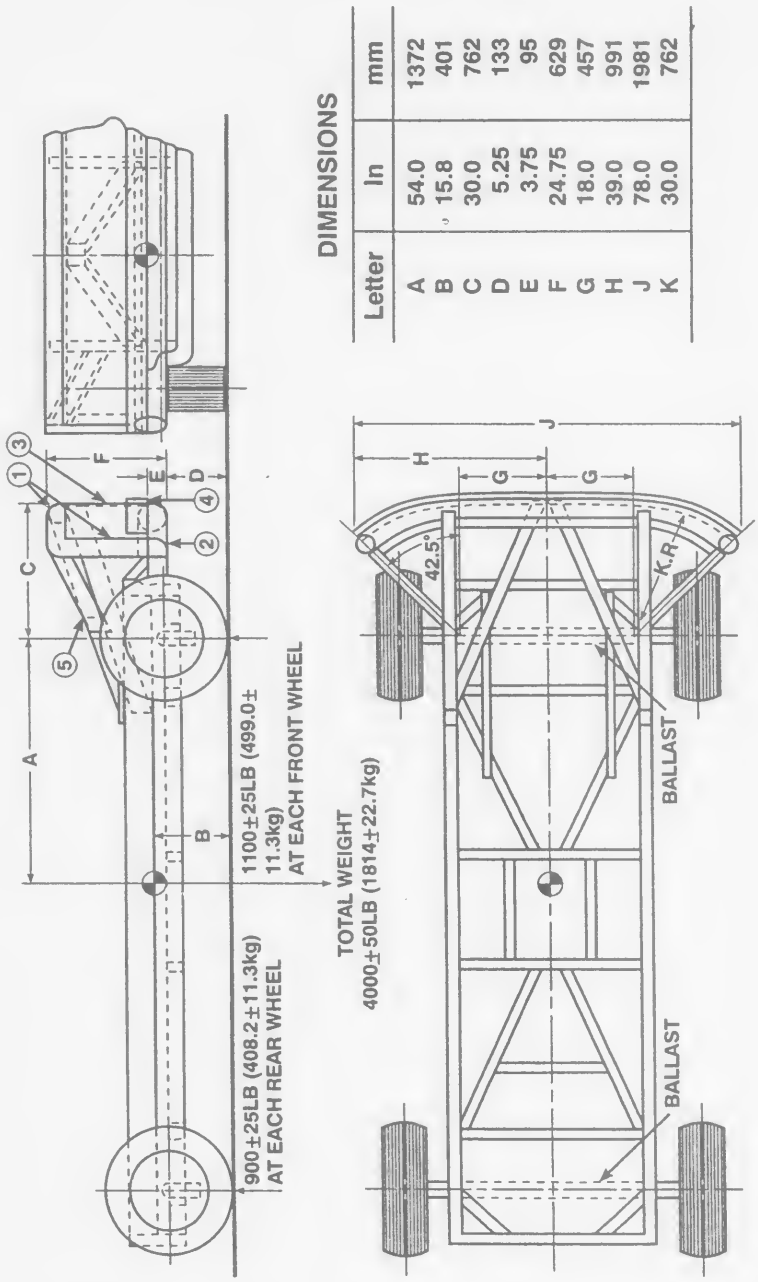
S7.6 The moving barrier assemblies specified in S7.2, S7.3 and S7.5 are

equipped with P205/75R15 pneumatic tires inflated to 200 kPa +/− 21 kPa.

* * * * *

■ 3. Figure 2 at the end of section 571.301 is revised to read as follows:

BILLING CODE 4910–59–P



NOTES:

1. UPPER FRAME 4.0 IN DIA X 0.25 IN WALL (102 mm DIA X 6 mm WALL) STEEL TUBING (THREE SIDES).
2. LOWER FRAME 6.0 IN DIA X 0.50 IN WALL (152 mm DIA X 13 mm WALL) STEEL TUBING.
3. FACE PLATE 0.75 IN (19 mm) THICK COLD ROLLED STEEL.
4. LEADING EDGE 1.0 X 4.0 IN (25 X 102 mm) STEEL BAND, SHARP EDGES BROKEN.
5. ALL INNER REINFORCEMENTS 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.

Fig. 2 – Common Carriage with Contoured Impact Surface Attached

PART 587—DEFORMABLE BARRIERS

■ 4. The authority citation for part 587 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 5. Section 587.6 is amended by revising paragraph (b)(1) to read as follows:

§ 587.6 General description.

* * * * *

(b) * * *

(1) The specifications for the final assembly of the moving deformable

barrier are provided in the drawings shown in DSL–1278, dated June 2002.

* * * * *

Issued on: July 23, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–19261 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–3170–02; I.D. 101702B]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Amendment 72/64 To Revise Recordkeeping and Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64). This action will revise certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota (CDQ) Program for the Pacific halibut fishery. This action is necessary to improve IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to sablefish and to further the goals and objectives of the groundfish Fishery Management Plans (FMPs).

DATES: This regulation becomes effective on August 28, 2003.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 72/64 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907–586–7247. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska according to fishery management plans (FMPs) prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600.

The commercial halibut fishery in and off Alaska is managed under the Individual Fishing Quota (IFQ) program and the Western Alaska Community Development Quota (CDQ) program codified at 50 CFR part 679. The IFQ Program, a limited access management system for the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off Alaska, was approved by NMFS in January 1993 and fully implemented beginning in March 1995. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery and the CDQ program for halibut are implemented by Federal regulations promulgated under the authority of the Halibut Act.

Purpose and Need for Amendment 72/64

This action amends the regulatory text for some of the Recordkeeping and Reporting (R&R) requirements for the groundfish fishery, the IFQ program for halibut and sablefish, and the CDQ program for halibut. Revisions are made to the regulatory text to accommodate the procedural changes.

IFQ Vessel Clearance

Currently, regulations require that vessels with IFQ halibut or sablefish catch leaving the jurisdiction of the Council check in with NOAA Fisheries Office for Law Enforcement (OLE) at a certified "primary" port and have the vessel's hold sealed prior to departure. OLE personnel are not currently able to effectively determine catch quantity at the primary port and are unable to seal a vessel's hold without compromising vessel safety. The requirement for a Vessel Clearance is removed with this action.

IFQ Shipment Report and Product Transfer Report (PTR)

The function of the shipment report and the PTR is to document the movement of fish product. The PTR was designed for completion by a processor manager or operator to report to NMFS the movement of groundfish. The shipment report was designed for completion by a Registered Buyer to report to NMFS the movement of IFQ halibut, CDQ halibut and IFQ sablefish. In many cases, the manager or operator of a processor is also a Registered Buyer. The regulations require that both forms be completed, regardless of any duplication of effort. This action consolidates the shipment report into the PTR. The result is that the operator or manager that is also a Registered Buyer can document all fish in a shipment on one form. The revised PTR also works for the participant that is only an operator, manager or a Registered Buyer. The result for NMFS is one standard form. This action eliminates the shipment report and allows the collection of necessary information with fewer paperwork requirements.

IFQ Prior Notice of Landing (PNOL)

In the IFQ program, fishers are required to notify OLE before IFQ species are offloaded. This requirement provides OLE agents and officers the time necessary to travel to unmanned ports throughout Alaska to monitor specific IFQ offloads and to gather specifics about a vessel's catch prior to landing. In addition, the PNOL helps International Pacific Halibut Commission (IPHC) port samplers meet and interview the skipper during the offload and allows port samplers to optimally sample the landings and collect logbook information.

The PNOL is made by toll-free telephone to OLE a minimum of six hours before landing fish. As part of the PNOL, fishers must name the Registered

Buyer to whom they plan to deliver their fish.

This rule changes the time limit for the PNOL from 6 hours to 3 hours before landing. This action relieves restrictions on vessel operators by providing them additional time to seek markets prior to reporting the time and location of a landing. This rule also changes the requirement from naming a specific Registered Buyer to naming the place of landing. Requiring vessel operators to report a "location of landing" rather than a "Registered Buyer" provides shoreside data-collection and OLE personnel with the location of the landing while not requiring a vessel to deliver to a specific processor. This provides vessels additional flexibility to market their product.

IFQ Departure Report

The departure report was created as a prerequisite notice to a vessel clearance. If a vessel operator intended to obtain a vessel clearance at Bellingham, Washington, he or she would first submit an IFQ departure report to an OLE clearing officer by toll-free telephone. The IFQ departure report was submitted only after completion of all IFQ fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. This action removes the vessel clearance, and thus changes the function of the departure report. Instead of being a prerequisite to a vessel clearance, the departure report now will be the complete report submitted to OLE by a vessel leaving the jurisdiction of the Council.

U.S. Vessel Activity Report (VAR)

A fisher is required to submit a VAR if his or her vessel is carrying fish or fish product onboard before the vessel crosses out of the jurisdiction of the Council. Some changes are made to the regulatory text for this form to incorporate "CDQ halibut" and to compensate for the removal of the vessel clearance.

Response to Comments

A Notice of Availability of Amendment 72/64 was published in the **Federal Register** on October 29, 2002 (67 FR 65941), inviting comments on the FMP amendment through December 27, 2002. NMFS received no comments. On January 24, 2003, the Secretary of Commerce approved Amendment 72/64 in its entirety.

NMFS published a proposed rule in the **Federal Register** on January 24, 2003 (68 FR 3485), which described the proposed regulatory amendment and invited comments from the public. No public comments were received on the proposed rule.

Changes from the Proposed Rule

Some technical, non-substantive changes are made in the final rule that were not presented in the proposed rule. These changes are the result of further review, intended to improve the rule for final publication. Fishery participants have requested guidance from NMFS on where to find separate R&R procedures for groundfish, IFQ and CDQ programs, as these programs become more integrated and thus more complicated. Overviews are provided of the three programs to assist the reader to find detailed information on specific programs. Clarification is provided on where to find information that already exists in different parts of the regulations.

The changes from the proposed rule are organized in three categories. Each of the three categories affects many paragraphs. The affected paragraphs are arranged below in order of appearance in the 50 CFR part 679 regulatory text.

CDQ Halibut

The IFQ and CDQ permits and cards are issued separately, under the IFQ Program and the CDQ Program. However, the IFQ halibut, CDQ halibut, and IFQ sablefish fisheries are managed and monitored by the IFQ Program. The Registered Buyer permit authorizes receipt of CDQ halibut in the same manner as receipt of IFQ halibut or IFQ sablefish. Some of the revisions clarify the administrative procedures that currently exist for halibut accounting in the IFQ Program and in the CDQ Program but which do not appear in regulatory text. Wherever CDQ halibut formerly was "understood" to be included in the phrase IFQ halibut, the regulatory text is revised to specifically state "CDQ halibut." In addition, a distinction is made between "halibut CDQ," which is a type of fish allocation and "CDQ halibut," which is a type of fish. CDQ halibut is treated the same administratively as IFQ halibut, and has been since the beginning of the CDQ halibut program. The following table 1 shows how CDQ halibut changes are incorporated into the regulatory text.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"

Paragraph	From	To
Revise § 679.2, definition for "dockside sale".	Transfer of IFQ transfer of IFQ sablefish	Transfer of IFQ halibut, CDQ halibut or IFQ sablefish.
Revise § 679.2, definition of "Transfer" ...	(1) *Groundfish fisheries of the GOA and BSAI* * * * of any groundfish product * * *. (2) *IFQ halibut, CDQ halibut, IFQ sablefish.* Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, or IFQ sablefish product,	(1) *Groundfish fisheries of the GOA and BSAI* * * * of any IFQ groundfish product * * * (2) *IFQ halibut and CDQ halibut fisheries.* Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product,
In the proposed rule, the wording of this definition was changed to read "Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, or IFQ sablefish product * * *" This is incorrect because receipt of IFQ halibut or CDQ halibut is not considered a transfer, so the text is corrected in this rule to read "Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product * * *" The two subparagraphs of the definition of "transfer" are changed such that paragraph (1) refers to IFQ sablefish and any other groundfish, while paragraph (2) refers to IFQ halibut and CDQ halibut.		
Revise § 679.4(d)(3)(i)	To receive and make an IFQ landing by an IFQ permit or card holder.	To receive and make an IFQ landing by an IFQ permit or card holder or to receive and make a CDQ halibut landing by a CDQ permit or cardholder.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise § 679.4(d)(3)(ii)(B)	Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish.	Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish.
Revise § 679.4(d)(6)(ii)	Location of an IFQ landing and must be made available by the Registered Buyer's representative for inspection on request of any authorized officer.	Location of an IFQ landing or CDQ halibut landing and must be made available by an individual representing the Registered Buyer for inspection on request of any authorized officer.
Add new § 679.4(e)	Add new heading "CDQ halibut permits and CDQ cards."	
Add new § 679.4(e)(1)	Add new heading "Requirements."	
Add new § 679.4(e)(1)(i)	The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) and of § 679.32(f) for the catch of CDQ halibut.	
Redesignate § 679.32(f)(2)(v) as § 679.4(e)(1)(ii) and revise.	The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f).	The CDQ group, vessel owner or operator, and Registered Buyer are subject to all of the IFQ prohibitions at § 679.7(f).
Redesignate § 679.32(f)(2)(i) through (iii) as § 679.4(e)(2) through (4), respectively.		
Redesignate § 679.32(f)(2)(iv) as § 679.4(e)(5) and revise.	*Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(l)(1) and (l)(2).	*Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card. The person(s) holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(g) and (l)(1) through (6).
Redesignate § 679.5(a)(1)(i) as paragraph (a)(1)(i)(A), and revise.	*Who must comply with recordkeeping and reporting requirements?* Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the owner, operator, or manager of the following participants must comply with the recordkeeping and reporting requirements of this section.	*Groundfish.* Except as provided in paragraph (a)(1)(iii) of this section, the owner, operator, or manager of the following participants must comply with the appropriate groundfish R&R requirements provided at § 679.5(a) through (k), (m), (o), and (p); § 679.28(b), (f), and (g).
Add new § 679.5(a)(1)(i)	*Who must comply with R&R requirements?* Participants in the groundfish fisheries, the IFQ fisheries, and the CDQ fisheries must comply with the appropriate R&R requirements of paragraphs (1)(i)(A) through (C) of this section. Sablefish are managed under both the IFQ Program and the Groundfish Program. As such, sablefish must be recorded and reported as groundfish and also as IFQ sablefish.	
Redesignate § 679.5(a)(1)(i)(A) through (E) as (a)(1)(i)(A)(*1*) through (*5*), respectively.		
add new § 679.5(a)(1)(i)(B)	*IFQ halibut and sablefish.* The IFQ permit holder, IFQ cardholder, or Registered Buyer must comply with the R&R requirements provided at § 679.5(g), (k), and (l).	
add new § 679.5(a)(1)(i)(C)	*CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided at § 679.5(g), (k), (l)(1) through (6), (n)(1), and (n)(2).	
Revise § 679.5(a)(15)	*IFQ/groundfish transfer comparison.* The operator, manager, or Registered Buyer may refer to the following table for submittal, issuance, and possession requirements for each type of IFQ or non-IFQ groundfish transfer activity. The locations of the paragraphs that describe the requirements of each activity are also given.	*Transfer comparison.* The operator, manager, or Registered Buyer must refer to the following table for submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut.
Revise (a)(15) intext table	Column headings within intext table at (a)(15) are revised by removing "IFQ."	
Revise § 679.5(a)(15)(i)	Non-IFQ groundfish and no IFQ product onboard (see § 679.5(k)).	Non-IFQ groundfish and no IFQ product or CDQ halibut product onboard (see § 679.5(k)).

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise § 679.5(a)(15)(ii)	If a vessel leaving Alaska with IFQ sablefish or IFQ halibut, but no other non-IFQ groundfish onboard (see § 679.5(l)(4)).	If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut but no other non-IFQ groundfish onboard (see § 679.5(l)(4)).
Revise § 679.5(a)(15)(iii)	If a vessel leaving Alaska with IFQ sablefish or IFQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4)).	If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4)).
Revise § 679.5(a)(15)(v)	Transfer of IFQ species from a Registered Buyer (see § 679.5(g)).	Transfer of IFQ species or CDQ halibut from a Registered Buyer (see § 679.5(g)).
Revise § 679.5(a)(15)(vi)	Transfer of IFQ species from IFQ Cardholder with an IFQ Registered Buyer permit in a dockside sale (see § 679.5(l)(5)).	Transfer of IFQ species from IFQ Cardholder or CDQ halibut from CDQ halibut with a Registered Buyer permit in a dockside sale (see § 679.5(l)(5)).
Revise § 679.5(a)(15)(vii)	Transfer of IFQ Transfer species from landing site to IFQ Registered Buyer's processing facility (see § 679.5(g)(l)(vi)).	Transfer of IFQ species or CDQ halibut from landing site to Registered Buyer's processing facility (see § 679.5(g)(1)(vi)).
Revise § 679.5(a)(15)(viii)	Transfer of IFQ processed product between vessels (see § 679.5(l)(3)).	Transshipment of IFQ processed product or CDQ halibut processed product between vessels (see § 679.5(l)(3)).
Revise footnote to intext table of § 679.5(a)(15).	"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.	"XX" indicates that the document must accompany the transfer of IFQ transfer of CDQ halibut from landing site to processor.
Revise footnote to intext table of § 679.5(a)(15).	"XXXX" indicates authorization must be obtained	"XXXX" indicates authorization must be obtained 24 hours in advance.
Revise § 679.5(g)(1)(v)(A)	A person holding a valid IFQ permit, IFQ card, and IFQ Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a IFQ Registered Buyer.	A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ fish have been landed and reported per § 679.5(l).
Redesignate § 679.5(g)(1)(v)(B) as (C) and revise.	An IFQ Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the IFQ Registered Buyer permit number, and the weight by product of the IFQ sablefish or IFQ halibut transferred.	A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the Registered Buyer permit number, and the weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred. A copy of each dockside sales receipt must be maintained by the Registered Buyer as described in § 679.5(l).
Add new § 679.5(g)(1)(v)(B)	A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported per § 679.5(l).	
Revise § 679.5(g)(1)(vi)	*Exemption: transfer directly from the landing site to a processing facility (IFQ only).* A PTR is not required for transportation of unprocessed IFQ species directly from the landing site to a processing facility for processing the IFQ species, provided the following conditions are met:	*Exemption: transfer directly from the landing site to a processing facility (CDQ halibut or IFQ only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, and CDQ halibut directly from the landing site to a facility for processing, provided the following conditions are met:
Revise § 679.5(g)(1)(vi)(A)	Accompanies the offloaded IFQ species while in transit.	Accompanies the offloaded IFQ halibut, IFQ sablefish, and CDQ halibut while in transit.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise §679.5(g)(1)(vi)(C)	For IFQ species transported in this manner, the IFQ Registered Buyer submitting the IFQ Landing Report must still complete a PTR for each transfer of IFQ halibut and IFQ sablefish from the processing facility.	For IFQ halibut, IFQ sablefish, and CDQ halibut transported in this manner, the Registered Buyer submitting the IFQ Landing Report must still complete a PTR for each transfer of IFQ halibut, CDQ halibut and IFQ sablefish from the processing facility.
Remove §679.5(g)(3)(iii)	This paragraph referred to boxes on the PTR that the participant was to mark indicating whether the fish onboard was groundfish, IFQ species, or CDQ halibut. This proved to be unrealistic because, by the time the fish is documented on a PTR, it has lost that detail	
Revise §679.5(l)(1)(i), (ii), (iii)(E), (iii)(F) and (iii)(G).	IFQ halibut or IFQ sablefish	IFQ halibut, CDQ halibut, or IFQ sablefish.
Revise §679.5(l)(2)(i)(A)	*All IFQ catch debited.* All IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.	*All IFQ halibut, CDQ halibut and IFQ sablefish catch debited.* Except as provided in §679.40(g), all IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.
	Section 679.40(g) modifies §679.5(l)(2)(i)(A) by saying that tagged halibut and sablefish are not debited against an individual's halibut or sablefish IFQ.	
Revise §679.5(l)(2)(iv)(D)	Cardholder's account was properly debited	Cardholder's account was properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in §679.5(l).
Revise §679.5(l)(4)(ii)(D)	Halibut IFQ Permit numbers and sasblefish IFQ Permit numbers of IFQ cardholders on board.	Halibut IFQ, Halibut CDQ, and Sablefish IFQ Permit numbers of IFQ and CDQ cardholders on board.
Revise §679.32(f)(1)	Must comply with the requirements of this paragraph (f) for the catch of CDQ halibut or while halibut CDQ fishing.	Must comply with the catch monitoring requirements of this paragraph (f) and with the R&R requirements of §679.4(e) for the catch of CDQ halibut or while CDQ halibut fishing.
Remove §679.32(f)(2).		
Redesignate §679.32(f)(3) through (5) as §679.32(f)(2) through (4), respectively.		

Registered Buyer

These revisions correct the term "IFQ Registered Buyer" to read "Registered Buyer." The term "IFQ" is removed from "IFQ Registered Buyer" everywhere it occurs in the regulatory text. With the inclusion of CDQ halibut regulatory text, it is necessary to make the term "Registered Buyer" more general. The Registered Buyer permit authorizes receipt of CDQ halibut in the same manner as IFQ halibut. This change is necessary to include "CDQ halibut" in the regulatory text that describes the functions of a Registered Buyer. Where only this change occurs in a paragraph, it is listed in Table 2, below. If a paragraph has more corrections than the "Registered Buyer" correction, that paragraph is included in either Tables 1 or 3.

TABLE 2.—CHANGES TO REGULATORY TEXT WHERE "IFQ" IS REMOVED FROM "IFQ REGISTERED BUYER"

Paragraph	From	To
Revise §679.2, heading for definition of "IFQ Registered Buyer".	IFQ registered buyer	Registered buyer.
Revise heading of §679.4(d)	IFQ Registered Buyer permits	Registered Buyer permits.
Revise §679.5(g)(1)	IFQ Registered Buyers	a Registered Buyer.
Revise §679.5(g)(1)(ii)	or IFQ Registered Buyer	or Registered Buyer.
Revise §679.5(g)(1)(iv)	*Exemption: IFQ Registered Buyers:* IFQ Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.	*Exemption: Registered Buyers:* Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.

TABLE 2.—CHANGES TO REGULATORY TEXT WHERE "IFQ" IS REMOVED FROM "IFQ REGISTERED BUYER"—Continued

Paragraph	From	To
Revise § 679.5(g)(2)	an IFQ Registered Buyer	a Registered Buyer.
Revise § 679.5(g)(3)	IFQ Registered Buyer	Registered Buyer.
Revise § 679.5(g)(6)	or IFQ Registered Buyer	or Registered Buyer.

Revisions and Adjustments

These revisions shown in Table 3, below, include cross reference corrections, cross reference additions, improvements in text clarity, addition of an effective date of two paragraphs, removal of obsolete text, replacing "recordkeeping and reporting" with "R&R" for clarity and brevity, and correction of a typographic error.

TABLE 3.—CHANGES TO REGULATORY TEXT RESULTING FROM CROSS REFERENCE CORRECTIONS AND ADDITIONS, CLARIFICATIONS, AND OTHER REVISIONS AND ADJUSTMENTS

Paragraph	From	To
Revise § 679.2, definition for "IFQ permit holder".	as defined at § 679.4(d)(1)	(see § 679.4(d)(1)).
Revise § 679.4(a)(1)(i)(A)	§ 679.4(d)(2)	§ 679.4(d)(3)(ii).
Revise § 679.4(a)(1)(i)(A)	Specified fishing year	Until next renewal cycle.
§ 679.4(a)(1)(ii)(A) and (B)	§ 679.32(f)	§ 679.4(e).
Revise § 679.4(d)(1)(i)	or until it is revoked	or until the permit is revoked.
Revise § 679.4(d)(2)(iii)	an IFQ permit number, the name of the individual	an IFQ permit number and the name of the individual.
Revise § 679.4(d)(6)(i)	*IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish from the time the vessel arrives at the point of landing and the commencement of landing".	*IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.
	Removal of sentence that duplicates regulatory text found at the last sentence of § 679.4(d)(2)(ii).	
Remove introductory § 679.5(a)(1)(ii).		
Revise § 679.5(a)(1)(ii)(A)	*Groundfish received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report.	*Groundfish and prohibited species received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to R&R requirements must record and report.
Redesignate § 679.5(a)(1)(ii)(B) as (a)(1)(ii)(C) and revise.	*Groundfish transferred.* A shoreside processor, stationary floating processor, or mothership subject to recordkeeping and reporting requirements must report.	*Groundfish and prohibited species transferred.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report.
Add new § 679.5(a)(1)(ii)(B)	*Groundfish and prohibited species reported by catcher vessels and buying stations.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report all discards or disposition information of groundfish and prohibited species reported to them by catcher vessels or buying stations.	
Redesignate § 679.5(g)(5)(i) as (g)(5) and revise.	or IFQ Registered Buyer must enter your representative's name, telephone number, and FAX number, check "Shipper" and:	or Registered Buyer must enter the name of the individual representing the Registered Buyer, telephone number, and FAX number, check "Shipper" and:
Redesignate § 679.5(g)(5)(ii) as (g)(5)(iv).		

TABLE 3.—CHANGES TO REGULATORY TEXT RESULTING FROM CROSS REFERENCE CORRECTIONS AND ADDITIONS, CLARIFICATIONS, AND OTHER REVISIONS AND ADJUSTMENTS—Continued

Paragraph	From	To
Revise newly redesignated §679.5(g)(5)(iv)(I).	n/a/	n/a
Redesignate §679.5(g)(5)(i)(A) through (C) as (g)(5)(i) through (iii), respectively.		
Revise newly redesignated §679.5(g)(5)(ii).	IFQ Registered Buyer name and permit number	Your Registered Buyer name and permit number.
Revise newly redesignated §679.5(g)(5)(iii).	your IFQ Registered Buyer's name and permit number.	Your Registered Buyer's name and permit number.
Revise §679.5(l)(2)(ii)(D)	Once the landing operations have commenced ...	Once the landing has commenced.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendments 72/64 are necessary for the conservation and management of the IFQ Pacific halibut and sablefish fisheries and that they are consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable laws.

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

NMFS prepared an RIR/Initial Regulatory Flexibility Analysis (IRFA) for the proposed amendments that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives. The public comment period ended on February 24, 2003. No comments on the economic impacts of the proposed rule were received.

NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) pursuant to Section 604(a) of the Regulatory Flexibility Act, which describes the impact this final rule may have on small entities. The FRFA incorporates the IRFA and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The actions included in this regulatory amendment would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. This action could also affect all six of the CDQ groups that hold halibut CDQ. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS. In addition, all six of the CDQ groups have halibut CDQ allocations. A total of 270 individuals landed CDQ halibut in 2001 and may be affected by this regulation. NMFS/RAM issued 694 permits for Registered Buyers in 2001; of these, 215 reported landings.

An examination of limits on quota share holdings indicates that all of the halibut and sablefish fishing operations are small entities. CDQ operations are small entities because they are non-profits. In the absence of data on employment and affiliation, the registered buyers have been assumed to be small entities.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

Three alternatives were considered to the action modifying PNOL requirements on fishermen. The status quo, maintaining the PNOL and six hour reporting requirements, was rejected because it did not address the concerns raised by industry with the existing rule. Complete elimination of the PNOL requirement was rejected because, although it would have reduced the burden on small entities, it would adversely affect data-collection, monitoring, and enforcement operations. A third alternative would have reduced the burden on fishermen by randomly applying the PNOL requirements to a sample of vessels. This alternative was rejected because it may have required a new "hail out" report from fishermen as they left port, and communication with fishermen at sea to let them know they had been randomly selected. IPHC port sampling may be adversely affected by this alternative. NOAA enforcement efforts would be complicated.

The NPFMC and NMFS considered one alternative to the status quo "offload window" between 6 a.m. and 6 p.m. This would have extended the offload window requirements so that fishermen would have had to begin offloading between 6 a.m. and 12 a.m. This alternative would have reduced the burden on small fishing entities compared to the status quo. However, this alternative could adversely affect current port sampling techniques used by the IPHC and increase their overall staffing costs, and potentially increase the labor costs for Registered Buyers. Industry indicated to the Council during the development of this action that extending the offload window would not be necessary if the PNOL were modified.

The status quo was considered as an alternative to the action to relax the requirement that IFQ vessels check in at a NMFS certified port prior to leaving the jurisdiction of the Council, but it was rejected. The status quo would not have addressed industry concerns about the vessel clearance requirements. The preferred alternative will not compromise enforcement activity. Because enforcement personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety, no effective difference occurs between a verbal "departure report" and the verbal vessel clearance report given in a certified port.

The status quo was considered as an alternative to the consolidation of the PTR and the shipment reports, but was rejected. That alternative would not have addressed industry concerns about duplication in reporting requirements. The preferred alternative collects necessary information with fewer paperwork requirements.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. These requirements are listed by OMB control number.

OMB No. 0648–0213: 20 minutes for a product transfer report, and 14 minutes for a vessel activity report.

OMB No. 0648–0272: 12 minutes for a prior notice of landing, 18 minutes for an IFQ/CDQ landing report, 6 minutes for IFQ dockside sales receipts, 15 minutes for an IFQ departure report, and 12 minutes for an IFQ transshipment authorization, 30 minutes for Registered Buyer's permit application, 30 minutes for CDQ halibut or IFQ landing card.

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.

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. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

In conclusion, these actions will improve the efficiency of data collection required under existing IFQ regulations and will implement recommendations received from industry, enforcement and management. Based on the foregoing conclusions, these revisions to R&R for the IFQ fisheries and CDQ halibut fishery will not substantively alter environmental impacts already analyzed within existing environmental documents.

The legislative authorities for these actions are the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94–265, 16 U.S.C. 1801 (Magnuson-Stevens Act), and the Northern Pacific Halibut Act of 1982 (NPHA) Pub. L. 97–176, 16 U.S.C. 773c (c).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set forth 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 "IFQ Registered Buyer" is removed; the definition for "Registered Buyer" is added; the definitions for "Authorized officer," "Clearing officer," "Dockside sale," "IFQ landing," "IFQ permit holder," and "Transfer" are revised to read in alphabetical order as follows:

§ 679.2 Definitions.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

* * * * *

Clearing officer means, a NOAA Fisheries Office for Law Enforcement (OLE) special agent, an OLE fishery enforcement officer, or an OLE enforcement aide.

* * * * *

Dockside sale means, the transfer of IFQ halibut, CDQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

* * * * *

IFQ landing means the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made (*see* § 679.4(d)(1)).

* * * * *

Registered buyer means the person identified on a Registered Buyer permit (see § 679.4(d)(3)).

* * * * *

Transfer means:

(1) *Groundfish fisheries of the GOA and BSAI.* Any loading, offloading, shipment or receipt of any IFQ sablefish or other groundfish product by a mothership, catcher/processor, shoreside processor, or stationary floating processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

(2) *IFQ halibut and CDQ halibut fisheries.* Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

* * * * *

■ 3. In § 679.4, paragraphs (a)(1)(i), (a)(1)(ii), (d), and (e) are revised to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information, see * * *
(i) IFQ:		
(A) Registered Buyer	Until next renewal cycle	Paragraph (d)(3)(ii) of this section.
(B) Halibut & sablefish permits.	Specified fishing year	Paragraph (d)(3)(i)(B) of this section.
(C) Halibut & sablefish cards.	Specified fishing year	Paragraph (d)(3)(i)(C) of this section.
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	Paragraph (e) of this section.
(B) Halibut card	Specified fishing year	Paragraph (e) of this section.

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information, see * * *
*	*	*

* * * * *

(d) *IFQ permits, IFQ cards, and Registered Buyer permits.* The permits and cards described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section.

(1) *IFQ permit.* (i) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until the permit is revoked, suspended, or modified under 15 CFR part 904.

(ii) A legible copy of any IFQ permit that specifies the IFQ regulatory area and vessel length overall from which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(2) *IFQ card.* (i) An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ card issued by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board. Except as specified in § 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ card issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ. In addition, IFQ cards issued to hired masters representing permit holders in accordance with § 679.42(i) and (j) will also display the ADF&G vessel identification number of the authorized vessel.

(3) *Registered Buyer permit.* (i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit or cardholder or to receive and make a CDQ halibut landing by a CDQ permit or cardholder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

(ii) A Registered Buyer permit is required of:

(A) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(B) Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish in a dockside sale, outside of an IFQ regulatory area, or outside the State of Alaska.

(C) A vessel operator who submits a Departure Report (see § 679.5(l)(4)).

(iii) A Registered Buyer permit is issued on a 3-year cycle by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) A Registered Buyer permit is in effect from the first day of the year for which it is issued or from the date of issuance, whichever is later, through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

(4) *Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer.* The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ cards and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) *Inspection*—(i) *IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(ii) *Registered Buyer permit.* A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing or CDQ halibut landing and must be made available by an individual representing the Registered Buyer for inspection on request of any authorized officer.

(7) *Validity.* An IFQ permit issued under this part is valid only if the IFQ permit holder has paid all IFQ fees that are due as a result of final agency action as specified in §§ 679.45 and 679.5(l)(7)(ii).

(e) *CDQ Halibut permits and CDQ cards*—(1) *Requirements.* (i) The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) and of paragraph § 679.32(f) for the catch of CDQ halibut.

(ii) The CDQ group, vessel owner or operator, and Registered Buyer are subject to all of the IFQ prohibitions at § 679.7(f).

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(3) *Halibut CDQ card.* An individual must have onboard the vessel a valid halibut CDQ card issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ card will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(4) *Alteration.* No person may alter, erase, mutilate, or forge a halibut CDQ permit, landing card, Registered Buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(5) *Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card. The person(s) holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(g) and (l)(1) through (6).

* * * * *

■ 4. In § 679.5, the section heading and paragraphs (a)(1)(i), (a)(1)(ii), (a)(15), (g), (k), and (l) are revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) *General requirements.* (1) *Applicability*—(i) *Who must comply with R&R requirements?* Participants in the groundfish fisheries, the IFQ fisheries, and the CDQ fisheries must comply with the appropriate R&R requirements of paragraphs (1)(i)(A) through (C) of this section. Sablefish are managed under both the IFQ Program and the Groundfish Program. As such, sablefish must be recorded and reported as groundfish and also as IFQ sablefish.

(A) *Groundfish.* Except as provided in paragraph (a)(1)(iii) of this section, the owner, operator, or manager of the following participants must comply with the appropriate groundfish R&R requirements provided at paragraphs (a) through (k), (m), (o), and (p) of this section; § 679.28(b), (f), and (g):

(*1*) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(*2*) Any shoreside processor, stationary floating processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(*3*) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or stationary floating processor issued a Federal processor permit under § 679.4(f).

(*4*) Any shoreside processor or stationary floating processor that is required to have a Federal processor permit under § 679.4.

(*5*) For purposes of this section, "operator or manager" means "the operator of a catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station."

(B) *IFQ halibut and sablefish.* The IFQ permit holder, IFQ cardholder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), and (l) of this section.

(C) *CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), (l)(1) through (6), (n)(1), and (n)(2) of this section.

(ii) *What fish need to be recorded and reported?* (A) *Groundfish and prohibited species received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to R&R requirements must record and report all groundfish and prohibited species received, including fish received from vessels not required to have a federal fisheries permit; and fish received under contract for handling or processing for another processor.

(B) *Groundfish and prohibited species reported by catcher vessels and buying stations.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report discard or disposition information for all groundfish and prohibited species reported to it by catcher vessels or buying stations.

(C) *Groundfish and prohibited species transferred.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report all groundfish and prohibited species transferred out of the facility or off the vessel.

* * * * *

(15) *Transfer comparison.* The operator, manager, or Registered Buyer must refer to the following table for submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut.

	Submittal				Issue	Ppssess
	VAR	PTR	Trans-shipment authorization	Departure report	Dockside sale receipt	Landing report receipt
(i) If a catcher vessel, mothership or catcher/processor leaving or entering Alaska with non-IFQ groundfish and no IFQ product or CDQ halibut product onboard (see § 679.5(k)))	X					
(ii) If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut but no other non-IFQ groundfish onboard (see § 679.5(l)(4))				X		
(iii) If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4))	X			X		
(iv) Transfer of non-IFQ groundfish (see § 679.5(g))		X				
(v) Transfer of IFQ species or CDQ halibut from a Registered Buyer (see § 679.5(g))		X				
(vi) Transfer of IFQ species from IFQ Cardholder or CDQ halibut from CDQ halibut Cardholder with a Registered Buyer permit in a dockside sale (see § 679.5(l)(5))					XXX	
(vii) Transfer of IFQ species or CDQ halibut from landing site to Registered Buyer's processing facility (see § 679.5(g)(1)(vi))						XX
(viii) Transshipment of IFQ processed product or CDQ halibut processed product between vessels (see § 679.5(l)(3))			XXXX			

"X" indicates under what circumstances each report is submitted;
"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor;
"XXX" indicates receipt must be issued to each receiver in a dockside sale;
"XXXX" indicates authorization must be obtained 24 hours in advance.

* * * * *

(g) *Product Transfer Report (PTR)*—(1) *General requirements.* Except as provided in paragraphs (g)(1)(i) through (vi) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must complete and submit a separate PTR for each transfer (shipment or receipt) of groundfish and donated prohibited species caught in groundfish fisheries.

In addition, a Registered Buyer must submit a separate PTR for each transfer (shipment only) of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment or transfer.

(i) *Exemption: Bait sales (non-IFQ groundfish only).* The operator or manager may aggregate individual sales or transfers of non-IFQ groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product transferred from a vessel or facility that day.

(ii) *Exemption: Retail sales.* For retail sales destined for human consumption and weighing less than 10 lb or 4.5 kilograms, the operator, manager, or Registered Buyer may aggregate and record on one PTR, the amount of such retail product transferred during one calendar day.

(iii) *Exemption: Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Exemption: Registered Buyers:* Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.

(v) *Exemption: Dockside sales.* (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ fish have been landed and reported in accordance with § 679.5(l).

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with § 679.5(l).

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the Registered Buyer permit number, and the weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred. The Registered Buyer must maintain a copy of each dockside sales receipt as described in § 679.5(l).

(vi) *Exemption: transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, or IFQ sablefish only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, and CDQ halibut directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ Landing Report receipt (Internet or transaction terminal receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, and CDQ halibut while in transit.

(B) A copy of the IFQ Landing Report receipt is available for inspection by an authorized officer.

(C) The Registered Buyer submitting the IFQ Landing Report completes a PTR for each transfer from the processing facility of IFQ halibut, CDQ halibut and IFQ sablefish transported in this manner.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor, a Registered Buyer, or manager of a shoreside processor or stationary floating processor must:

(i) *Record on PTR.* Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) *Submit original PTR.* Submit by FAX or electronic file a copy of each PTR to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) *Submit revised PTR.* Ensure that, if any information on the original PTR changes prior to the first destination of the shipment, a revised PTR is submitted by FAX or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred.

(3) *General information.* The operator, manager, or Registered Buyer must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether you are the shipper or receiver;

(4) *Receiver information.* If documenting receipt of non-IFQ groundfish, the operator or manager must check "Receiver"; enter your representative's name, telephone number, and FAX number; start and finish date and time of product transfer, position of product transfer (if applicable), port or location of transfer and:

Enter under "Receiver"	Enter under "Shipper"
Your processor's name, Federal fisheries or Federal processor permit	Other processor's name and Federal fisheries or Federal processor permit (if applicable).

(5) *Shipper information.* If documenting transfer of product away from your facility or transfer of product off of your vessel, the operator, manager, or Registered Buyer must enter the name of the individual representing the Registered Buyer, telephone number, and FAX number, check "Shipper" and:

If you are shipping . . .	Enter under "Shipper" . . .
(i) Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
(ii) IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
(iii) Both non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish on the same PTR.	Your processor's name and Federal fisheries permit number or Federal processor permit number; or your Registered Buyer's name and permit number.

(iv) Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (*e.g.*, port, position coordinates, or city), mode of transportation, and intended route.

If you are the shipper and . . .	Then enter . . .			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks, or vehicles.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city product transfer	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer	Name of airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer takes occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR.	"RETAIL SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a
(J) *Non-IFQ Groundfish only.* You are aggreating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a

(6) *Products shipped or received.* The operator, manager, or Registered Buyer must record the following information for each product transferred:

(i) *Species code and product code.* The species code and product code (Tables 1 and 2 to this part).

(ii) *Species weight.* Use only if recording two or more species with two or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter "n/a" in the species weight column. If using more than one line to record species in one carton, use a brace "}" to tie the carton information together.

(iii) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(iv) *Unit weight.* Unit weight (average weight of single production unit as listed in "No. of Units" less packing materials) for each species and product code in kilograms or pounds (indicate which).

(v) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(7) *Total or partial offload.* (i) If a mothership or catcher/processor, the operator must indicate whether the transfer is a total or partial offload.

(ii) If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?*—(i) *Fish or fish product onboard.* Except as noted in paragraph (k)(1)(iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, or IFQ sablefish.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish, the operator must submit a VAR in addition to an IFQ Departure Report per paragraph (l)(4) of this section.

(iii) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the vessel operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(iv) *Exemption: IFQ Departure Report.* If a vessel is carrying only IFQ halibut, CDQ halibut, or IFQ sablefish onboard and the operator has submitted an IFQ Departure Report per paragraph (l)(4) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher

vessel, catcher/processor, or mothership); and representative information (*see* paragraph (b)(2) of this section).

(i) *Return report.* "Return," for purposes of this paragraph, means returning to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (*see* Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(l) *IFQ halibut, CDQ halibut or IFQ sablefish R&R.* In addition to the R&R requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (*see* § 679.5(g)), IFQ Landing Report, IFQ Transshipment Authorization, and IFQ Departure Report.

(1) *IFQ Prior Notice of Landing (PNOL)*—(i) *Time limits and submittal.* (A) Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK, no fewer than 3 hours before landing IFQ halibut, CDQ halibut, or IFQ sablefish, unless permission to commence an IFQ landing within 3 hours of notification is granted by a clearing officer.

(B) A PNOL must be made to the toll-free telephone number 800–304–4846 or to 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(ii) *Revision to PNOL.* The operator of any vessel wishing to make an IFQ landing before the date and time (A.l.t.) reported in the PNOL or later than 2 hours after the date and time (A.l.t.) reported in the PNOL must submit a new PNOL as described in paragraphs (l)(1)(i) and (iii) of this section.

(iii) *Information required.* A PNOL must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Port of landing and port code from Table 14 to this part;

(C) Exact location of landing within the port (*i.e.*, dock name, harbor name, facility name, or geographical coordinates);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Species and estimated weight (in pounds) of the IFQ halibut, CDQ halibut or IFQ sablefish that will be landed;

(F) IFQ regulatory area(s) in which the IFQ halibut, CDQ halibut, or IFQ sablefish were harvested; and

(G) IFQ permit number(s) that will be used to land the IFQ halibut, CDQ halibut, or IFQ sablefish.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.

(2) *IFQ Landing report*—(i) *Requirements*—(A) *All IFQ halibut, CDQ halibut and IFQ sablefish catch debited.* Except as provided in paragraph 679.40(g) of this section, all IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account or CDQ halibut permit holder's account under which the catch was harvested.

(B) *Single offload site for halibut.* The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut on board the vessel.

(C) *Single offload site for sablefish.* The vessel operator who lands IFQ sablefish must continuously and completely offload at a single offload site all sablefish on board the vessel.

(D) *Remain at landing site.* Once the landing has commenced, the IFQ cardholder or CDQ cardholder and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish or CDQ halibut account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish.* The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ cardholder's or CDQ cardholder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(ii) *Time limits.* (A) A landing of IFQ halibut, CDQ halibut, or IFQ sablefish may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

(B) A Registered Buyer must submit a completed IFQ Landing Report within 6 hours after all IFQ halibut, CDQ halibut, or IFQ sablefish are landed and prior to shipment or transfer of said fish from the landing site.

(iii) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ Landing Report as follows:

(A) Date and time (A.l.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ cardholder or CDQ cardholder;

(D) Name and permit number of Registered Buyer receiving the IFQ halibut, IFQ sablefish, or CDQ halibut;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear code used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J) For each ADF&G statistical area of harvest:

(*1*) Except as provided in paragraph (l)(2)(iii)(J)(*2*) of this section, the species codes, product codes, and initial accurate scale weight(s) (in pounds or to the nearest thousandth of a metric ton) made at the time of offloading for IFQ halibut, IFQ sablefish, or CDQ halibut sold and retained.

(*2*) If the vessel operator is the Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.

(K) Initial accurate scale weight(s) with or without ice and slime, as

appropriate, of fish as offloaded from the vessel. Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2-percent deduction for ice and slime and must be reported as fish weights without ice and slime.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear.

(M) After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ Landing Report.

(iv) *Submittals.* Except as indicated in paragraph (l)(2)(iv)(C) of this section, IFQ landing reports must be submitted electronically to OLE, Juneau, AK, either by using an electronic transaction terminal or by using the Internet as indicated below:

(A) *Transaction terminal.* Landing Reports submitted using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region.

(*1*) The Registered Buyer must locate or procure a transaction terminal and report as required.

(*2*) The IFQ cardholder or CDQ cardholder must initiate a Landing Report by using his or her own magnetic card and personal identification number (PIN).

(B) *Internet.* Landing Reports submitted using Internet submission methods as provided and/or specified by NMFS, Alaska Region.

(*1*) The Registered Buyer must obtain at his or her own expense, hardware, software and Internet connectivity to support Internet submissions and report as required.

(*2*) The IFQ cardholder or CDQ cardholder must initiate a Landing Report by logging into the IFQ landing report system using his or her own password and must provide identification information requested by the system.

(*3*) The Registered Buyer must enter additional log-in information, including his or her password, and provide landing information requested by the system.

(C) *Manual landing report.* Waivers from the transaction terminal or Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, at 800–304–4846 (Select Option 1). Registered Buyers must complete and submit manual Landing Reports by FAX to OLE, Juneau, AK, at 907–586–7313. When a waiver is issued, the following additional information is required: whether the manual Landing Report is an original or revised; and name, telephone number, and FAX number of individual submitting the manual Landing Report.

(D) *Properly debited landing.* A properly concluded transaction terminal receipt, or printed Internet submission receipt, or a manual landing report receipt which is sent by FAX from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(3) *Transshipment authorization.* (i) No person may transship processed IFQ halibut, CDQ halibut, or IFQ sablefish between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a Transshipment Authorization, the vessel operator must provide the following information to the clearing officer:

(A) Date and time (A.l.t.) of transshipment;

(B) Location of transshipment;

(C) Name and ADF&G vessel registration number of vessel offloading transshipment;

(D) Name of vessel receiving the transshipment;

(E) Product destination;

(F) Species and product type codes;

(G) Total product weight;

(H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(4) *IFQ Departure Report*—(i) *General Requirements*—(A) *Time limit and submittal.* A vessel operator who intends to make an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, at 800–304–4846 or 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut, or IFQ sablefish are on board.

(C) *Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ Landing Reports for all IFQ halibut, CDQ halibut, and IFQ sablefish on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, or IFQ sablefish.

(E) *Permits on board.*—(*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must ensure that one or more IFQ cardholders are on board with enough remaining IFQ balance to harvest amounts of IFQ halibut or IFQ sablefish equal to or greater than all IFQ halibut and IFQ sablefish on board.

(*2*) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G registration number;

(C) Vessel operator's name and Registered Buyer permit number;

(D) Halibut IFQ, Halibut CDQ, and sablefish IFQ Permit numbers of IFQ and CDQ cardholders on board;

(E) Halibut Regulatory Areas or Sablefish Regulatory Areas of harvest or both;

(F) Estimated total weight as appropriate of IFQ halibut or CDQ halibut on board (lb/kg/mt);

(G) Estimated total weight of IFQ sablefish on board (lb/kg/mt).

(5) *Landing verification, inspection and record retention*—(i) *Verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification and inspection by authorized officers.

(ii) Record retention. The IFQ cardholder or CDQ cardholder must

retain a legible copy of all Landing Report receipts, and the Registered Buyer must retain a copy of all reports and receipts required by this section. All retained records must be available for inspection by an authorized officer:

(A) Until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded are retained onboard the vessel or at the facility; and

(B) Upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(6) *Sampling*—(i) Each IFQ landing and all fish retained onboard a vessel making an IFQ landing are subject to sampling by NMFS-authorized observers.

(ii) Each IFQ halibut landing or CDQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

* * * * *

■ 5. In § 679.7, paragraphs (f)(6) and (f)(12) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(6) *Landing*—(i) *IFQ or CDQ* card. Make an IFQ landing without an IFQ or CDQ card, as appropriate, in the name of the individual making the landing.

(ii) *Hired master, IFQ.* Make an IFQ landing without an IFQ card listing the name of the hired master and the name of the vessel making the landing.

(iii) *Hired master, CDQ halibut.* Make a CDQ halibut landing without a CDQ card listing the name of the hired master.

* * * * *

(12) Commence an IFQ landing without a Prior Notice of Landing (PNOL), before the date and time stated on the PNOL, or more than 2 hours after the date and time stated on the PNOL, except as provided in § 679.5(l)(1).

* * * * *

■ 6. In § 679.32, paragraph (f)(1) is revised; paragraph (f)(2) is removed; and paragraphs (f)(3) through (5) are redesignated as paragraphs (f)(2) through (f)(4), respectively, to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) *Halibut CDQ*—(1) *Applicability.* The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the catch monitoring requirements of this paragraph (f) and with the R&R requirements of § 679.4(e) for the catch of CDQ halibut or while CDQ halibut fishing.

* * * * *

■ 7. In § 679.42, paragraphs (a), (c)(1)(ii), (c)(1)(iv), and (c)(2)(i) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) Except as provided in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category.

(3) Notwithstanding § 679.40(a)(5)(ii), IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.268 mt), based on the 1996 TACs for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(c) * * *

(1) * * *

(ii) Be aboard the vessel at all times during the fishing trip and present during the landing.

* * * * *

(iv) Sign the IFQ Landing Report required by § 679.5(l)(2)(iii)(M) or § 679.5(l)(2)(iv)(D).

(2) * * *

(i) Except as provided in § 679.5(l)(2)(iii)(J), if offload of unprocessed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(iii) to be included in the IFQ Landing Report.

* * * * *

■ 8. In § 679.43, paragraph (c) is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of appeals.* Appeals must be in writing and must be mailed to the: National Marine Fisheries Service, Office of Administrative Appeals (OAA), P. O. Box 21668, Juneau, AK 99802–1668, or delivered to National Marine Fisheries Service, Attention: Appeals (OAA), 709 W. 9th Street, Room 453, Juneau, AK 99801.

* * * * *

■ 9. In part 679, Table 14a is revised to read as follows:

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]

Port name	NMFS code	ADF&G code
a. Alaska:		
Adak	186	ADA
Akutan	101	AKU
Akutan Bay	102	
Alitak	103	ALI
Anchor Point	104	
Anchorage	105	ANC
Angoon	106	ANG
Aniak		ANI
Anvik		ANV
Atka	107	ATK
Auke Bay	108	
Baranof Warm Springs.	109	
Beaver Inlet	110	
Bethel		BET
Captains Bay	112	
Chefornak	189	
Chignik	113	CHG
Chinitna Bay	114	
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	118	
Dutch Harbor/Unalaska.	119	DUT
Edna Bay	121	
Egegik	122	EGE
Ekuk		EKU
Elfin Cove	123	ELF
Emmonak		EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks		FBK
Galena		GAL
Glacier Bay		GLB
Glennallen		GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	
Hollis	131	
Homer	132	HOM
Hoonah	133	HNH
Hooper Bay	188	
Hydaburg		HYD
Hyder	134	HDR
Ikatan Bay	135	
Juneau	136	JNU
Kake	137	KAK
Kaltag		KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	140	
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue		KOT
La Conner		LAC
Mekoryuk	147	
Metlakatla	148	MET
Moser Bay		MOS
Naknek	149	NAK
Nenana		NEN
Nikiski (or Nikishka).	150	NIK
Ninilchik	151	NIN
Nome	152	NOM

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]—Continued

Port name	NMFS code	ADF&G code
Nunivak Island		NUN
Old Harbor	153	OLD
Other Alaska [1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Point Baker	157	
Port Alexander	158	PAL
Port Armstrong		PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions		LIO
Port Moller		MOL
Port Protection	161	
Portage Bay (Petersburg).	162	
Quinhagak	187	
Resurrection Bay	163	
Sand Point	164	SPT
Savoonga	165	
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna		SOL
St. George	170	STG
St. Lawrence	171	
St. Mary		STM
St. Paul	172	STP
Tee Harbor	173	
Tenakee Springs	174	TEN
Thorne Bay	175	
Togiak	176	TOG
Toksook Bay	177	
Tununak	178	
Ugadaga Bay	179	
Ugashik		UGA
Unalakleet		UNA
Valdez	181	VAL
Wasilla		WAS
West Anchor Cove.	182	
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

TABLE 14B TO PART 679.—PORT OF LANDING CODES

Port name	NMFS code	ADF&G code
CALIFORNIA		
b. Non-Alaska (California, Oregon, Canada, Washington):		
Eureka	500	EUR
Fort Bragg		501
Other California [1]	599	
CANADA		
Port Edward	800	
Port Hardy	801	
Prince Rupert	802	PRU
Vancouver	803	
Other Canada [1]	899	
OREGON		
Astoria	600	AST
Lincoln City	602	
Newport	603	NPT
Olympia		OLY
Portland		POR
Warrenton	604	
Other Oregon [1]	699	
WASHINGTON		
Anacortes	700	ANA
Bellevue	701	
Bellingham	702	
Blaine		BLA
Edmonds	703	
Everett	704	
Fox Island	706	
Ilwaco	707	
La Conner	708	LAC
Mercer Island	709	
Nagai Island	710	
Port Angeles	711	
Port Orchard	712	
Port Townsend	713	
Rainier	714	
Seattle	715	SEA
Tacoma		TAC
Other Washington [1].	799	

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

[FR Doc. 03–19132 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 145
Tuesday, July 29, 2003

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 595

RIN 3206–AJ96

Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise the regulations governing the physicians' comparability allowance program. The proposed regulations have been converted to a question-and-answer format and rewritten to ease reader understanding and improve administration of this program.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX: (202) 606–0824, or email them to *pay-performance-policy@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606–2858; by fax at (202) 606–0824; or by email at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to revise 5 CFR part 595, Physicians' Comparability Allowances. Unless otherwise stated, the purpose of this revision to part 595 is to make part 595 more readable, not to make substantive changes. OPM has replaced the verb "shall" with "must" in this part for added clarity and readability. OPM intends that any provision in this part using the verb "must" has the same meaning and effect as previous provisions in this part using "shall."

Finally, OPM is removing § 595.108, Reports. Section 5948(j) of title 5, United States Code, requires an annual Presidential report to Congress on the operation of the PCA program and specifies what information must be included in the report. The regulations in § 595.108 repeat what information must be included in the annual report. Since the regulations are redundant, we are proposing to remove § 595.108. In addition, since the PCA program was made permanent in 2000, the necessity for an annual report is clearly diminished. OPM plans to propose legislation to repeal 5 U.S.C. 5948(j) to delete the annual reporting requirement.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 595

Government employees, Health professions, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 595 of title 5 of the Code of Federal Regulations as follows:

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

1. The authority citation for part 595 continues to read as follows:

Authority: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

2. Section 595.101 is revised to read as follows:

§ 595.101 Purpose.

Section 5948 of title 5, United States Code, authorizes the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only to categories of physicians for which the agency is experiencing recruitment and retention problems and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of OPM, acting in consultation with the Office of Management and Budget. This part contains the regulations, criteria and conditions which the Director of OPM, in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians' comparability allowance program. This part supplements and implements 5 U.S.C. 5948 and should be read together with that section of law.

3. In § 595.102, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 595.102 Who is covered by this program?

(a) This program covers individuals employed as physicians under the Federal pay systems listed in 5 U.S.C. 5948(g)(1), except as provided in 5 U.S.C. 5948(b). For the purposes of this part, an individual is "employed as a physician" only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) Section 5948(b) of title 5, United States Code, prohibits the payment of physicians' comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of applying this prohibition, "reemployed annuitant" means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee.

* * * * *

4. In § 595.103, the section heading and paragraph (a) are revised to read as follows:

§ 595.103 What requirements must agencies establish for determining which physician positions are covered?

(a) The head of each agency must determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

* * * * *

5. In § 595.104, the section heading and the introductory text are revised to read as follows:

§ 595.104 What criteria are used to identify a recruitment and retention problem?

The head of each agency may determine that a significant recruitment and retention problem exists for each category of physician position established under § 595.103 only if the following conditions are met with respect to the category:

* * * * *

6. In § 595.105, the section heading and paragraphs (a), (b), (d), and (e) are revised to read as follows:

§ 595.105 What criteria must be used to determine the amount of a physicians' comparability allowance?

(a) The amount of the comparability allowance payable for each category of physician positions established under § 595.103 must be the minimum amount necessary to deal with the recruitment and retention problem identified under § 595.104 for that category of positions. In determining this amount, the agency head must consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits for physicians in each category and for comparable physicians inside and outside the Federal Government.

(b) Agencies may not pay a physicians' comparability allowance in excess of $14.000 annually to a physician with 24 months or less of service as a Government physician. Agencies may not pay a physicians' comparability allowance in excess of $30.000 annually to a physician with more than 24 months of service as a Government physician.

* * * * *

(d) A physician who is employed on a regularly scheduled part-time basis of half-time or more is eligible to receive a physicians' comparability allowance, but any such allowance must be prorated according to the proportion of the physicians' work schedule to full-time employment.

(e) A physician who is serving with the Government under a loan repayment program must have the amount of any loan being repaid deducted from any physicians' comparability allowance for which he or she is eligible and may receive only that portion of such allowance which exceeds the amount of the loan being repaid during the period of employment required by the service agreement under the student loan repayment program.

7. Section 595.106 is revised to read as follows:

§ 595.106 What termination and refund provisions are required?

Each service agreement entered into by an agency and a physician under the comparability allowance program must prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than 1 year, the service agreement must include a provision that, if the physician completes more than 1 year of service pursuant to the agreement, but fails to complete the full period of service specified in the agreement either voluntarily or because of misconduct by the physician, the physician must refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

8. In § 595.107, the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 595.107 What are the requirements for implementing a physicians' comparability allowance program?

* * * * *

(b) The agency must submit to the Office of Management and Budget a complete description of its plan for implementing the physicians' comparability allowance program, including the following:

(1) An identification of the categories of physician positions the agency has established under § 595.103, and of the basis for such categories;

(2) An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in § 595.104; and

(3) An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under § 595.105.

(c) The Office of Management and Budget (OMB) will review each agency's plan for implementing the physicians' comparability allowance program and determine whether the plan is consistent with 5 U.S.C. 5948 and the requirements of this part. OMB will advise the agency within 45 calendar days after receipt of the plan as to whether the plan is consistent with 5 U.S.C. 5948 and this part or what changes need to be made.

9. Section § 595.108 is removed.

§ 595.108 Reports. [Removed]

[FR Doc. 03–19088 Filed 7–28–03; 8:45 am]
BILLING CODE 6325–39–P

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AC20

Eligibility and Scope of Financing

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA) is extending the comment period on our Advance Notice of Proposed Rulemaking concerning eligibility and scope of financing for farmers, ranchers, and aquatic producers or harvesters, and "moderately priced" rural housing. We are extending the comment period so all interested parties have more time to respond to our questions.

DATES: Please send your comments to the FCA by October 29, 2003.

ADDRESSES: We encourage you to send comments by electronic mail to "reg-comm@fca.gov," through the Pending Regulations section of FCA's Web site, *http://www.fca.gov,* or through the government-wide *http://www.regulations.gov* portal. You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434.

Or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On May 2, 2003, FCA published a notice in the **Federal Register** seeking public comment on whether it should revise its regulations governing eligibility and scope of financing for farmers, ranchers, and aquatic producers or harvesters who borrow from Farm Credit System institutions that operate under titles I or II of the Farm Credit Act of 1971, as

amended. In addition, we requested public comment on whether we should modify our regulatory definition of "moderately priced" rural housing. The comment period expires on July 31, 2003. *See* 68 FR 23425, May 2, 2003.

We also held a public meeting on June 26, 2003, to hear views from the public about whether and how we should revise our regulations governing eligibility, scope of financing, and "moderately priced" rural housing. After the public meeting two members of the public requested that we extend the comment period for an additional 90 days. In response to this request, we are extending the comment period until October 29, 2003, so all interested parties have more time to respond to our questions. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on our notice.

Dated: July 23, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–19208 Filed 7–28–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models. This proposal would require a one-time inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring. This action is necessary to prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–170–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–170–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of wire chafing and a subsequent short to structure in the left-hand tunnel area of the forward cargo compartment on a McDonnell Douglas Model MD–88 airplane. Investigation of the incidents revealed that excess wiring and improper routing of wiring resulted in wire chafing. Such wire chafing, if not corrected, could result in shorting to structure and consequent smoke or fire in the airplane.

The subject area on certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes is similar to that on the affected Model MD–88 airplane. Therefore, those airplanes may be subject to the unsafe condition revealed on the Model MD–88 airplane.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, has reviewed all aspects of the service history of those airplanes to

identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. That service bulletin describes procedures for a one-time visual inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Explanation of Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 655 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $127,725, or $195 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2000–NM–170–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane, accomplish the following:

Inspection and Follow-On Actions

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment between Y = 237.000 and Y = 256.000, per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. Then, do paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) If any chafing is found, before further flight, repair per the service bulletin.

(2) Before further flight, coil and stow excess wiring per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin MD80–24–158, dated October 27, 1995, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 22, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19194 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require repetitive inspections of the control panel of the direct current (DC) generator for discrepancies, and replacement of any discrepant part. This action is necessary to prevent the loss of both DC generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–253–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–253-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The CAA–NL advises that it has received a number of reports of direct current (DC) generator overvoltages, which resulted in loss of both DC generator systems and loss of several other airplane systems. The overvoltages were caused by the incorrect installation of DC generator system parts, including bad solder joints, bad wire insulation, and incorrect functioning of relays and resistors. These conditions, if not corrected, could result in the loss of both DC generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F27/24–79, dated April 28, 1999, which describes procedures for repetitive inspections of the control panel of the DC generator for discrepancies (*e.g.*, incorrect installation of DC generator system parts, including discrepant solder joints, discrepant wire insulation, and incorrect functioning relays and resistors). The service bulletin references Bendix (Allied Signal) publication R766–28, Technical Manual, Maintenance Instructions with Illustrated Parts Catalog for Generator Control Panel type no. 1539–11–B and 1539–12–B, paragraphs 2–12 through 2–15, as an additional source of service information for accomplishing the inspections and replacement of any discrepant part with a new part. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–093, dated June 30, 1999, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,360, or $240 per inspection cycle.

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

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket 2002–NM–253–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of both direct current (DC) generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight, accomplish the following:

Initial and Repetitive Inspections

(a) Within 60 days after the effective date of this AD, do a detailed inspection of the control panel of the DC generator for discrepancies, per the Accomplishment Instructions of Fokker Service Bulletin F27/24–79, dated April 28, 1999. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace any discrepant part with a new part having the same part number, per the Accomplishment Instructions of Fokker Service Bulletin F27/24–79, dated April 28, 1999.

Note 2: The service bulletin references Bendix (Allied Signal) publication R766–28, Technical Manual, Maintenance Instructions with Illustrated Parts Catalog for Generator Control Panel type no. 1539–11–B and 1539–12–B, paragraphs 2–12 through 2–15, as an additional source of service information for accomplishing the inspections and any parts replacement required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1999–093, dated June 30, 1999.

Issued in Renton, Washington, on July 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19195 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes on Which Cargo Restraint Strap Assemblies Have Been Installed Per Supplemental Type Certificate (STC) ST01004NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. This proposal would require revising the Airplane Flight Manual to include a procedure for discontinuing the use of certain cargo restraint strap assemblies that have been installed per STC ST01004NY if used as the only cargo restraint. This action is necessary to prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–91–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of incorrect installation of cargo restraint strap assemblies having part number 1519–MCIDS. These cargo restraint strap assemblies are manufactured by Airline Container Manufacturing Company, Inc., and are installed on various transport category airplanes per Supplemental Type Certificate (STC) ST01004NY. Reports also indicate the use of incorrect pallet and strap combinations, and the use of straps inappropriate for the type of cargo to be restrained. In addition, reports indicate that, upon landing, the strap assemblies were disassembled, and no record was made of the incidents. Shifting or unrestrained cargo in the cargo compartment due to such conditions could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations section of the Airplane Flight Manual (AFM) to include a procedure for discontinuing the use of certain cargo restraint strap assemblies that have been installed per STC ST01004NY if used as the only cargo restraint. The actions would be required to be accomplished per a method approved by the FAA. We have determined that, although such cargo restraint strap assemblies may not be used as the only restraint, the strap assemblies may be used as a supplemental restraint in conjunction with TSO C90c Type I cargo nets or other FAA-approved assemblies for securing cargo to pallets only.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,150 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 735 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane

to accomplish the proposed AFM revision, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $47,775, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Transport Category Airplanes: Docket 2002–NM–91–AD.

Applicability: The following transport category airplanes on which cargo restraint strap assemblies have been installed per Supplemental Type Certificate (STC) ST01004NY, certificated in any category:

TABLE—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model
Aerospatiale	ATR42 and ATR72 series airplanes.
Airbus	A300 B2 and A300 B4 series airplanes; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; A310, A320, A321, A330, and A340 series airplanes.
Boeing	707–100, 707–200, 707–100B, and 707–100B series airplanes; 727, 737, 747, 757, and 767 series airplanes.
British Aerospace	BAe 146 series airplanes; Avro 146–RJ series airplanes.
Fokker	F27 and F.28 series airplanes.
Lockheed	188A and 188C airplanes, L–1011 series airplanes.
Maryland Air Industries, Inc	F–27 series airplanes, FH–227 series airplanes.
McDonnell Douglas	DC–7, DC–7B, and DC–7C airplanes; DC–8–11, DC–8–12, DC–8–21, C–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes; DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; MD–88 airplanes; MD–90–30 airplanes; 717–200 airplanes; DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes; MD–11 and MD–11F airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the AFM to include the following information (this may be accomplished by inserting a copy of this AD into the AFM):

Discontinue the use of Airline Container Manufacturing Company, Inc., cargo restraint straps, part number P/N 1519–MCIDS, as the only means of securing cargo to Technical Standard Order (TSO) C90c/NAS3610 pallets. Such cargo restraint straps may continue to be used as supplemental restraints, if used with TSO C90c Type I cargo nets, or other FAA-approved cargo nets. (The subject cargo restraint straps were installed per Airline Container Manufacturing Company, Inc., Report No. 289A. Installation Instructions, Revision D, per Supplemental Type Certificate (STC) ST01004NY.)

Note 1: If the statement in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, and the copy of this AD may then be removed from the AFM.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on July 22, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19196 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This proposed AD would require you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tab. This proposed AD is the result of reports of inadvertent and undetected engagement of the autopilot system. The actions specified by this proposed AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 22, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–28–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

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

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

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

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

We have received reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system.

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot does not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA–28–181 airplanes. This proposed AD would not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control

panel on the Piper airplanes. The unsafe condition only exists on the Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now only allow the AP button on the instrument control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

Is There Service Information That Applies to This Subject?

Cessna has issued Service Bulletin SB02–22–01, dated November 25, 2002.

Honeywell has issued Service Bulletin No: KC 140–M1, dated August 2002; and Installation Bulletin No: 491, dated August 2002.

What Are the Provisions of This Service Information?

Cessna Service Bulletin SB02–22–02, dated November 25, 2002, specifies installing an update to the autopilot computer system operating software by accomplishing the actions in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

Honeywell Service Bulletin No: KC 140–M1, dated August 2002, includes procedures for:

—Installing an update to the autopilot computer system operating software;
—Changing the unit part number;
—Placing an M tag on the unit serial number tag; and
—Changing the unit's software modification tag.

Honeywell Installation Bulletin No: 491, dated August 2002, describes the operational changes the software update makes to the KC 140 autopilot computer system.

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

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H of the same type design;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to update to the operating software of the KAP 140 autopilot computer system; change the unit's part number; and change the software modification identification tab.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 3,681 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane
7 workhours × $65 per hour = $455.	Not applicable.	$455.

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in each specified in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 2003–CE–28–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are:

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702 ; and

(2) certificated in any category;

Model	Serial numbers
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203
182S	18280001 through 18280944
182T	18280945 through 18281064, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172
T182T ...	T18208001 through T18208109, and T18208111 through T18208177
206H	20608001 through 20608183, 20608185, 20608187, and 20608188
T206H ..	T20608001 through T20608039, T20608041 through T20608367, T20608269 through T20608379, T20608381, T20608382, and T20608385

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

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

Actions	Compliance	Procedures
(1) Install and update the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(2) Accomplish the following: (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057–02203–0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057–02984–0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and. (iii) Attach a software mod tag, P/N 057–05287–0301, in place of the old tag to indicate the software change to SW MOD 03/01..	Prior to further flight after installing the update to the KC 140 autopilot computer system operating software.	In accordance with Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(3) Only install KC 140 autopilot computer systems, P/Ns 065–00176–2602, 065–00176–5402, and 065–00176–7702, that have been modified as specified in paragraphs (d)(1) and (d)(2) of this AD.	As of the effective date of this AD	Not applicable.

You may request a revised flight manual supplement from Cessna or Honeywell at the address specified in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 22, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19197 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133791–02 and REG–105606–99]

RINS 1545–BA88 1545–AX05

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previously proposed regulations.

SUMMARY: This document contains proposed regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control. These proposed regulations reflect changes made to section 41 by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996, which introduced the alternative incremental research credit. This document also provides notice of a public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on January 4, 2000 (65 FR 258).

DATES: Written or electronic comments must be received by October 27, 2003. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for November 13, 2003 at 10 a.m. must be received by October 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–133791–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–133791–02), Courier's Desk, Internal Revenue Service. 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Jolene J. Shiraishi at (202) 622–3120 (not a toll-free call); concerning submissions of comments, the hearing, and to be placed on the building access list to attend the hearing, Guy Traynor at (202) 622–7180 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2000, Treasury and the IRS published in the **Federal Register** (65 FR 258) proposed amendments to the regulations under section 41(f) (2000 proposed regulations) relating to the computation and allocation of the credit for increasing research activities (research credit) for members of a controlled group of corporations or a group of trades or businesses under common control (controlled group). The 2000 proposed regulations reflected changes made to section 41 by the Revenue Reconciliation Act of 1989 (the 1989 Act) and the Small Business Job Protection Act of 1996. Treasury and the IRS received written comments from two commentators. A public hearing was held on April 26, 2000. After considering the written comments and the statements at the public hearing, Treasury and the IRS are withdrawing the 2000 proposed regulations and are proposing new regulations.

Summary of Comments and Explanation of Provisions

Overview

These new proposed regulations for members of a controlled group under section 41(f) follow the research credit computation rule contained in the 2000 proposed regulations. The computation of the research credit for a controlled group (group credit) under these new proposed regulations is done by treating all of the members of a controlled group as a single taxpayer. Unlike the 2000 proposed regulations, these new proposed regulations then allocate the group credit among the members of the controlled group based on the relative amounts of each individual member's stand-alone entity credit—the credit, if any, that a member of a controlled group would be entitled to claim if it were not a member of a controlled group. These new proposed regulations generally will apply to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

Computation of the Group Credit

Section 41(f)(1)(A)(i) provides that in determining the amount of the research credit under section 41, "all members of the same controlled group of corporations shall be treated as a single taxpayer." Section 41(f)(1)(B)(i) provides a similar rule for a group of trades or businesses under common control. Accordingly, for purposes of determining the amount of the group credit, the 2000 proposed regulations applied all of the section 41 computational rules on an aggregate basis. The commentators agreed that with respect to the computation of the group credit, the 2000 proposed regulations are consistent with the provisions of section 41(f). These new proposed regulations, therefore, do not change the method for computing the group credit. These new proposed regulations, however, clarify the application of the start-up company rules under section 41(c)(3)(B) to a controlled group with respect to the computation of the group credit.

Allocation of the Group Credit Among Members of the Controlled Group

Section 41(f)(1)(A)(ii) provides that "the [portion of the group] credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses and basic research payments giving rise to the credit." Section 41(f)(1)(B)(ii) provides a similar rule for a group of trades or businesses under common control. These new proposed regulations apply these provisions by allocating the group credit based on the relative amounts of each individual member's stand-alone entity credit.

2000 Proposed Regulations

The 2000 proposed regulations allocated the group credit based on the amounts by which each individual member's qualified research expenses (QREs) exceeded a base amount for that member. An individual member's base amount, for purposes of allocating the group credit under the 2000 proposed regulations, was determined by applying the controlled group's fixed-base percentage to the member's average annual gross receipts for the four taxable years preceding the credit year. The group credit was allocated to a member having an excess amount of QREs by multiplying the group credit by a fraction having the individual member's excess amount as the numerator and the aggregate excess amount of all the members of the controlled group as the denominator. A similar allocation method was provided for the credit for basic research payments and for the alternative incremental research credit.

The preamble to the 2000 proposed regulations stated that the purpose of this method was to allocate the group credit to "those members whose share of current year qualified research expenses exceeds their share of the [controlled group's] base amount." In particular, the preamble noted that in providing a rule that reflects the incremental nature of the research credit, Treasury and the IRS declined to follow comments noting that amendments to section 41 made by the 1989 Act required that the allocation of the group credit be based on the relative amounts of total QREs incurred separately by members of the controlled group:

> In proposing rules for the allocation of the credit, Treasury and the IRS considered, but were not persuaded by, certain taxpayers' argument that the elimination of the word "increase" from the allocation rule in the statute requires that the credit be allocated on the basis of the gross amount of qualified research expenses incurred by the various members of the controlled group. Treasury and the IRS believe that elimination of the word "increase" was necessitated by the 1989 statutory amendments to the computation of the research credit, which afford a credit in certain circumstances even where the taxpayer (or each member of a controlled group) is decreasing its gross amount of qualified research expenses (*e.g.*, because the taxpayer's gross receipts also are decreasing). However, there is no indication that the elimination of the word "increase" was intended to suggest that the credit be allocated without regard to its incremental nature. To the contrary, the statutory prescription that the credit be allocated according to each member's proportionate share of the qualified research expenses "giving rise to" the credit supports a rule that allocates the credit to those members whose share of current year qualified research expenses exceeds their share of the base amount.

Comments on the 2000 Proposed Regulations

Two commentators submitted a series of comments in response to the 2000 proposed regulations. As noted above, both commentators agreed that the method for computing the group credit contained in the 2000 proposed regulations is consistent with the provisions of section 41(f). The commentators diverged significantly, however, with respect to the method for allocating the group credit. The first

commentator supported the allocation rule contained in the 2000 proposed regulations. The second commentator reiterated the earlier expressed view that the allocation of the group credit should be done on the basis of each member's total QREs (gross QREs method).

The second commentator set out a number of reasons why a gross QREs method should be adopted instead of the method contained in the 2000 proposed regulations. In particular, the commentator stated that a gross QREs method is the only method consistent with the plain meaning of section 41(f). As a related point, the commentator claimed that a statutory amendment made by the 1989 Act supports its plain meaning argument. The commentator also noted that the allocation method contained in the 2000 proposed regulations, by incorporating both individual member and controlled group elements, was at odds with the computation method provided by the statute and failed to allocate rationally the group credit.

Treasury and the IRS continue to believe that, compared to a gross QREs method, an allocation method based on a group member's QREs in excess of a base amount more fully carries out the purposes of section 41 in general and the section 41(f) controlled group credit rules. The research credit is not, and has never been, a credit computed as a percentage of total qualifying expenses. Rather, the research credit generally is allowed only when a taxpayer's QREs exceed a base amount. Prior to the 1989 Act, the research credit was computed by multiplying the credit rate by the excess of the taxpayer's current year QREs over the taxpayer's average QREs for the preceding three years. The 1989 Act significantly modified the computation of the research credit while retaining the incremental approach of the pre-1989 Act credit. In general, the research credit computation is based on whether and the extent to which a taxpayer increases the proportion of its QREs relative to its recent gross receipts, compared to a historical base period. Ultimately, this computation measures the extent to which a taxpayer's current year QREs exceed a base amount.

Treasury and the IRS conclude that the controlled group allocation rules set out in section 41(f) were not intended to result in the allocation of the group credit to individual members of the group in a manner wholly at odds with the incremental nature of the research credit. The legislative history to the research credit, as originally enacted in 1981, indicates that the group credit rules were enacted to ensure that the research credit would be allowed only for actual increases in research expenditures. These rules were intended to prevent taxpayers from creating artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related persons. H. Rep. No. 97–201, 1981–2 C.B. (Vol. 2) 364, and S. Rep. 97–144, 1981–2 C.B. (Vol. 2) 442. In effect, the group credit computation rule serves as a cap on the maximum amount of credit that the members of the group, in the aggregate, may claim. A rule that then allocates the group credit based solely on the total amount of QREs incurred by each individual member, however, would be inconsistent with the incremental nature of the credit and would not further the purpose of the section 41(f) group credit rules.

As during the consideration of the 2000 proposed regulations, Treasury and the IRS do not find persuasive the second commentator's argument that a plain reading of the statute, following the deletion of the phrase "increase in" in sections 41(f)(1)(A)(ii) and 41(f)(1)(B)(ii) by the 1989 Act, mandates a gross QREs method for allocating the group credit. Prior to the 1989 Act, for example, section 41(f)(1)(A)(ii) provided that the research credit, if any, allowable to each member of a controlled group was the member's "proportionate share of the increase in qualified research expenses giving rise to the credit." The phrase "increase in" was deleted by the 1989 Act. The commentator maintained that a gross QREs method gives effect to the phrase "giving rise to the credit" as well as to the deletion of the phrase "increase in" from the statute by the 1989 Act because "each dollar of the group's QREs gives rise to [the] excess over the group's base amount" or "(s)tated otherwise, if you eliminate a dollar of qualified research expenses from any member of the group, the group's credit will be reduced proportionately."

The reason for the deletion of the phrase "increase in" is not addressed in the legislative history to the 1989 Act. The changes to the computation of the research credit made by the 1989 Act, however, made a taxpayer's QREs for prior years, other than taxable years beginning after December 31, 1983, and before January 1, 1989 (base years), irrelevant to the computation of the credit. Instead, the amount of the research credit now depends on whether and the extent to which a taxpayer increases the proportion (compared to that of the base years) of its QREs relative to its average annual gross receipts from the prior four years. Accordingly, although the research credit is still based on the amount by which current year QREs exceed a base amount, that base amount, unlike the general research credit computation prior to the 1989 Act, is not a rolling average of QREs incurred in the three years prior to the credit year. Treasury and the IRS, therefore, conclude that the deletion of the phrase "increase in" was intended to reflect this change, and not to indicate that the allocation of the group credit was to be made using a gross QREs method.

The second commentator noted, in arguing that the allocation method in the 2000 proposed regulations impermissibly mixed controlled group and individual member calculations, that the allocation method favors those members whose current ratio of QREs to recent gross receipts exceeds the controlled group's fixed-base percentage, regardless of whether that member's ratio, in fact, was increasing or decreasing. As stated by the commentator, "[t]he group's fixed-base percentage can be wildly different from the fixed-base percentage for an individual member depending on the individual member's separate QREs and separate gross receipts during the [base years]. In other words, the amount of group credit that would be allocated to an individual member under the 2000 proposed regulations may bear little or no relationship to what the individual member would be entitled to on a stand-alone basis, depending on how similar the individual member's separate fixed-base percentage was to the group's fixed-base percentage.

Proposed Allocation Rule

After considering the statute, the legislative history, the written comments, and the statements at the public hearing, Treasury and the IRS have determined that the allocation method contained in the 2000 proposed regulations does not fully carry out the purpose of the research credit statute and, in particular, the amendments made by the 1989 Act. Treasury and the IRS continue to believe that the method for allocating the group credit must take into account the incremental nature of the credit. In considering the consequences of the allocation method contained in the 2000 proposed regulations, as highlighted by the commentators, Treasury and the IRS believe that the method may not, in certain cases, appropriately balance the purpose of the group credit computation and allocation rules contained in section 41(f) with the general purpose of the research credit, which is to encourage research activities.

Accordingly, these new proposed regulations allocate the group credit among the members of the controlled group by first computing each individual member's stand-alone entity credit and then multiplying the group credit by the ratio that the member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the controlled group. This new allocation method ensures that the amount of group credit allocated to each individual member will be proportionate to the amount of research credit that the individual member would have been entitled to claim had it not been part of a controlled group. This new allocation method therefore addresses the concerns expressed by the commentators that the allocation method contained in the 2000 proposed regulations could result in individual members receiving little or no research credit—or, conversely, a disproportionately greater amount of research credit—compared to what they would have been entitled to on a stand-alone basis, solely as a result of being part of a controlled group.

Special Allocation Rule for Consolidated Groups

In the preamble to the 2000 proposed regulations, Treasury and the IRS requested comments with respect to a special rule that would treat all members of a consolidated group within a controlled group as a single member for purposes of allocating the group credit among the members of a controlled group. After considering the comments received, Treasury and the IRS have decided not to propose a special allocation rule for consolidated groups.

Effective Date

The 2000 proposed regulations provided that they would be effective, when finalized, for taxable years ending on or after the date the proposed regulations were filed with the **Federal Register** (*i.e.*, December 29, 1999). The 2000 proposed regulations, however, were proposed to be retroactive in certain instances to prevent abuse:

> To prevent taxpayers that are members of a controlled group from together claiming in excess of 100% of the credit with respect to prior taxable years, the rules for allocating the group credit would apply to any taxable year beginning after December 31, 1989, in which, as a result of inconsistent methods of allocation, the members of a controlled group as a whole claimed more than 100% of the allowable group credit. In the case of a group whose members have different taxable years and whose members used inconsistent methods of allocation, the members of the group as a whole shall be deemed to have claimed more than 100% of the allowable group credit.

The two commentators disagreed as to the appropriateness of this proposed effective date. In particular, the second commentator stated that it would be "unconscionable" for final regulations containing the allocation method set out in the 2000 proposed regulations to be applied retroactively. The second commentator therefore proposed that final regulations be applied prospectively and that for prior years, taxpayers be permitted to rely on final regulations or any other method that is reasonable, including a gross QREs method. Finally, the second commentator disputed "that there is a potential for abuse if members of a controlled group take inconsistent methods of allocation for past years. The fact that members of the same controlled group may, in the aggregate, claim more than 100% of the group's Research Credit should not make any difference."

The group credit rules in section 41(f) provide for a total group credit. There is nothing in the statute or the legislative history that suggests that it then should be permissible for the members of the controlled group to claim, in the aggregate, an amount of research credit exceeding the group credit. Treasury and the IRS continue to believe that the purpose of the section 41(f) group credit rules would be undermined if the members of a controlled group applied different allocation methods to claim more than 100 percent of the group credit. The preamble to the 2000 proposed regulations and those proposed regulations themselves eliminated any ambiguity that may have existed with respect to the Treasury and IRS position on this point.

Accordingly, Treasury and the IRS propose that final regulations be effective for taxable years beginning on or after the date that these regulations are published in the **Federal Register** as final regulations. Treasury and the IRS further propose that the final regulations be retroactive in limited circumstances to prevent abuse. Generally, a taxpayer may use any reasonable method of computing and allocating the credit for taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations. However, paragraph (b) relating to the computation of the group credit and paragraph (c), relating to the allocation of the group credit, will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b).

Special Analyses

It has been determined that these proposed regulations do not constitute a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–105606–99) published in the **Federal Register** on January 4, 2000, (65 FR 258) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.41–0, the table of contents is amended as follows:

1. The entry for § 1.41–6(a)(4) is revised.
2. The entries for § 1.41–6(b) through (e) are revised.
3. New entries are added for § 1.41–6(f) through (i).

The revisions and additions read as follows:

§ 1.41–0 Table of contents.

* * * * *

§ 1.41–6 Aggregation of expenditures.

(a) * * *
(4) Definition of group credit.
(b) Computation of the group credit.

(1) In general.
(2) Start-up companies.
(c) Allocation of the group credit.
(1) In general.
(2) Stand-alone entity credit.
(d) Examples.
(e) For taxable years beginning before January 1, 1990.
(f) Tax accounting periods used.
(1) In general.
(2) Special rule where timing of research is manipulated.
(g) Membership during taxable year in more than one group.
(h) Intra-group transactions.
(1) In general.
(2) In-house research expenses.
(3) Contract research expenses.
(4) Lease payments.
(5) Payment for supplies.
(i) Effective date.

* * * * *

Par. 3. Section 1.41–6 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraph (a)(4) is revised.
3. Paragraph (b) is revised.
4. Paragraphs (c), (d), and (e) are redesignated as paragraph (f), (g), and (h), respectively.
5. New paragraphs (c), (d), and (e) are added.
6. Newly designated paragraph (f)(1) is revised.
7. New paragraph (i) is added.

The revisions and additions read as follows:

§ 1.41–6 Aggregation of expenditures.

(a) * * * (1) *In general.* To determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group of corporations or a group of trades or businesses under common control, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (b) of this section, and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (c) of this section.

* * * * *

(4) *Definition of group credit.* For purposes of this section, the term *group credit* means the research credit (if any) allowable to a controlled group of corporations or a group of trades or businesses under common control.

(b) *Computation of the group credit*—(1) *In general.* All members of a controlled group of corporations or a group of trades or businesses under common control are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis.

(2) *Start-up companies.* A controlled group of corporations or a group of trades or businesses under common control is treated as a start-up company for purposes of determining the group's fixed-base percentage under section 41(c)(3)(B)(ii) only if each member of the group qualifies as a start-up company under section 41(c)(3)(B)(i).

(c) *Allocation of the group credit*—(1) *In general.* To determine the amount of the group credit (if any) computed under paragraph (b) of this section that is allocated to a member of the group, a taxpayer must—

(i) Compute the member's stand-alone entity credit; and

(ii) Multiply the group credit by the ratio that the member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group:

$$\text{group credit} \times \frac{\text{member's stand-alone entity credit}}{\text{sum of all the members' stand-alone entity credits}}$$

(2) *Stand-alone entity credit.* For purposes of this section, the term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a group if the credit were computed without regard to section 41(f). In computing a member's stand-alone entity credit, a taxpayer must use the same method (*i.e.*, the computation method provided in section 41(a) or the elective method provided in section 41(c)(4)) that was used to compute the group credit. Therefore, if the research credit determined under section 41(a) is not allowable to the group and the group credit is computed using the alternative incremental research credit (AIRC) rules of section 41(c)(4), each member's stand-alone entity credit also must be computed using the AIRC rules, even if the research credit determined under section 41(a) would be allowable to a member if that member were not a part of the group.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Research credit—(i) *Facts.* A, B, and C, all of which are calendar-year taxpayers, are members of a controlled group of corporations. Neither A, B, nor C made any basic research payments for their taxable year ending December 31, 2003. For purposes of computing the group credit for the 2003 taxable year (the credit year), A, B, and C had the following:

	A	B	C	Group aggregate
Credit Year Qualified Research Expenses (QREs)	$200x	$20x	$110x	$330x
1984–1988 QREs	$40x	$10x	$100x	$150x
1984–1988 Gross Receipts	$1,000x	$350x	$150x	$1,500x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($330x) over the group's base amount ($170x). The group credit is 0.20 × ($330x − $170x), which equals $32x.

(B) *Group's base amount*—(1) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,700x), or the group's minimum base amount ($165x). The group's base amount, therefore, is $170x, which is the greater of: 0.10 × $1,700x, which equals $170x, or $165x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $330x, which equals $165x.

(*3*) *Group's fixed-base percentage.* The group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bears to the group's aggregate gross receipts for the same period, or 16 percent (the statutory minimum). The group's fixed-base

percentage, therefore, is 10 percent, which is the lesser of: $150x/$1,500x, which equals 10 percent, or 16 percent.

(iii) *Allocation of the group credit.* The group credit of $32x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the controlled group. The $32x group credit is allocated as follows:

	A	B	C	Total
Stand-Alone Entity Credit	$20x	$2x	$11x	$33x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/33	2/33	11/33	
Multiplied by: Group Credit	$32x	$32x	$32x	
Equals: Credit Allocated to Member	$19.39x	$1.94x	$10.67x	$32x

Example 2. Member is a start-up company—(i) *Facts.* D, E, and F, all of which are calendar-year taxpayers, are members of a controlled group of corporations. F is a start-up company under section 41(c)(3)(B)(i). D and E are not start-up companies under section 41(c)(3)(B)(i). Neither D, E, nor F made any basic research payments during the 2003 taxable year. For purposes of computing the group credit for the 2003 taxable year (the credit year), D, E, and F had the following:

	D	E	F	Group aggregate
Credit Year QREs	$200x	$20x	$50x	$270x
1984–1988 QREs	$55x	$15x	$0x	$70x
1984–1988 Gross Receipts	$1,000x	$400x	$0x	$1,400x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$0x	$1,400x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($270x) over the group's base amount ($135x). The group credit is 0.20 × ($270x − $135x), which equals $27x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (5 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,400x), or the group's minimum base amount ($135x). The group's base amount, therefore, is $135x, which is the greater of: 0.05 × $1,400x, which equals $70x, or $135x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $270x, which equals $135x.

(*3*) *Group's fixed-base percentage.* Because only one member of the group, F, is a start-up company under section 41(c)(3)(B)(i), the group is not a start-up company under paragraph (b)(2) of this section. Therefore, the group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bears to the group's aggregate gross receipts for the same period, or 16 percent (the statutory minimum). The group's fixed-base percentage, therefore, is 5 percent, which is the lesser of: $70x/$1,400x, which equals 5 percent, or 16 percent.

(iii) *Allocation of the group credit.* The group credit of $27x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of stand-alone entity credits of all the members of the controlled group. The $27x group credit is allocated as follows:

	D	E	F	Total
Stand-Alone Entity Credit	$20x	$2x	$5x	$27x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/27	2/27	5/27	
Multiplied by: Group Credit	$27x	$27x	$27x	
Equals: Credit Allocated to Member	$20x	$2x	$5x	$27x

Example 3. Group is a start-up company—(i) *Facts.* G, H, and I, all of which are calendar-year taxpayers, are members of a controlled group of corporations. Each of G, H, and I qualifies as a start-up company under section 41(c)(3)(B)(i). The 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which each of G, H, and I has QREs. Because each of G, H, and I qualifies as a start-up company under section 41(c)(3)(B)(i), the group is treated as a start-up company under paragraph (b)(2) of this section. The 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which the group has QREs. Neither G, H, nor I made any basic research payments during the 2003 taxable year. For purposes of computing the group credit for the 2003 taxable year (the credit year), G, H, and I had the following:

	G	H	I	Group aggregate
Credit Year QREs	$255x	$25x	$100x	$380x
1984–1988 QREs	$0x	$0x	$0x	$0x
1984–1988 Gross Receipts	$0x	$0x	$0x	$0x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,600x	$340x	$300x	$2,240x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($380x) over the group's base amount ($190x). The group credit is 0.20 × ($380x − $190x), which equals $38x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (3 percent) multiplied by the group's aggregate average annual gross

receipts for the 4 taxable years preceding the credit year ($2,240x), or the group's minimum base amount ($190x). The group's base amount, therefore, is $190x, which is the greater of: 0.03 × $2,240x, which equals $67.2x, or $190x.

(2) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $380x, which equals $190x.

(3) *Group's fixed-base percentage.* Each member of the group is a start-up company under section 41(c)(3)(B)(i), therefore, the group is a start-up company under paragraph (b)(2) of this section. Because the 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which the group has QREs, under section 41(c)(3)(B)(ii)(I), the group's fixed-base percentage is 3 percent.

(iii) *Allocation of the group credit.* The group credit of $38x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of stand-alone entity credits of all the members of the controlled group. The $38x group credit is allocated as follows:

	G	H	I	Total
Stand-Alone Entity Credit	$25.5x	$2.5x	$10x	$38x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	25.5/38	2.5/38	10/38	
Multiplied by: Group Credit	$38x	$38x	$38x	
Equals: Credit Allocated to Member	$25.5x	$2.5x	$10x	$38x

Example 4. Group alternative incremental research credit—(i) *Facts.* J, K, and L, all of which are calendar-year taxpayers, are members of a controlled group of corporations. The research credit under section 41(a) is not allowable to the group for the 2003 taxable year because the group's aggregate QREs for the 2003 taxable year are less than the group's base amount. The group credit is computed using the AIRC rules of section 41(c)(4). For purposes of computing the group credit for the 2003 taxable year (the credit year), J, K, and L had the following:

	J	K	L	Group aggregate
Credit Year QREs	$0x	$20x	$110x	$130x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to the sum of: 2.65 percent of so much of the group's aggregate QREs for the taxable year as exceeds 1 percent of the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year, but does not exceed 1.5 percent of such average; 3.2 percent of so much of the group's aggregate QREs as exceeds 1.5 percent of such average but does not exceed 2 percent of such average; and 3.75 percent of so much of such QREs as exceeds 2 percent of such average. The group credit is [0.0265 × [($1,700x × 0.015) − ($1,700x × 0.01)]] + [0.032 × [($1,700x × 0.02) − ($1,700x × 0.015)]] + [0.0375 × [$130x − ($1,700x × 0.02)]], which equals $4.10x.

(iii) *Allocation of the group credit.* The group credit is allocated to each member of the group by multiplying the group credit by the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $4.10x group credit is allocated as follows:

	J	K	L	Total
Stand-Alone Entity Credit	$0x	$.66x	$3.99x	$4.65x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.65	0.66/4.65	3.99/4.65	
Multiplied by: Group Credit	$4.10x	$4.10x	$4.10x	
Equals: Credit Allocated to Member	$0x	$.58x	$3.52x	$4.10x

(e) *For taxable years beginning before January 1, 1990.* For taxable years beginning before January 1, 1990, *see* § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2003.

(f) *Tax accounting periods used*—(1) *In general.* The credit allowable to a member of a controlled group of corporations or a group of trades or businesses under common control is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, M, N, and O are members of a controlled group of corporations. M and N file a calendar year consolidated return. O files a separate return using a fiscal year ending June 30. For purposes of computing the group credit at the end of the M's and N's (the computing members') calendar year on December 31, O's fiscal year ending June 30, which ends within the M's and N's calendar year, is treated as O's credit year.

* * * * *

(i) *Effective date.* Paragraphs (a)(1), (a)(4), (b), (c), (d), and (f)(1) of this section are applicable for taxable years beginning on or after the date these regulations are published in the **Federal Register** as final regulations. Generally, a taxpayer may use any reasonable method of computing and allocating the credit for taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations. However, paragraph (b) relating to the computation of the group credit and paragraph (c), relating to the allocation of the group credit, will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount

that would be allowable under paragraph (b).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–17870 Filed 7–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–011]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. The drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 7:30 a.m. to 11:30 a.m. on September 28, 2003. This proposed rule would allow the annually scheduled running of a foot race as part of a local community event.

DATES: Comments and related material must reach the Coast Guard on or before August 28, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–03–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On February 19, 2003, the Department of the Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad & Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois to allow the drawbridge to remain in the closed to navigation position for a four hour period while a foot race is run across the drawbridge. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the limited closure period of four hours. Presently, the draw opens on signal for passage of river traffic. The Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 7:30 a.m. until 11:30 a.m. on Sunday. September 28, 2003.

Regulatory Evaluation

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

The Coast Guard expects that this temporary change to operation of the Rock Island Railroad & Highway Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will be in effect for only 4 hours early on a Sunday morning, and the Coast Guard expects the impact of this action to be minimal.

If you think that your business, organization. or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed 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. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. 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 discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 7:30 a.m. to 11:30 a.m. on September 28, 2003, § 117.T395 is added to read as follows:

§ 117.T395 Upper Mississippi River.

Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River.

From 7:30 a.m. to 11:30 a.m. on September 28, 2003 the drawspan need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: July 10, 2003.

R.F. Duncan,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–19257 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK94

Payment for Non-VA Physician Services Associated With Either Outpatient or Inpatient Care Provided at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. Currently, the medical regulations require all VA facilities to reimburse for non-VA physician services based upon the Centers for Medicare and Medicaid Services (CMS) physician fee schedule in effect at the time the services are provided. However, it appears that special circumstances exist in the state of Alaska. If the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. This, in turn, may potentially limit VA patient access to non-VA health care. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this could negatively impact the quality of care provided veterans living in that state. Therefore, to ensure that amounts paid to physicians better represent the local cost to furnish a service, while continuing to achieve program cost reductions, we propose to establish an Alaska-specific payment methodology for inpatient and outpatient non-VA physician services within that state.

DATES: Comments must be received by VA on or before September 29, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.*

Comments should indicate that they are submitted in response to "RIN 2900–AK94." All comments received will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Rex Gilmore, Chief Business Office (16), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–0321. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The VA Healthcare System converted to a Centers for Medicare and Medicaid Services (CMS) Resource Based Relative Value System (RBRVS) payment schedule for outpatient care purchased from community providers in 1999. At that time, because of concerns regarding the high cost of care in the state of Alaska, the state was granted an exemption that kept payments for non-VA health care in that state under the previous system. That system created a fee schedule each year based upon the 75th percentile of at least eight billed amounts received in the previous year. This resulted in significant fee schedule changes each year, and a schedule that was not comprehensive.

Following an actuarial study completed in 2001 and subsequent meetings with VA Alaska officials and community providers, VA determined that special circumstances still exist in Alaska. If the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. As a result, community practitioners may be unwilling to accept VA patients. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this may limit VA patient access to health care and negatively impact the quality of care provided veterans living in that state. Therefore, to ensure that amounts paid to physicians better represent the local cost to furnish a service, VA proposes to establish a special payment methodology for inpatient and outpatient non-VA care provided in Alaska. Under the proposed methodology, the VA Fee Schedule would include, in the new § 17.56(d), a payment system for non-VA care in Alaska that does not compromise access to care for veterans, is comprehensive for all Current Procedural Terminology (CPT) codes, and accounts for the geographic and specialty care challenges of Alaska.

In Alaska, VA proposes to pay for services in accordance with a fee schedule that uses CPT codes utilized by CMS. VA would pay a specific amount for each service for which there is a corresponding CPT code. Under the VA Fee Schedule, the amount paid in Alaska for each CPT code would be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2002. For services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA would take the CMS rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for CMS like codes. VA would increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by CMS.

Finally, this document would make non-substantive revisions in paragraphs (a) and (b) of § 17.56 to reflect the name change of the former Health Care Financing Administration to Centers for Medicare and Medicaid Services.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, in 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 proposed rule would have no consequential effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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 through 612. The proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 21, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.56 is amended by:

A. In paragraph (a), first sentence, removing "Except for anesthesia services," and adding, in its place, "Except for anesthesia services, and services provided in the State of Alaska under paragraph (d) of this section,"; removing "Department of Health and Human Services, Health Care Financing Administration (HCFA) under Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and in the third sentence, removing "calculated under Medicare's participating" and adding, in its place, "calculated under Centers for Medicare and Medicaid Services' participating".

B. In paragraph (b), removing "Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and removing "calculating the Medicare fee" and adding, in its place, "calculating the Centers for Medicare and Medicaid Services' fee".

C. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f),

respectively. In newly redesignated paragraph (f), removing the phrase "paragraphs (a) through (d)" and adding, in its place, "paragraphs (a) through (e)".

D. Adding a new paragraph (d).

The addition reads as follows:

§ 17.56 Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities.

* * * * *

(d) In Alaska, VA will pay for services in accordance with a fee schedule that uses CPT codes utilized by Centers for Medicare and Medicaid Services. VA will pay a specific amount for each service for which there is a corresponding CPT code. Under the VA Fee Schedule the amount paid in Alaska for each CPT code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2002. For services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA will take the Centers for Medicare and Medicaid Services' rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by Centers for Medicare and Medicaid Services. Payment for non-VA physician services in Alaska shall be the lesser of the amount billed, or the amount calculated under this subpart.

(Authority: 38 U.S.C. 513, 1703, 1728)

* * * * *

[FR Doc. 03–19174 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7570]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed 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.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA Edgecombe County				
Fishing Creek	Approximately 0.8 mile upstream of the confluence with Deep Creek.	None	•48	Edgecombe County (Unincorporated Areas).
	At the downstream side of Rail Road	None	•96	
Maple Swamp	Approximately 575 feet downstream of NC Highway 97	•51	•52	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile downstream of Bethlehem Church Road.	None	•60	
Moccasin Swamp	Approximately 0.5 mile upstream of confluence with Swift Creek.	None	•75	Edgecombe County (Unincorporated Areas).
	Approximately 800 feet downstream of Morning Star Church Road.	None	•75	
Edgecombe County (Unincorporated Areas)				
Maps available for inspection at Edgecombe County (Unincorporated Areas) Planning Department, 201 Saint Andrews Street, Tarboro, North Carolina. Send comments to Mr. Lorenzo Carmon, Edgecombe County (Unincorporated Areas) Manager, 201 Saint Andrews Street, Tarboro, North Carolina 27866.				
Hollis Branch	Approximately 450 feet downstream of the Craven/Jones County boundary.	None	•35	Jones County (Unincorporated Areas).
	Approximately 800 feet upstream of the Craven/Jones County boundary.	None	•36	
Unincorporated Areas of Jones County				
Maps available for inspection at the Jones County Building and Inspections Department, 101 Market Street, Trenton, North Carolina. Send comments to Mr. Larry Meadows, Jones County Manager, P.O. Box 340, Trenton, North Carolina 28585.				
NORTH CAROLINA Lenoir County				
Adkin Branch	At the confluence with Neuse River	•33	•35	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Carey Road	None	•76	
Bear Creek	At the confluence with Neuse River	•49	•52	Town of LaGrange, Lenoir County (Unincorporated Areas).
	At the Lenoir/Greene County boundary	•83	•82	
Southwest Creek	At the confluence with Neuse River	•29	•32	City of Kinston, Lenoir County (Unincorporated Areas).
	At the downstream side of railroad	•33	•34	
Moseley Creek into Falling Creek.	At the downstream LaGrange corporate limit	None	•76	Town of LaGrange.
	Approximately 150 feet upstream of State Highway 903.	None	•92	
Briery Run	Approximately 1,000 feet upstream of Rouse Road	None	•67	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Dobbs Farm Road	None	•80	
Falling Creek	At the confluence with Neuse River	•38	•42	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Brothers Road	None	•85	

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Taylors Branch	Approximately 300 feet upstream of Rouse Road	None	•72	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Rouse Road	None	•101	
Eagle Swamp	At the confluence with Contentnea Creek	•23	•25	Lenoir County (Unincorporated Areas).
	At the downstream side of railroad	•24	•25	
Contentnea Creek	At the confluence with Neuse River	•19	•24	Lenoir County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Hugo Road	•33	•34	
Neuse River	At the confluence with Contentnea Creek	•19	•24	City of Kinston, Lenoir County (Unincorporated Areas).
	At the Lenoir/Wayne County boundary	•53	•55	
Wheat Swamp	At the Lenoir/Greene County boundary	None	•39	Lenoir County (Unincorporated Areas).
	Approximately 4 miles upstream of NC Route 58	None	•77	
Wheat Swamp Tributary	At the Lenoir/Greene County boundary	None	•40	Lenoir County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Research Farm Road.	None	•56	
Stonyton Creek	At the confluence with Neuse River	•26	•29	Lenoir County (Unincorporated Areas).
	Approximately 1,400 feet upstream of the confluence with Jerico Run.	•31	•30	
Jerico Run	At the confluence with Stonyton Creek	•27	•29	Lenoir County (Unincorporated Areas).
	Approximately 300 feet downstream of State Route 55	•28	•29	
Mosley Creek to Neuse River.	At the confluence with Neuse River	•19	•25	Lenoir County (Unincorporated Areas).
	Approximately 650 feet downstream of Griffin Road	None	•31	
Beaverdam Swamp	At the confluence with Trent River	None	•68	Lenoir County (Unincorporated Areas).
	Approximately 200 feet upstream of Rex-Howard Road	None	•95	
Deep Run	Approximately 425 feet upstream of NC State Highway 11.	None	•87	Lenoir County (Unincorporated Areas).
	Approximately 0.7 mile upstream of NC State Highway 11.	None	•95	
Horse Branch	At the confluence with Trent River	None	•71	Lenoir County (Unincorporated Areas).
	Approximately 2,120 feet upstream of Jesse Howard Road.	None	•74	
Joshua Creek	Approximately 1,200 feet upstream of Fordham Road	None	•63	Lenoir County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Vine Swamp Road.	None	•82	
Neuse River Tributary	At the confluence with Neuse River	•38	•42	City of Kinston.
	Approximately 1,400 feet upstream of railroad	None	•56	
Southwest Creek Tributary	At the confluence with Southwest Creek	•32	•34	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1,250 feet downstream of British Road	•33	•35	
Strawberry Branch	At the confluence with Southwest Creek	None	•39	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 150 feet downstream of Whaley Road	None	•47	
Tracey Swamp	At the upstream side of Sand Hill Road	None	•42	Lenoir County (Unincorporated Areas).
	At the Lenoir/Craven/Jones County boundary	None	•43	
Trent River	At the Lenoir/Jones County boundary	None	•62	Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile upstream of NC State Route 11	None	•123	
Neuse River Tributary 2	At the confluence with Neuse River Tributary	None	•44	City of Kinston.
	Approximately 1,800 feet upstream of railroad	None	•62	
Vine Swamp	At the Lenoir/Jones County boundary	None	•57	Lenoir County (Unincorporated Areas).
	Approximately 800 feet upstream of Parker Farm Road	None	•81	
Vine Swamp Tributary	At the confluence with Vine Swamp	None	•62	Lenoir County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.5 mile upstream of Joe Williams Road	None	•67	
Tuckahoe Swamp	At the Lenoir/Jones County boundary	•77	•81	Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile downstream of West Hill Pleasant Road.	•86	•87	
Rivermont Tributary	At the confluence with Neuse River	•36	•37	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1,200 feet Areas) upstream of Andrews Street.	•37	•39	

City of Kinston

Maps available for inspection at the City of Kinston Planning Department, 301 East King Street, Kinston, North Carolina.

Send comments to The Honorable Johnnie Mosley, Mayor of the City of Kinston, P.O. Box 339, Kinston, North Carolina 28502.

Town of La Grange

Maps available for inspection at the La Grange Town Hall, 120 East Railroad Street, La Grange, North Carolina.

Send comments to The Honorable Woodard H. Gurley, Mayor of the Town of La Grange, P.O. Box 368, La Grange, North Carolina 28551.

Lenoir County Unincorporated Areas

Maps available for inspection at the Lenoir County Building Inspector's Office, 201 East King Street, Kinston, North Carolina.

Send comments to Mr. John Bauer, Lenoir County Manager, P.O. Box 3289, Kinston, North Carolina 28502.

NORTH CAROLINA
Pamlico County

Alexander Swamp	Approximately 500 feet upstream of the confluence with Goose Creek.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 2.0 miles downstream of the confluence with Goose Creek.	None	•15	
Bay River/Vandemere Creek.	At the intersection of 1st Lane and Water Lane	None	•7	City of Mesic.
Beard Creek	Approximately 0.8 mile downstream of the confluence of Cedar Gut.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0 8 mile upstream of Roberts Road	None	•14	
Black Creek	Approximately 0.8 mile downstream of Prescott Road	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 600 feet upstream of Prescott Road	None	•16	
Caraway Creek	Approximately 0.6 mile upstream of confluence with Beard Creek.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Marvin Field Road	None	•14	
Cedar Gut	At the confluence with Beard Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Neuse Road	None	•13	
Deep Run South	At the confluence with Dawson Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 900 feet upstream of Don Lee Road	None	•9	
Deep Run North	At the confluence with Upper Broad Creek	None	•11	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Upper Broad Creek.	None	•15	
Deep Run Branch	At the confluence with Goose Creek	None	•11	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Goose Creek.	None	•13	
East Prong	At the confluence with Beard Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Beard Creek.	None	•16	
Fork Run	Approximately 0.7 mile downstream of confluence of Deep South Run.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Kershaw Road	None	•11	
Goose Creek	At Neuse Road	None	•8	Pamlico County (Unincorporated Areas), Town of Grantsboro.
	Approximately 1.7 miles upstream of confluence of Deep Run Branch.	None	•15	
Granny Gut	At the confluence with Dawson Creek	None	•8	Pamlico County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,500 feet upstream of Kershaw Road ..	None	•8	
Green's Creek	Approximately 1,750 feet west-southwest of the intersection of Harris Farm Road and Kershaw Road.	None	•9	Pamlico County (Unincorporated Areas).
Kershaw Creek	Approximately 1,500 feet north-northeast of the intersection of Harris Farm Road and Kershaw Road.	None	•7	Pamlico County (Unincorporated Areas).
Mill Creek	Approximately 1,800 feet upstream of the confluence with Neuse River.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Neuse River.	None	•9	
Neal Creek	Approximately 0.6 mile upstream of confluence with South Prong Bay River.	None	•7	Pamlico County (Unincorporated Areas).
	Approximately 1.4 miles upstream of confluence with South Prong Bay River.	None	•10	
North Prong Bay River	Approximately 1.1 miles upstream of the confluence with Bay River.	None	•7	Pamlico County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Mill Pond Road ...	None	•10	
Pamlico River	Area within Goose Creek State Refuge	None	•6	Pamlico County (Unincorporated Areas).
	Area within Goose Creek State Refuge	None	•7	
Possum Swamp	At the confluence with Upper Broad Creek	None	•17	Pamlico County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence of Savannah Bridge Swamp.	None	•24	
Sasses Branch	At the confluence with Upper Broad Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Upper Broad Creek.	None	•9	
Savannah Bridge Swamp ...	At the confluence with Possum Swamp	None	•19	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Possum Swamp.	None	•23	
South Prong Bay River	Approximately 1.0 mile upstream of Cooper Road	None	•9	Pamlico County (Unincorporated Areas), Town of Alliance, Town of Grantsboro.
	Approximately 1.6 miles upstream of Cooper Road	None	•9	
Southwest Fork Trent Creek.	Approximately 0.5 mile upstream of confluence with Trent Creek.	None	•6	Pamlico County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Isabelle Road	None	•7	
Trent Creek	At Highway 55	None	•6	Pamlico County (Unincorporated Areas).
	Approximately 2.2 miles upstream of confluence of Fork Run 1.	None	•7	
Upper Broad Creek (Neuse Basin).	At Lee Landing Road	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 3.2 miles upstream of Old Cross Road	None	•29	
Upper Broad Creek (Tar-Pamlico Basin)	At the Beaufort/Pamlico County boundary	None	•31	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles downstream of the Beaufort/Pamlico County boundary.	None	•37	
Wheeler Gut	At the confluence with Fork Run	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Fork Run.	None	•9	

Town of Alliance

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Lee Toler, Mayor of the Town of Alliance, 72 Courtland Drive, P.O. Box 1, Alliance, North Carolina 28509.

Town of Grantsboro

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Clifton E. Stowe, Mayor of the Town of Grantsboro, P.O. Box 83, Grantsboro, North Carolina 28529

City of Mesic

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Joe Ollison, Mayor of the City of Mesic, 8443 NC Highway 304, Bayboro, North Carolina 28515.

Pamlico County Unincorporated Areas

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to Mr. Randy Beeman, Pamlico County Manager, 302 Main Street, Bayboro, North Carolina 28515–0776.				
	NORTH CAROLINA Person County			
Alderidge Creek	At the upstream side of Berry Road	None	•527	Person County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Satterfield Road	None	•536	
Alderidge Creek Tributary	At the confluence with Alderidge Creek	None	•530	Person County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Alderidge Creek.	None	•535	
Bushy Fork Creek	Approximately 600 feet downstream of Charlie Long Road.	None	•571	Person County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Bradsher Road	None	•616	
Bushy Fork Creek Tributary	At the confluence with Bushy Fork Creek	None	•606	Person County (Unincorporated Areas).
	Approximately 0.38 mile upstream of the confluence with Bushy Fork Creek.	None	•622	
Byrds Creek	Approximately 850 feet upstream of the confluence with South Flat River.	None	•546	Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with South Flat River.	None	•558	
Cub Creek Tributary 1	At the Person/Granville County boundary	None	•477	Person County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Cub Creek Tributary 2.	None	•499	
Cub Creek Tributary 2	At the confluence with Cub Creek Tributary 1	None	•490	Person County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence with Cub Creek Tributary 1.	None	•496	
Deep Creek	At the Person/Durham County boundary	None	•420	Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Mollie Moonie Road.	None	•561	
Deep Creek Tributary	At the confluence with Deep Creek	None	•477	Person County (Unincorporated Areas).
	Approximately 2,000 feet upstream of the confluence with Deep Creek.	None	•485	
Deep Creek Tributary 2	At the confluence with Deep Creek	None	•516	Person County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Deep Creek.	None	•520	
Dial Creek	At the Person/Durham County boundary	None	•515	Person County (Unincorporated Areas).
	Approximately 400 feet upstream of the Person/Durham County boundary.	None	•519	
Flat River Tributary 5	At the confluence with Flat River	•473	•474	Person County (Unincorporated Areas).
	At the Person/Durham County boundary	None	•496	
Lick Creek 1	At the upstream side of Ashley Road	None	•533	Person County (Unincorporated Areas).
	At the Person/Orange County boundary	None	•545	
North Flat River	Approximately 500 feet upstream of Paynes Tavern Road.	None	• 604	Person County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Paynes Tavern Road.	None	• 617	
North Flat River Tributary	Just upstream of Railroad crossing	None	• 542	City of Roxboro, (Unincorporated Areas).
	Approximately 1.0 mile upstream of U.S. Highway 158	None	• 711	
North Flat River Tributary 2	Approximately 600 feet upstream of the confluence with North Flat River.	None	• 580	City of Roxboro, Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Industrial Drive	North	• 701	
North Flat River Tributary 3	At the confluence with North Flat River	None	• 604	Person County (Unincorporated Areas).
	Approximately 325 feet upstream of Noah Davis Road	None	• 625	
North Flat River Tributary 5	At the confluence with North Flat River Tributary	None	• 582	Person County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.7 mile upstream of the confluence with North Flat River Tributary.	None	• 600	
North Flat River Tributary 7	At the confluence with North Flat River Tributary 2	None	• 592	Person County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with North Flat River Tributary 2.	None	• 607	
North Flat River Tributary 8	At the confluence with North Flat River Tributary 2	None	• 595	Person County (Unincorporated Areas).
	Approximately 825 feet upstream of Hurdle Mills Road	None	• 606	
North Flat River Tributary 9	At the confluence with North Flat River Tributary 2	None	• 608	Person County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with North Flat River Tributary 2.	None	• 649	
Rock Fork	At the confluence with Deep Creek	None	• 445	Person County (Unincorporated Areas).
.....	Approximately 0.7 miles upstream of the confluence with Deep Creek.	None	.....	• 453
South Flat River	At the upstream side of Jim Morton Road	*619	• 618	Person County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the Jim Morton Road.	None	• 627	
South Flat River Tributary ..	Approximately 100 feet upstream of the confluence with South Flat River.	None	• 491	Person County (Unincorporated Areas).
	Approximately 1,000 feet upstream of U.S. Highway 501/State Route 57.	None	• 508	
South Flat River Tributary 3	Approximately 0.3 mile upstream of the confluence with South Flat River.	None	• 517	Person County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with South Flat River.	None	• 522	
South Flat River Tributary 4	Approximately 4,100 feet upstream of the confluence with South Flat River.	None	• 593	Person County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with South Flat River.	None	• 602	
South Flat River Tributary 5	Approximately 1,200 feet upstream of the confluence with South Flat River.	None	• 603	Person County (Unincorporated Areas).
	Approximately 575 feet upstream of Briggs Road	None	• 617	
Tar River	At the Person/Granville County boundary	None	• 499	Person County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Gentry Road	None	• 551	
Tar River Tributary 5	At the confluence with the Tar River	None	• 510	Person County (Unincorporated Areas).
	Approximately 150 feet upstream of Depot Street	None	• 541	

City of Roxboro

Maps available for inspection at the Roxboro Planning Department, 105 South Lamar Street, Roxboro, North Carolina.

Send comments to The Honorable Lois Winstead, Mayor of the City of Roxboro, P.O. Box 128, Roxboro, North Carolina 27573.

Person County Unincorporated Areas

Maps available for inspection at the Person County Planning and Zoning Department, 20A Court Street, Roxboro, North Carolina.

Send comments to Mr. Steve Carpenter, Person County Manager, 304 South Morgan Street, Room 212, Roxboro, North Carolina 27573.

WISCONSIN
La Crosse County

Johns Coulee	At the confluence with Mormon Creek	None	• 725	La Crosse County (Unincorporated Areas).
	Approximately 1 mile upstream of County Route YY	None	• 827	
Mormon Creek	Approximately 0.8 mile upstream of the confluence with the Mississippi River.	None	*645	City of La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 100 feet upstream of County Route M ..	None	*766	
Sand Lake Coulee	Approximately 200 feet downstream of County Route OT.	None	*650	Village of Holmen, La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Moos Drive	None	*770	
Smith Valley Creek	Approximately 1,000 feet upstream of the confluence with La Crosse River.	*658	*659	La Crosse, La Crosse County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Black River	Approximately 2.1 miles upstream of Kiel Coulee Road	None	*814	City of Onalaska.
	Just upstream of the dam	*648	*647	
	Approximately 1.1 miles upstream of the dam	*648	*647	
Green Coulee	Approximately 0.5 mile downstream of Main Street	None	*710	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 250 feet upstream of Main Street	None	*716	
La Crosse River	Approximately 0.9 mile downstream of 17th Avenue North.	None	*712	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.9 mile upstream of 17th Avenue North	None	*718	
State Road Coulee	Approximately 620 feet downstream of Stry Drive	*691	*683	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 1,000 feet downstream of Haas Farm Drive.	*702	*701	
Sand Lake Coulee	Approximately 200 feet downstream of County Route OT.	None	*650	Village of Holmen, La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Moos Drive	None	*770	

La Crosse County (Unincorporated Areas)

Maps available for inspection at the La Crosse County Zoning, Planning and Land Information Department, 400 4th Street North, Room 105, La Crosse, Wisconsin.

Send comments to Mr. Steve Doyle, La Crosse County Board Chairman, 400 4th Street North, Room 101, La Crosse, Wisconsin 54601–3200.

City of La Crosse

Maps available for inspection at the La Crosse City Hall, 400 La Crosse Street, La Crosse, Wisconsin.

Send comments to the Honorable John Medinger, Mayor of the City of La Crosse, 400 La Crosse Street, La Crosse, Wisconsin 54601.

City of Onalaska

Maps available for inspection at the Onalaska City Hall, Engineering Department, 415 Main Street, Onalaska, Wisconsin.

Send comments to the Honorable James Bialecki, Mayor of the City of Onalaska, 415 Main Street, Onalaska, Wisconsin 54650.

Village of Holmen

Maps available for inspection at the Holmen Village Hall, 428 South Main Street, Holmen, Wisconsin.

Send comments to Mr. John Chapman, Holmen Village President, 428 South Main Street, Holmen, Wisconsin 54636.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19248 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7572]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed 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.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
New Jersey	Greenwich (Township), Warren County.	Merrill Creek	Approximately 30 feet upstream of confluence with Pohatcong Creek.	*263	*262
			Approximately 150 feet downstream of North Main Street.	*336	*337
		Merrill Creek (Left Channel).	At the downstream confluence with Merrill Creek.	*271	*270
			Approximately 35 feet downstream from upstream confluence with Merrill Creek.	*342*	343
Maps available for inspection at the Greenwich Township Municipal Building, 321 Greenwich Street, Stewartsville, New Jersey.					
Send comments to The Honorable Gregory Blaszka, Mayor of the Township of Greenwich, Municipal Building, 321 Greenwich Street, Stewartsville, New Jersey 08886.					
New York	Victor (Village) Ontario County.	Great Brook	At the downstream corporate limits	None	*555
			Approximately 1,150 feet upstream of CONRAIL.	None	*585
Maps available for inspection at the Victor Village Office, 60 East Main Street, Victor, New York.					
Send comments to The Honorable Thomas Walker, Mayor of the Village of Victor, 60 East Main Street, Victor, New York 14564.					
Wisconsin	New Richmond (City), St. Croix County.	Paper Jack Creek	Approximately 650 feet downstream of abandoned railroad.	None	*960
			Approximately 0.6 mile upstream of Bilmar Avenue.	None	*980
		Willow River	Approximately 0.4 mile downstream of State Highway 64.	None	*950
			Approximately 0.8 mile upstream of the Soo Line Railroad.	None	*979

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the City of New Richmond Civic Center, 156 East First Street, New Richmond, Wisconsin.					
Send comments to The Honorable David Schnitzler, Mayor of the City of New Richmond, 156 East First Street, New Richmond, Wisconsin 54017.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19249 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030721177–3177–01; I.D. 060903C]

RIN 0648–AQ96

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications for Pacific Mackerel

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action proposes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by August 13, 2003.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The report Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA, on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16–20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that began July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach the biomass for July 1, 2003, would be 68,924 metric tons (mt). Applying the formula in the FMP would result in a harvest guideline of 10,652 mt, which is lower than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2003, this estimate is 68,924 mt.

2. *The cutoff.* This is the biomass level below which no commercial

fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 50,724 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 50,724 mt, that is, 35,507 mt.

4. *The harvest fraction.* This is the percentage of th e biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, a directed fishery for Pacific mackerel of 9,500 mt was set beginning July 1, 2002, followed by an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, if the 9,500 mt was harvested. A 1–mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. As of May 30, 2003, approximately 3,800 mt of Pacific mackerel had been landed in the directed fishery; therefore, an incidental fishery was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season that a directed fishery of 7,500 mt and an incidental fishery of 3,152 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective when 7,500 mt of Pacific mackerel is estimated to be harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip while fishing for salmon or groundfish in the incidental fishery without landing any other CPS. The Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an automatic action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested.

Public comments are requested on how the fishery might be conducted for the 2003/2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the July 1, 2003, through June 30, 2004, fishing season:

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt would be in effect for the fishery beginning on July 1, 2003. This harvest guideline would be for the fishing season beginning at 12:01 a.m. on July 1, 2003, and continue through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. A directed fishery of 7,500 mt and an incidental fishery of 3,152 mt would be implemented, with an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS becoming effective when 7,500 mt of Pacific mackerel is estimated to be harvested. A landing of 1 mt of Pacific mackerel per trip would be permitted during the incidental fishery without landing any other CPS.

Classification

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

Public comments are also requested on the IRFA that NMFS has prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. Specifically, NMFS is requesting that the public provide comments on the range of alternatives considered by NMFS and offer any additional alternatives that NMFS should consider for the Pacific mackerel fishery. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this proposed rule and is not repeated here. A harvest guideline is required by the FMP to protect the resource from overfishing while allowing harvest by fishermen. For the purposes of analysis, the no action alternative has potential negative environmental and economic impacts. Failure to set a harvest guideline based on a biomass estimate could lead to overfishing. This would provide some short term economic benefits to the fishing industry through increased revenue, but a decline in the resource would lead to lower revenue in subsequent years. The alternative to not have a directed and incidental fishery is reasonable, but could have negative economic consequences, because Pacific mackerel often occur in schools of Pacific sardine; therefore, a prohibition on landing Pacific mackerel would disrupt the sardine fishery. The season structure of the 2002–2003 fishing season was reviewed, which included a directed fishery of 9,500 mt, an incidental fishery of 3,035 mt, and an incidental harvest of 40 percent following closure of the directed fishery. The lower harvest guideline and the primary goal of minimizing economic impacts on the sardine fishery during the 2003–2004 fishing season led to setting the incidental fishery at a similar level,3,152 mt, with a 40 percent incidental rate, reducing the size of the directed fishery. Many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable; therefore, changes during the fishing season may be necessary. A review of previous seasons indicated that about 3,000 mt should be reserved for an incidental fishery. Changes can be made during the fishing season, but a high incidental rate and a significant incidental fishery would likely minimize interruption of the sardine fishery and regulatory changes during the year. If a significant amount of the harvest guideline remains toward the end of the season, the directed fishery can be reopened. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the proposed rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39°N. lat. (a point north of Monterey, California). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, California south. Some of the vessels in Monterey, California may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of

these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

The average revenue from Pacific mackerel in real dollars in the last 10 years, from 1993 through 2002 is almost $1.8 million per year. This is the revenue the industry might expect on average per year given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of $144.55, potential revenue could be $1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, as of June 3, 2003, only 3,790 mt had been landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Total landings for the 2002–2003 fishing season are not likely to exceed 4,000 tons. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of $960,000 in ex vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and processors, and will benefit the fishing communities in southern California, where virtually all Pacific mackerel is landed. Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific mackerel but all species harvested during the year by the CPS fleet. Average conditions are likely to prevail during the 2003–2004 fishing season, that is, ex vessel revenue derived from Pacific mackerel will fall between $1.4 million and $1.8 million based on a real ex vessel price that has varied between $126.98/mt and $172.59/mt from 1993 to 2002.

Cost data is not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of $960,000 in gross revenue, the average gross revenue per vessel would be $14,769. Setting a harvest guideline is required by the FMP and Federal regulations; therefore, a no action alternative is not reasonable. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lead to some short term economic benefits to the fishing industry, but would lower the biomass estimate the following year along with the harvest guideline, which would reduce potential future revenue to the fleet. The impact of future revenue loss is greater at the low biomass levels that have occurred in recent years, because rebuilding the resource from low biomass levels takes longer. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, overall fleet revenue has averaged $29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that total. Under the proposed alternative, revenue is likely to average less because squid landings contribute substantial revenue to the fleet and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The proposed alternative also divides the harvest guideline into a 7,500 mt directed fishery, a 3,152 mt incidental fishery, and a limit of 40 percent by weight of Pacific mackerel in any landing of CPS when the directed fishery is closed. The numbers chosen were based on recent experience in the fishery, primarily availability of Pacific mackerel in the area of the fishery and the recent market value of mackerel compared to other CPS fisheries. A directed fishery with no incidental fishery could lead to significant negative economic impacts by closing the sardine fishery, which provided over $10 million in revenue to the CPS fleet in 2002. Interfering with the sardine fishery leads to increased bycatch of Pacific mackerel and increased enforcement action. To minimize the impact on the CPS fleet, the season structure of the 2002–2003 fishing season was reviewed, which included a directed fishery of 9,500 mt, an incidental fishery of 3,035 mt, and an incidental harvest of 40 percent following closure of the directed fishery. The lower harvest guideline and the primary goal of minimizing economic impacts on the sardine fishery during the 2003–2004 fishing season led to setting the incidental fishery at a similar level, of 3,152 mt, with a 40 percent incidental rate, thereby, reducing the size of the directed fishery. The FMP allows up to a 45 percent incidental harvest following the closing of the directed fishery, but 45 percent was considered not likely necessary. A 40 percent incidental rate operating in combination with a relatively significant incidental fishery was considered sufficient. Although the incidental rate can be changed during the fishing season, if the rate is set too low initially, fishing operations in the sardine fishery may be interrupted by attempting to avoid the capture of Pacific mackerel occurring in schools of Pacific sardine. Misjudgement by fishermen of the amount of Pacific mackerel occurring in schools of sardine leads to discards and increases bycatch. The possibility of dramatic changes during the fishing season were recognized, which could require in-season adjustments to any of the above factors. The goal of the changes would be to minimize disruption of the sardine fishery, which would minimize economic inpact on the fishing industry; however, administrative costs of implementing changes would increase in proportion to the number of changes needed. The proposed action will yield potentially lower revenue from Pacific mackerel than what otherwise might be possible under environmental conditions more favorable to Pacific mackerel (That is, a higher biomass); however, the low harvest guideline for the 2003–2004 fishing season will provide a small increase in revenue above that of the 2002–2003 fishing season and will not have a substantial effect on overall vessel profitability.

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

Dated: July 23, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19259 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–JS–S

Notices

Federal Register
Vol. 68, No. 145
Tuesday, July 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection—Operating Loans; Policies, Procedures, Authorizations and Closings

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the extension and revision of a currently approved information collection used in support of the Farm Loan Programs (FLP). The collection of information from FLP applicants and commercial lenders is used to determine eligibility; financial feasibility and security positions when the applicant applies for direct loan assistance.

DATES: Comments on this notice must be received on or before September 29, 2003.

ADDRESSES: Comments concerning this notice should be addressed to: Cathy Quayle, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522, and to: the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by email to: *cathyquayle@wdc.usda.gov*. Copies of the information collection may be obtained by contacting Cathy Quayle.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Loan Making Division, (202) 690–4018.

SUPPLEMENTARY INFORMATION:

Title: Operating Loans; Policies, Procedures, Authorizations and Closings

OMB Control Number: 0560–0162

Expiration Date of Approval: February 29, 2004

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0162 is necessary to effectively administer the operating loan program in accordance with the requirements in 7 CFR part 1941 as authorized by the Consolidated Farm and Rural Development Act. Specifically, the Agency uses the information to evaluate loan making or loan servicing proposals, and to process loan closings. The information is needed to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and if the security offered in support of the loan is adequate.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response

Respondents: Individuals or households, businesses or other for profit and farms

Estimated Number of Respondents: 51,466

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 6,176

Comment is invited on: (a) Whether the collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the Office of Management and Budget Approval.

Signed in Washington, DC on July 16, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–19173 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest, Idaho; Fisher Creek, Smiley Creek, Baker Creek, & North Fork-Boulder Allotments Management Plans Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement for sheep allotments located on the Sawtooth national Recreation Area and Ketchum Ranger District, Sawtooth National Forest, in Custer and Blaine Counties, Idaho.

SUMMARY: On May 6, 2003, the USDA Forest Service filed a notice of intent to prepare an environmental impact statement for the Fisher Creek and Smiley Creek sheep & goat allotments (**Federal Register** Volume 68, Number 87, Page 23950–23951). Also on May 6, 2003, the Forest Service filed a notice of intent to prepare an environmental impact statement for the Baker Creek and North Fork-Boulder Creek sheep & goat allotments (**Federal Register** Volume 68, Number 87, Page 23951–23952). The May 6th notice for both environmental impact statements describe the "Purpose and Need for Action", the proposed action, possible alternatives, environmental issues considered, estimated dates for filing the environmental impact statements, identified the responsible officials, and provided information concerning public participation. This information remains unchanged. This notice combines the Fisher Creek and Smiley Creek environmental impact statement with the environmental impact statement for the Baker Creek and North Fork-Boulder Creek sheep & goat allotments. Only one environmental impact statement will be prepared for the four livestock allotments and it will be known as the "North Sheep Allotment Management Plans". Publication of the Draft and

Final Environmental Impact Statements will be under that name. The livestock allotments are adjacent to one another and connected by a common sheep driveway. It is cost effective to combine them and will enhance the cumulative effects analysis for both. This notice also changes the names and addresses of the agency officials who can provide additional information for the combined environmental impact statement. Questions about the proposed project and scope of analysis should be directed to Mike O'Farrell, Team Leader, at Ketchum Ranger Station; P.O. Box 2356; Ketchum, Idaho, 83340. Faxes should be sent to 208–622–3923 and e-mails to: *comments-intermtn-sawtoot ketchum@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Questions about this revised notice or the proposed project and scope of analysis should be directed to Mike O'Farrell, Team Leader, at the above address, or phone at (208) 622–5371.

Dated: July 23, 2003.

Ruth Monahan,

Sawtooth Forest Supervisor.

[FR Doc. 03–19192 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report/ Maintenance, (5) Update on Approved Projects, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on August 14, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 11, 2003 will have the opportunity to address the committee at those sessions.

Dated: July 23, 2003.

James Fenwood,

Designated Federal Official.

[FR Doc. 03–19191 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

July 14, 2003.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 69th Meeting in Dutch Harbor, Alaska on August 4 and Anchorage, Alaska on August 5, 2003. The Business Session open to the public will convene at 9 a.m. Tuesday, August 4, in the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 68th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Wednesday, August 5, 2003. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 03–19327 Filed 7–25–03; 11:25 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Central Region Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas, Missouri, Nebraska and Oklahoma Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Thursday, August 14, 2003. The purpose of the conference call is to discuss strategic planning about meaningful/measurable outcomes.

This conference call is available to the public through the following call-in number: 1–800–473–8493, access code 17926130. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or for those made over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Friday, August 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 2003.

Dawn Sweet,

Editor.

[FR Doc. 03–19347 Filed 7–25–03; 1:06 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama and Louisiana Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alabama and Louisiana Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Tuesday, August 12, 2003. The purpose of the conference call is to discuss the civil rights "Listening Tour" meeting to be held in November.

This conference call is available to the public through the following call-in number: 1–800–923–4213, access code 18014444. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or for those made over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Thursday, August 7, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 2003.

Dawn Sweet,

Editor.

[FR Doc. 03–19348 Filed 7–25–03; 1:06 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Office of Administration

[Docket No.: 020125021–3179–02]

Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the adoption of its policy guidance entitled Guidance to Federal Financial Assistance Recipients on Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

DATES: Commerce adopts the guidance as of March 24, 2003.

ADDRESSES: For a copy of the policy guidance, please mail requests to Theresa C. Counce, Office of Civil Rights, Room 6003, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Requests may also be submitted by e-mail to *TCounce@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Theresa C. Counce, Office of Civil Rights, telephone: 202–482–8187, TDD: 202–482–2030. Arrangements to receive the policy in an alternate format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: On March 24, 2003, Commerce published and requested comments on a policy guidance notice entitled Guidance to Federal Financial Assistance Recipients of the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (68 FR 14180, March 24, 2003). Limited English proficient (LEP) persons are those having limited ability to read, write, speak, or understand English. Executive Order (EO) 13166 (August 16, 2000) directs each Federal agency that extends assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, as amended, publish such guidance. The Office of Management and Budget (OMB) issued a report on March 14, 2002 recommending that Federal agencies issue uniform guidance for recipients, and the Department of Justice (DOJ) published model guidance 67 FR 41455 (June 18, 2002) for agencies to follow when developing agency-specific guidance. Commerce's guidance, published on March 24, 2003, adheres to DOJ's model guidance.

Commerce received only one comment in response to the March 24, 2003 notice. The organization ProEnglish, of Arlington, VA submitted 7 pages in opposition to the guidance and EO 13166. Commerce acknowledges ProEnglish's opposition to the Executive Order and to Commerce's guidance, however Commerce has been directed by the Executive Order to develop and publish its guidance. As such, the guidance published on March 24, 2003.

By this notice, Commerce is adopting the proposed system as final without changes on July 29, 2003.

Although the March 24, 2003 notice indicated that the guidance was effective on March 24, 2003, Commerce clarifies that the March 24, 2003 date was the date when Commerce would begin accepting comments. There is no effective date of this guidance, as it is policy guidance.

Dated: July 23, 2003.

Suzan J. Aramaki,

Director, Office of Civil Rights.

[FR Doc. 03–19189 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215333–3181–08]

National Technical Assistance, Training, Research, and Evaluation: University Research Parks, Technology-Led Economic Development Strategies, and Information Dissemination—Request for Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Request for grant proposals (RFP) upon availability of funds.

SUMMARY: EDA publishes this notice to reopen the application submission period for ten days to allow applicants to submit proposals addressing Section VI.B.I. entitled "Information Dissemination to Practitioners Serving Distressed Areas." EDA reopens the proposal period because the proposals that addressed "Information Dissemination to Practitioners Serving Distressed Areas," did not adequately meet the established criteria for EDA to select a proposal for funding consideration.

DATES: Prospective applicants are advised that proposals for funding will be accepted through August 8, 2003, at any of the addresses provided in the May 23, 2003, RFP. Proposals received after 4 p.m. e.d.t., on August 8, 2003, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: John J. McNamee, 202.482.4085; e-mail: *jmcnamee@eda.doc.gov.*

SUPPLEMENTARY INFORMATION: On May 23, 2003, EDA published a Notice in the **Federal Register** at 68 FR 28672, requesting proposals for several RFPs. Section VI.B.I. of that Notice requested proposals for "Information Dissemination to Practitioners Serving Distressed Areas." Proposals received in response to Section VI.B.I. did not adequately meet the established criteria for EDA to select a proposal for funding consideration. Consequently, EDA hereby reopens for ten days the proposal submission period for the information dissemination proposals only. New proposals, as well as revisions of proposals submitted earlier, will be accepted. All other requirements of the May 23, 2003, notice remain in effect.

Dated: July 23, 2003.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 03–19207 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume to the e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR MORE INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be e-mailed to her at *Lcarpent@bis/doc/gov*.

Dated: July 24, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–19206 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, requests for revocation in part and deferral of administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part and to defer the initiation of an administrative review of four companies in one antidumping duty order.

EFFECTIVE DATE: July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on and Non-Frozen Apple Juice Concentrate and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China. In addition, the Department received a request to defer for one year the initiation of the June 1, 2002 through May 31, 2003 administrative review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the People's Republic of China with respect to four exporters in accordance with 19 CFR 351.213(c). The Department received no objection to this request from any party cited in 19 CFR 351.213(c)(1)(ii).

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2004. Also, in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of the June 1, 2002 through May 31, 2003 administrative review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the People's Republic of China with respect to four exporters.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Certain Softwood Lumber, A–122–838	05/22/02–05/31/03
Buchanan Lumber [1]	
Japan: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850	06/01/02–05/31/03
Kawasaki Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd	

	Period to be reviewed
Taiwan: Certain Stainless Steel Butt-Weld, Pipe Fittings, A–583–816	06/01/02–05/31/03
Liang Feng Stainless Steel Fitting Co., Ltd.	
PFP Taiwan Co., Ltd.	
Ta Chen Stainless Steel Pipe, Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China: Certain Non-Frozen Apple Juice Concentrate [2] A–570–855	06/01/02–05/31/03
Gansu Tongda Fruit Juice Beverage Co., Ltd.	
Shaanxi Hengxing Fruit Juice Co., Ltd.	
Xian Asia Qin Fruit Co., Ltd.	
Xian Yang Fuan Juice Co., Ltd.	
The People's Republic of China: Folding Metal Tables and Chairs [3] A–570–868	12/03/01–05/31/03
Feili Furniture Development Ltd.	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
Dongguan Shichang Metals Factory Co., Ltd.	
Dongguang Shchang Metals Factory Co.	
Maxchief Investments Ltd.	
New-Tec Integration Co., Ltd.	
Wok and Pan Industry, Inc.	
The People's Republic of China: Tapered Roller Bearings [4] A–570–601	06/01/02–05/31/03
Peer Bearing Company-Changshan	
Yantai Timken Co., Ltd.	
Shanghai United Bearing Co., Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[1] Inadvertently omitted from the initiation notice published July 1, 2003 (68 FR 39059).

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of non-frozen apple juice concentrate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of folding metal tables and chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

	Period to be deferred
Deferral of Initiation of Administrative Review	
People's Republic of China: Non-Frozen Apple Juice Concentrate, A–570–855	06/01/02–05/31/03
Sanmenxia Lakeside Fruit Juice Co., Ltd.	
SDIC Zhonglu Fruit Juice Co., Ltd.	
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	
Yantai Oriental Juice Company, Ltd.	

	Period/class or kind
Antifriction Bearing Proceedings and Firms	
France: A–427–801 [5]	05/01/02–04/30/03
Ace Bearing & Transmission Co	Ball
Acorn Industrial Service	Ball
Aktif Endustri Malzemeleri	Ball
Alphateam SPRL	Ball
Australian Bearing Pty Ltd	Ball
Baltic Bearing Supply Gmbh	Ball
Bearing & Tool Gmbh	Ball
Bearing Discount International Gmbh	Ball
Bearing Dynamics	Ball
Bearing Net	Ball
Bearing Sales Corp	Ball
BTM Bearing Trade F.C Miltner	Ball
Cantoni & C.S.N.C	Ball
CCVI Bearing Co	Ball
Comal SNC	Ball
DCD Corp	Ball
EuroLatin Ex. Services	Ball
Fair Friend Ent. Co. Ltd	Ball
Friedrich Picard Gmbh	Ball
Froklich & Dorken Gmbh	Ball

	Period/class or kind
Han Sol Tech. Corp/Yoo Shin Co	Ball
Hayley Import/Export	Ball
Heinz Knust	Ball
Hergenhan Gmbh	Ball
Hoens Industriel BV	Ball
IBD Ltd	Ball
International Bearing Pte. Ltd	Ball
Interspecies Donath Gmbh	Ball
Italcuscinetti Group	Ball
Kian Ho Bearings, Ltd	Ball
KIS Antriebs Technik Gmbh	Ball
KSM, Minamiguchi/ Bearing Manufacturing Co	Ball
Kugellager Weber	Ball
LTM Industrietechnik	Ball
M. Buchhalter Maschenmode/Hergenhan	Ball
Micaknowledge	Ball
Minetti SPA	Ball
Ming Hing Trading Co	Ball
Motion Bearing Pte. Ltd	Ball
Rodamientos Rovi	Ball
Roeirasa	Ball
Rolling Bearing Co. Pty Ltd	Ball
Rovi-Marcay	Ball
Rovi-Valencia	Ball
SKF	Spherical
Sprint Engineering	Ball
Taisho Kiko Co. Ltd	Ball
Taninaka Ltd	Ball
Top G Trading Pte Ltd	Ball
Weber Kugellager Int	Ball
Withus Technology Corp	Ball
Wyko Export, Division of Wyko Grp/Wyko-Ewb	Ball

[5] The companies listed for A–427–801 were inadvertently omitted from the intiation notice that published on July 1, 2003 (68 FR 39055).

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 23, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–19271 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070703C]

Marine Mammals; File No. 699–1720

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Kathryn Ono, Department of Biological Sciences, University of New England, Marine Sciences Center, 11 Hills Beach Road, Biddeford, ME 04005, has applied in due form for a permit to take harbor seals (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*) and hooded seals (*Cystophora cristata*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 28, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin or Jennifer Jefferies, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the research is to assess the health of the Northeast Atlantic harbor seal population residing along the coast of Maine. The permit would authorize the applicant to take up to 200 harbor seals annually by capture, and 20 young of the year pups

would be physically restrained and have morphometric measurements, samples of blood, feces, and skin biopsies taken, and flipper tags attached. Annually, 10 pups would have satellite tags attached to allow movement tracking and behavioral analysis. Authorization of 2 accidental mortalities of harbor seals annually is requested. Accidental capture of 5 gray seals, 3 harp seals, and 3 hooded seals annually is also requested. Additionally, annual authorization for Level B Harassment is requested for 400 harbor seals, 5 grey seals, 3 harp seals and 3 hooded seals, annually. The proposed research would study movement and migration patterns for young of the year pups. The movements, disease load, survival and behavior of wild-caught pups will be compared with rehabilitated pups from the same population and cohort to determine baseline "normal" behavior. The Permit would expire 5 years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 23, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19260 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

July 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). *Also see* 67 FR 68566, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on July 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
338/339 [2] (shirts and blouses other than tank tops and tops, knit).	3,011,286 dozen.
338/339(1) [3] (tank tops and knit tops).	2,272,178 dozen.
347/348	6,980,479 dozen of which not more than 6,980,479 dozen shall be in Categories 347–W/348–W [4]; and not more than 5,290,853 dozen shall be in Category 348–W.
638/639	5,106,304 dozen.
Within Group II subgroup	
342	636,602 dozen.
351	1,239,395 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[3] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19186 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

July 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, swing, special shift, the allowance for 100% cotton apparel items of handloomed fabric, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). *Also see* 67 FR 68569, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on July 29, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	27,049,106 square meters.
219	98,446,174 square meters.
313	71,697,337 square meters.
314	13,867,950 square meters.
315	23,292,600 square meters.
317	24,936,738 square meters.
326	13,776,970 square meters.
334/634	263,512 dozen.
335/635	1,222,862 dozen.
336/636	1,707,151 dozen.
338/339	5,777,024 dozen.
340/640	3,341,638 dozen.
341	6,636,453 dozen of which not more than 4,017,873 dozen shall be in Category 341–Y [2].
342/642	2,476,300 dozen.
345	384,415 dozen.
347/348	1,342,531 dozen.
351/651	479,170 dozen.
363	80,482,444 numbers.
369–S [3]	1,340,745 kilograms.
641	2,360,009 dozen.
647/648	1,448,882 dozen.
Group II	
200, 201, 220, 224–227, 237, 239pt. [4], 300, 301, 331pt. [5], 332, 333, 352, 359pt. [6], 360–362, 603, 604, 611–620, 624–629, 631pt. [7], 633, 638, 639, 643–646, 652, 659pt. [8], 666pt. [9], 845, 846 and 852, as a group	186,847,246 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[6] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19188 Filed 7–28–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

July 23, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Designation

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles, excluding

gloves, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On April 21, 2003 the Chairman of the Committee received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of the American Apparel and Footwear Association (AAFA); Intradeco, Inc. of Miami, Florida; J. C. Penney Purchasing Corporation of Plano, Texas; and Knothe Apparel Group, Inc. of Ashford, Alabama alleging that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

In response to a previous commercial availability request by the same petitioners on 100 percent cotton, yarn-dyed flannel fabric, the Committee requested public comments on June 17, 2002 (67 FR 41219). Also in response to the previous petition, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel regarding the proposed action on July 3, 2002. On July 3, 2002, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (Congressional Committees) regarding the proposed action. On July 23, 2002, the U.S. International Trade Commission provided advice regarding the proposed action. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabric set forth in the instant petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On May 19, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

The Committee hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, apparel articles, excluding gloves, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112 (d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19187 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the AFOSR Review. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the AFOSR Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 29, 2003.

ADDRESSES: 1560 Wilson Boulevard, 4th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–19216 Filed 7–28–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; Correction.

SUMMARY: The Department of the Navy published a document in the **Federal**

Register of May 30, 2003, concerning a notice of availability of Government-owned invention; available for licensing of Navy Case No. 83860 and Navy Case No. 84146 entitled "Internal Locking Device for Use on Magazine Doors." The document contained an incorrect address and incorrect point of contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 30, 2003, in FR Doc. 03–13585, on page 32467, in the second column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Requests for copies of the Navy Case Numbers cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19209 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 23, 2003, concerning a notice of availability of Government-owned inventions; available for licensing; U.S Patent Application Serial No.10/390,404 entitled "A Port Security Barrier System." Navy Case No.83,881. And Navy Case No. 84,694 entitled "In Port Barrier System (IPBS)." The document contained an incorrect address and incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 23, 2003, in FR Doc. 03–12956, on page 28200, in the third column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Requests for copies of the patent application cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19212 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Diversified Technology and Development, Inc; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 30, 2003, giving notice of its intent to grant to Diversified Technology and Development, Inc. a revocable, nonassignable, exclusive license in the United States, to Navy Case No. 83860 and Navy Case No. 84146 entitled "Internal Locking Device for Use on Magazine Doors." The document contained an incorrect address and incorrect point of contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 30, 2003, in FR Doc. 03–13586, on page 32467, in the second column, correct the **ADDRESS** caption and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Written objections are to be filed with Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19210 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Harbor Offshore, Inc; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 23, 2003, giving notice of its intent to grant to Harbor Offshore, Inc. a revocable, nonassignable, exclusive license in the United States, to Application Serial No.10/390404 entitled "A Port Security Barrier System". As well as Navy Case No. 84694 entitled "In Port Barrier System (IPBS)." The document contained an incorrect address and incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 23, 2003, in FR Doc. 03–12957, on pages 28200–28201, in the first column of page 28201, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Written objections are to be filed with Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19211 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB

review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 28, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 24, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: 21st Century Community Learning Centers Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,125.

Burden Hours: 9,000.

Abstract: 21st Century Community Learning Center grantees must annually submit the report so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. An extension of the currently approved collection is necessary to collect information through the grantees' final budget period (2004).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2277. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651; or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–19254 Filed 7–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Wednesday, August 13, 2003; 6:30 p.m.–8:30 p.m.

ADDRESSES: Pahrump Nugget Hotel and Casino, 681 South Highway 160, Pahrump, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Kozeliski, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513; phone: 702–295–2836, fax: 702–295–5300, e-mail: *kozeliskik@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The U.S. Department of Energy Environmental Management Program will provide a briefing on shipping radioactive waste from Nevada to New Mexico.
2. The Board will update the community on current committee initiatives.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kelly Kozeliski at the address listed above.

Issued at Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19252 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 4, 2003; 9 a.m.–5 p.m.—Friday, September 5, 2003; 8:30 a.m.–4 p.m.

ADDRESS: Doubletree Suites Seattle, 16500 Southcenter Parkway, Seattle, WA; Phone: (206) 575–8220; Fax: (206) 575–4743.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, September 4, 2003

- Tri-Party Agreement Look Back/ Look Ahead: Perspectives from Tri-Party Agreement (TPA) Senior Management.
- Discussion with Tri-Party Agreement (TPA) Senior Management on Hanford Advisory Board Priorities for the Upcoming Year.
- Process for the Determination Whether There is Transuranic Waste in Certain Tanks—Discussion and Introduction of Draft Advice.
- Overall Strategy and Approach for Groundwater Protection, Monitoring and Remediation under Tri-Party Agreement (Milestone Series-24) Discussion and Introduction of Draft Advice.
- Proposed Changes to the Tri-Party Agreement Establishing New Deadlines for Tank Waste Treatment Activities (M–62). Discussion and Introduction of Draft Advice (Tentative).

Friday, September 5, 2003

- Public Involvement and Its Role/ Importance in Decision-Making: Dialogue with the Tri-Party Agreement Agencies.
- Update on Hanford Long-Term Stewardship Plan.
- Informational Session on the Hanford Natural Resource Trustee Council.
- Adoption of Draft Advice:
  - —Process for the Determination Whether There is Transuranic Waste in Certain Tanks
  - —Overall Strategy and Approach for Groundwater Protection, Monitoring and Remediation under Tri-Party Agreement (Milestone Series M–24)
  - —Proposed Changes to the Tri-Party Agreement Establishing New Deadlines for Tank Waste Treatment (M–62) Tentative
- Announcement of Committee Leadership
- Agenda Topics for the November Hanford Advisory Board Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; or by calling her at (509) 376–1563.

Issued at Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19253 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Kangley-Echo Lake Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the proposed Kangley-Echo Lake Transmission Line Project in King County, Washington, based on the Kangley-Echo Lake Transmission Line Project Final Environmental Impact Statement (DOE/EIS–0317–S1, June 2003). BPA has decided to implement the Proposed Action (Alternative 1) identified in the environmental impact statement, which consists of constructing a new 9-mile 500-kilovolt (kV) transmission line from a tap point on an existing 500–kV line near Kangley, Washington, to BPA's Echo Lake Substation. BPA is taking this action to continue to provide reliable power to customers throughout the Northwest and to other regions and Canada as population grows.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling toll-free 1–888–276–7790. The ROD and EIS are also available on BPA's Transmission Business Line Web site, *http://www.transmission.bpa.gov/projects.*

FOR FURTHER INFORMATION, CONTACT: Gene Lynard, Environmental Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; direct telephone number 503–230–3790; fax number 503–230–5699; or e-mail *gplynard@bpa.gov.*

SUPPLEMENTARY INFORMATION: The Proposed Action, construction of a new 500–kV transmission line from Kangley, Washington, to Echo Lake Substation, will be constructed next to an existing 500-kV line. Five miles of the route will go through the Cedar River Municipal Watershed (CRW). In addition, Echo Lake Substation will be expanded about three acres to the east and new equipment will be installed to accommodate the new line. The Proposed Action will primarily use 500-kV single-circuit steel lattice structures averaging about 135 feet high. In the CRW, where the line crosses the Cedar River, two 500-kV double-circuit lattice structures will be used to hold the new 500-kV line and the existing 500-kV line. BPA will purchase easements for a new 150-foot-wide right-of-way (ROW) for the new line (except at the Cedar River crossing where BPA will use its existing ROW). Clearing of tall-growing vegetation within the ROW will be required to insure reliable transmission service. As part of the Proposed Action, BPA has decided to construct new spur roads, upgrade existing access roads, and remove from service some existing roads; and install fiber optic cable on the new line and part of the existing

500-kV line into Raver Substation. The Proposed Action also includes a commitment to a variety of mitigation measures described in the mitigation section.

Issued in Portland, Oregon, on July 21, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–19251 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–716–001, FERC–716]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

July 22, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 16, 2003 (68 FR 26591–92) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 21, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by contacted by fax: at 202–395–7285 or submitting comments electronically to *pamelabeverly.oirasubmission@omb.eop.gov*. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–716–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS and the FERC Web site during normal business hours by contacting FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov* or by telephone at 866–208–3676 (toll free) or TTY at 202–502–8659 or the Public Reference at (202)-8371, TTY (202) 502–8659 or by e-mail to *public.reference.room@ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information*: FERC–716 "Good Faith Request for Transmission Services and Response by Transmitting Utility Under sections 211(a) and 213(a) of the Federal Power Act."

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.*: 1902–0170.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under section 388.112 of the Commission's regulations.

4. *Necessity of the Collection of Information*: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 211 and 213 of the Federal Power Act(FPA), as amended by the Energy Policy Act of 1992, 16 U.S.C. 824j and 824l. Section 211(a) allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant. The Commission may issue an order only if the applicant has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. Accordingly, a request for transmission services is a condition upon which the Commission may order service under section 211. Section 213(a) of the FPA requires a response by the transmitting utility to a good faith request. Unless the transmitting utility agrees to provide such services as rates, charges, terms and conditions acceptable to the person making the request, the transmitting utility, within 60 days of its receipt of the request, or other mutually agreed upon period, provides the person making the request with a detailed written explanation with specific reference to the facts and circumstances of the request including the basis for the proposed rates, charges, terms and conditions for the services as well as any physical constraints that would affect performing the services.

The information is not filed with the Commission, however, the request and response may be analyzed as part of a section 211 proceeding. This collection of information covers the information that must be contained in the request and the response.

Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 2.20.

5. *Respondent Description*: The respondent universe currently comprises 12 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden*: 1,000 total hours, 10 respondents(average), 1 response per respondent, 100 hours (20 hours for the transmission requestor and

80 hours for the transmitting utility's response) (average).

7. *Estimated Cost Burden to respondents*: 1,000 hours / 2080 hours per years × $117,041 per year = $56,270. The cost per respondent is equal to $5,627.00.

Statutory Authority: Sections 211(a), 212, 213(a) of the Federal Power Act, 16 U.S.C. 824j-l and Sections 721–723 of the Energy Policy Act of 1992. (Pub L. 102–486).

Magalie R. Salas,

Secretary.

[FR Doc. 03–19233 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–347–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 16, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2003:

Substitute Original Sheet No. 68A.
Substitute Eighth Revised Sheet No. 69.
Substitute Seventh Revised Sheet No. 69A.
Substitute First Revised Sheet No. 69A.01.
Substitute First Revised Sheet No. 69A.02.
Substitute Third Revised Sheet No. 69B.

Chandeleur asserts that the purpose of this filing is to comply with the Commission's order issued June 30, 2003, in Docket No. RP03–347–000.

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 ¶385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with ¶154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Protest Date: July 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19236 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–332–000]

Destin Pipeline Company, L.L.C., Notice of Request Under Blanket Authorization

July 22, 2003.

Take notice that on July 14, 2003, Destin Pipeline Company, L.L.C.(Destin), 200 WestLake Park Boulevard, Houston, Texas 77079 filed in Docket No. CP03–332–000 a request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct, own, and operate an additional compressor at Destin's Pascagoula Compressor Station in Jackson County, Mississippi, under Destin's blanket certificate issued in Docket Nos. CP96–657–000 and CP96–657–001, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open for public inspection. 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 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.

Destin states that it intends to install an additional compressor unit adjacent to the three existing compressor units at the Pascagoula Compressor Station. Destin asserts that the proposed modifications will occur on property currently owned by Destin. Destin further states that the additions proposed will increase operational flexibility and efficiency, provide flow assurance, and enhance reliability on the Destin System. Destin states that there will be no change in Destin's current daily design capacity or daily operating pressures.

Destin states that the total estimated cost for this proposed additional compressor project is approximately $11.6 million.

Any questions concerning this request may be directed to Bruce G. Reed, Director Regulatory Affairs, 200 WestLake Park Boulevard, Houston, Texas 77079 at (281) 366–5062.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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.

Magalie R. Salas,

Secretary

[FR Doc. 03–19229 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–384–002]

North Baja Pipeline, LLC; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, North Baja Pipeline, LLC (NBP), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 177, First Revised Sheet No. 178, and Fifth Revised Sheet No. 201, to be effective August 16, 2003.

NBP states that these tariff sheets are being submitted in compliance with the Commission's June 27, 2003 Order in this docket.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19237 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–314–002]

Northern Natural Gas Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of April 28, 2003:

2nd Substitute Fifth Revised Sheet No. 291.
Substitute Original Sheet No. 291A.

Northern states that the filing is being made in compliance with the Commission's order issued on July 2, 2003 in this proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19235 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–510–001 and RP03–259–002]

Questar Pipeline Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, Questar Pipeline Company (Questar), tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as indicated on each tariff sheet:

Substitute Fourteenth Revised Sheet No. 6, Effective October 1, 2002.
Substitute Fifteenth Revised Sheet No. 6, Effective April 7, 2003.
Eighth Revised Sheet No. 67, Effective April 7, 2003.
Substitute First Revised Sheet No. 67A, Effective April 7, 2003.

Questar states that this filing corrects language on several tariff sheets to reflect revisions resulting from the Commission's rejection and Questar's withdrawal of tariff filings in Docket Nos. RP02–210 and RP03–250, respectively.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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 § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19234 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Document Nos. RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003 RT01–86–000, RT01–86–001 RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000, RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000 and RT02–3–000]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al., New York Independent System Operator, Inc., et al., PJM Interconnection, L.L.C., et al., PJM Interconnection, L.L.C., ISO New England, Inc., New York Independent System Operator, Inc.; Regional Transmission Organizations, et. al.; Notice

July 22, 2003.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information 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). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19238 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–213–000]

Southern Nevada Water Authority, Complainant, v. Nevada Power Company, Respondent; Notice of Complaint

July 22, 2003.

Take notice that on July 18, 2003 Southern Nevada Water Authority (SNWA) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint Requesting Fast Track Processing against Nevada Power Company (NPC) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Commission's Rules of Practice and procedure, 18 CFR 385.206. SNWA alleges that NPC has violated section 17.7 of NPC's Open-Access Transmission Tariff (OATT) in refusing to extend the commencement date of SNWA's Service Agreement No. 101B from August 31, 2003 to August 31, 2004.

On July 21, 2003 SNWA filed an Errata to its Complaint stating that the Complaint erroneously identified August 31, 2003 as the start date of the transmission service agreement in dispute. Those same references also identify August 31, 2004 as the date that SNWA requested for an extension of service pursuant to section 17.7 of NPC's open access transmission tariff. SNWA's transmission service agreement is to commence July 31, 2003 and SNWA requested a one-year extension until July 31, 2004.

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 the comment date below. 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.

Comment Date: July 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19231 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1039–001, et al.]

AmPro Energy Wholesale, Inc., et al.; Electric Rate and Corporate Filings

July 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AmPro Energy Wholesale, Inc.

[Docket No. ER03–1039–001].

Take notice that on July 16, 2003, AmPro Energy Wholesale, Inc., tendered for filing a revised Rate Schedule No. 1 amending their petition filed July 7, 2003 in Docket No. ER03–1039–000.

Comment Date: August 6, 2003.

2. Access Energy Cooperative

[Docket No. ER03–1078–000].

Take notice that on July 16, 2003, Access Energy Cooperative (AEC) tendered for filing its 2003 annual rate redetermination informational filing, pursuant to the Commission's Regulations, 18 CFR 35.13, and in accordance with Section 105 of its FERC Rate Schedule No. 1. AEC states that its filing is available for public inspection at its offices in Mt. Pleasant, Iowa.

AEC further states that copies of this filing have been served upon its transmission customer and the Iowa State Utilities Board.

Comment Date: August 6, 2003.

3. Aquila, Inc.

[Docket No. ER03–1079–000].

Take notice that on July 16, 2003, Aquila, Inc. on behalf of itself and as agent for its divisions Aquila Networks-MPS d\b\a Missouri Public Service, Aquila Networks-WPK d\b\a WestPlains Energy-Kansas, Aquila Networks-WPC d\b\a WestPlains Energy-Colorado and Aquila Networks-L&P d\b\a St. Joseph Light and Power (collectively Aquila) tendered for filing proposed changes in its FERC Electric Tariff Volumes 28 and 29. Aquila states that the proposed changes add a provision to the Aquila market-based power sales tariffs to comply with the settlement in Docket No. ER02–2170.

Comment Date: August 6, 2003.

4. Florida Power & Light Company

[Docket No. ER03–1080–000].

Take notice that on July 16, 2003, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission Service Agreement No. 223 to FERC Electric Tariff, Second Revised Volume No. 6, which is an agreement to construct a control area interconnection between FPL and Seminole Electric Cooperative, Inc. (Seminole).

FPL states that a copy of this filing has been served on Seminole and the Florida Public Service Commission.

Comment Date: August 6, 2003.

5. Covanta Union, Inc.

[Docket No. ER03–1085–000].

Take notice that on July 16, 2003, Covanta Union, Inc., tendered for filing a Notice of Succession to reflect a name change from Ogden Martin Systems of Union, Inc., to Covanta Union, Inc.

Covanta Union, Inc., states that copies of the filing were served upon the Public Service Electric and Gas Company and on the PJM Interconnection, L.L.C.

Comment Date: August 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19232 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

July 22, 2003.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a license application.

b. *Docket No.:* DI02–3–002.

c. *Date filed:* July 10, 2003.

d. *Applicant:* AquaEnergy Group, Ltd.

e. *Name of Project:* Makah Bay Wave Energy Pilot Project

f. *Location:* The project would be located in Makah Bay, about 1.9 nautical miles offshore of Waatch Point in Clallam County, Washington. The offshore portion of the project would occupy waters of the Olympic Coast National Marine Sanctuary, and shore-based facilities would be on tribal lands within the Makah Indian Reservation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mary Jane Parks, P.O. Box 1276, Mercer Island, Washington 98040–1276; (626) 568–0798.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073; e-mail Nicholas.Jayjack@ferc.gov.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The project would include four floating buoys, tethered to concrete blocks located on the ocean floor; hoses for carrying pressurized sea water; a power conversion facility located on the sea floor, where the water from the hoses would be converted to electrical energy and from alternating current to direct current; submarine electrical cables running from the conversion facility to shore and under the beach through a conduit; and a power station housing equipment for connecting the power generated by the project to an existing 12-kilovolt distribution line. Power generated by the project, expected to be about 1,500 megawatt-hours annually, would be purchased by the Clallam County Public Utility District, and used within its service territory.

l. A copy of the request to use the alternative procedures 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 (DI02–3) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov* /esubscribenow.htm to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. AquaEnergy Group, Ltd. (AquaEnergy) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AquaEnergy has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AquaEnergy has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on the request to use the alternative procedures, pursuant to section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AquaEnergy will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application.

This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AquaEnergy has met with Federal and State resources agencies, the U.S. Coast Guard, the Makah Tribal Council, and the public regarding the proposed project. It is expected that AquaEnergy will file 6-month progress reports during the alternative procedures process leading to the filing of a license application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19230 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of

Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 9 a.m.–4 p.m.; August 7, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of the meeting is to review recent developments related to the national health information infrastructure, review a draft recommendation about HHS participation in advanced research and development on the national information infrastructure (Internet2, etc.) and develop the workgroup's work plan related to the personal health dimension.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 260–2652, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, 3311 Toledo Road, Hyattsville, MD 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: July 15, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–19265 Filed 7–28–03; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date:

9 a.m. to 5 p.m., August 19, 2003.
9 a.m. to 5 p.m., August 20, 2003.
8:30 a.m. to 1 p.m., August 21, 2003.

Place: Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Status: Open.

Purpose: The agenda for Tuesday, August 19th includes discussion on Drug and Devise Terminologies. The morning session on the 20th will be devoted to reviewing the PMRI Terminology report. During the afternoon session, discussion will take place on the analysis of the impact of moving to ICD–10–CM and ICD–10–PCS. On the 21st, a wrap up of day one and two will begin the session followed by an update on Claims Attachments. Discussion of updates/issues related to the Financial and Administrative Transaction Implementation will end the day.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Diseases Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 438–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: July 15, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–19266 Filed 7–28–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community and Tribal Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community and Tribal Subcommittee (CTS).

Times and Dates:

8:30 a.m.—4:30 p.m., August 19, 2003.
8:45 a.m.—4:30 p.m., August 20, 2003.

Place: Agency for Toxic Substances and Disease Registry, 1825 Century Center, Atlanta, Georgia 30345.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 35 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be discussed: Agenda items include a discussion on National Policy Dialogue on the Military Munitions Document; update on the Tribal Environmental Health Education Program; ATSDR Disease Registry Process; presentation on the CTS Evaluation Process findings and outcomes; reports from the task groups on cultural sensitivity activities, educational training and toolbox, and an evaluation of Public Health Assessment compliance to guidelines; review of Action Items and Recommendations; and an update on ATSDR activities.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: James E. Tullos, Jr., Designated Federal Official, CTS/ATSDR contact, ATSDR, M/S E–33, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/498–0287.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and ATSDR.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19199 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A U.S. Clinical Trial Site To Conduct Evaluations of Topical Microbicides in Heterosexual Women and Men, Contract Solicitation Number 2003–N–00822

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis

Panel (SEP): A U.S. Clinical Trial Site to Conduct Evaluations of Topical Microbicides in Heterosexual Women and Men, Contract Solicitation Number 2003–N–00822.

Times and Dates:
7 p.m.–8 p.m., August 14, 2003 (Open).
8 a.m.–8:30 a.m., August 15, 2003 (Open).
8:30 a.m.–5 p.m., August 15, 2003 (Closed).

Place: The Westin Atlanta North Perimeter Hotel, 7 Concourse Parkway, Atlanta, GA 30327, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Contract Solicitation Number 2003–N–00822.

For Further Information Contact: Andrew Vernon, Office of the Director, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, MS–E07, Atlanta, GA 30333, Telephone 404.639.8006.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–19198 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 1:30 p.m.–4:30 p.m., August 18, 2003. 8 a.m.–4:30 p.m., August 19, 2003.

Place: The Westin Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, telephone 513/621–7700, fax 513/852–5690.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on the Program Status Report; Development of Task Order; Dose Reconstruction Workgroup Report; Status of Procurement; Status of Technical Basis Document/Site Profile Development; Oak Ridge Associated Universities Contract Support Status; and a Scientific Issues Workgroup Report.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19202 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Protocol To Develop a Database for Identification and Assessment of Engineering Control of Noise From Powered Hand Tools Used in the Construction Industry

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and information on study protocol to develop a database for identification and assessment of engineering control of noise from powered hand tools used in the construction industry.

SUMMARY: NIOSH invites written comments from the public on the research study protocol describing the proposed project. Copies of the study protocol document may be obtained by contacting the individual referenced below. The document may also be obtained in .pdf format at the following Web site: *http://www.cdc.gov/niosh/ext-supp-mat/powertools/powertools.html*. To view the document in .pdf format, you must have the Adobe Acrobat Reader Program. It is available free of charge at *http://www.adobe.com/support/downloads/main.html*.

DATES: Comments concerning this notice must be received on or before September 29, 2003.

ADDRESSES: Comments may be transmitted either electronically to *Chayden@CDC.gov*, by facsimile to 513/533–8139, or by regular mail or hand delivery to Mr. Charles Hayden, NIOSH Engineering Noise Control Project, Robert A. Taft Laboratories, M/S C–27, 4676 Columbia Parkway, Cincinnati, Ohio 45226. E-mail attachments should be formatted as WordPerfect 7/8/9 or Microsoft Word.

FOR FURTHER INFORMATION CONTACT: Charles Hayden, Robert A. Taft Laboratories, M/S C–27, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8152.

SUPPLEMENTARY INFORMATION: This project will develop a noise control

technology database consisting of powered hand tools used in the construction industry with respective sound power levels and workers' 8-hour time-weighted average noise exposure level. The sound power level and workers' exposure level data will be acquired in a hemi-anechoic laboratory by NIOSH researchers. The database will facilitate the use of engineering noise controls by gathering precise information on the effectiveness of existing control technology. The principal product of the study and the primary method of information dissemination will be the searchable web-site database of powered hand tools used in the construction industry with respective operational specifications, sound power levels, and workers' exposure level. This database and specific information on noise control applications also will be disseminated through practical guidelines, handbooks, and case study reports to aid safety and health professionals, noise control engineers, equipment and noise-control systems' manufacturers, and trade associations in applying effective noise control technologies.

Comments are invited on:

1. Whether the proposed database will be useful for its planned purposes;

2. Ways to enhance the quality, utility, clarity, and dissemination of the information to be collected;

3. Whether the study population is properly targeted and whether access to the study population is feasible; and

4. Whether the makes and models of powered hand tools with respective sound power level data or simply generic terms should be reported in the sound power level database.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–19201 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee scheduled for August 20, 2003, is cancelled based upon a decision by the sponsor, CardioGenesis Corp. to submit additional information for FDA review in support of their premarket approval application for the Axcis Percutaneous Myocardial Revascularization. This meeting was announced in the **Federal Register** of July 21, 2003 (68 FR 43133).

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ–5), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–7991, FAX 301–827–2565, *lsw@cdrh.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10232.

Dated: July 23, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–19172 Filed 7–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15096]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0046 (Formerly 2115–0545), and 1625–0071 (Formerly 2115–0611)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 28, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15096] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.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 (Plaza level), 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 for inspection and copying in public dockets. They are available in docket USCG 2003–15096 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15096], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act

Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 25898 (May 14, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15096. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators or owners of vessels over 300 gross tons.

Form: CG–5585, CG–5586, CG–5586–1, CG–5586–2, CG–5586–3, CG–5586–4, and CG–5586–5.

Abstract: The collection of information requires operators of vessels over 300 gross tons to submit to the U.S. Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of a spill of either oil or hazardous substances.

Annual Estimated Burden Hours: The estimated burden is 2,162 hours a year.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

OMB Control Number: 1625–0071.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and users of recreational boats and of items of designated associated equipment.

Form: CG–5578.

Abstract: The collection of information provides a form for consumers who believe their recreational boats or designated associated equipment either contains substantial-risk defects or fails to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

Annual Estimated Burden Hours: The estimated burden is 10 hours a year.

Dated: July 23, 2003.

Nathaniel S. Heiner,

Acting Director of Information & Technology.

[FR Doc. 03–19258 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–16670; CIA–7]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving coal, oil, and gas for conveyance pursuant to the Alaska Native Claims Settlement Act, the Act of January 2, 1976, and the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, will be issued to Cook Inlet Region, Inc. The lands are located in Tps. 8 and 9 N., R. 8 W., and T. 3 N., R. 11 W., Seward Meridian, Alaska, and aggregate approximately 17,156 acres. Notice of the decision will also be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 28, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land

Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite by phone at 907–271–5656, or by e-mail at *cfavorit@ak.blm.gov.*

Christy Favorite,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–19203 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES03–44]

Ten-Year Water Exchange Agreements With Mendota Pool Group, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a draft environmental impact statement (EIS) and request for comment.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate the proposed exchange of up to 25,000 acre-feet of water per year over a 10-year period with the Mendota Pool Group.

The purpose of the proposed project is to provide water to irrigable lands on Mendota Pool Group properties in Westlands Water District and San Luis Water District to offset substantial reductions in contract water supplies attributable to the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act listings and regulations, and new Bay-Delta water quality rules. This water would thereby enable the Mendota Pool Group farmers to maintain production on historically irrigated lands. The project is not intended to increase the amount of water for farming activities but would replace some of the contract water lost because of increased environmental regulations that restrict water deliveries south of the export pumps at Tracy, California.

Reclamation has obtained public input on the scope of the project and potential alternatives through comment letters and a public scoping meeting. The EIS addresses the comments received.

There are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

DATES: The draft EIS is available for a 60-day public comment period ending on September 29, 2003. Submit written comments on the draft EIS on or before this date at the address provided below.

ADDRESSES: The draft EIS may be obtained by contacting Mr. David Young at the address provided below. The draft EIS is also available on the Internet at *http://www.usbr.gov* or *http://www.entrix.com.*

Written comments on the draft EIS should be sent to Mr. David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno CA 93721–1813; by telephone at 559–487–5127; (TDD 559–487–5933); by e-mail at *dkyoung@mp.usbr.gov*; or faxed to 559–487–5397.

FOR FURTHER INFORMATION CONTACT: Mr. Young, Environmental Specialist, at the above address or by telephone at 559–487–5127 or TDD 559–487–5933.

SUPPLEMENTARY INFORMATION: The Delta export service area of the Central Valley Project (CVP) has total contractual obligations and delivery losses of approximately 3.45 million acre-feet per year. The theoretical maximum pumping capability of CVP facilities serving this area is approximately 3.09 million acre-feet per year. Available supplies are apportioned under a hierarchy of allocation in which agricultural water service contracts, totaling about 1.85 million acre-feet per year, are provided water only after all other obligations are met. Implementation of the CVPIA (1992), Endangered Species Act (1993–1995) and revised Bay-Delta water quality standards have further reduced pumping capabilities and water supplies available to agricultural contractors. Currently these parties can expect to receive a long-term average supply of about 50 to 55 percent of contract water as compared to a pre-1992 average of 88 to 92 percent.

Alternatives identified and evaluated provide for continued agricultural production, and include the proposed project, construction of new wells, and fallowing of farmland. The project proponents propose to pump up to 269,600 acre-feet of groundwater over the 10-year period from non-CVP wells located adjacent to the Mendota Pool into the Mendota Pool to make up for a portion of the annual shortfall in the contract water to be delivered via the CVP. The actual quantity of water to be pumped would depend on whether the year is classified as wet (0 acre-feet per year), normal (maximum of 31,600 acre-feet per year), or dry (maximum of 40,000 acre-feet per year). Of the total quantity pumped each year, a maximum of 25,000 acre-feet would be exchanged with Reclamation. This water would be made available to Reclamation in the Mendota Pool to offset their existing water contract obligations. In exchange, Reclamation would make an equivalent amount of CVP water available to the members of the Mendota Pool Group for irrigation purposes at Check 13 of the Delta-Mendota Canal. Any quantity of water pumped beyond the 25,000 acre-feet exchanged would be delivered directly to other lands that are presently under irrigation around the Pool. As part of this program, a maximum of 12,000 acre-feet per year of groundwater would be pumped from deep wells (*i.e.*, screened interval greater than 130 feet deep), with the remainder coming from shallow wells (*i.e.*, screened interval less than 130 feet deep). The proposed project will comply with the terms specified in the Settlement Agreement for Mendota Pool Transfer Pumping Program, effective January 1, 2001.

The primary environmental resource issues that are evaluated in the EIS include groundwater levels, groundwater quality, subsidence, surface water quality, and biological resources. Other resource areas evaluated include cost of water, CVP operations, archaeological and cultural resources, Indian Trust assets, environmental justice, socioeconomic resources, land use, transportation, air quality, and noise.

The environmental review was conducted pursuant to NEPA, the Endangered Species Act, and other applicable laws, and analyzes the potential environmental impacts of implementing each of the feasible alternatives. The EIS is based upon previously prepared environmental reports and ongoing monitoring activities. Public input on alternatives and the criteria for evaluation of the alternatives was obtained through the initial scoping meeting and initial comment letters.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public disclosure in their entirety.

Dated: April 23, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–19264 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG); Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of conference call and public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The AMWG will conduct the following conference call: Friday, August 8, 2003. The conference call will begin at 9 a.m. and conclude at 11 a.m. Mountain Time.

Agenda: The purpose of the conference call will be to seek approval from the AMWG to modify the ongoing mechanical removal of non-native fish in Grand Canyon during the remainder of Federal fiscal year 2003. The proposed modification, which would involve moving the mechanical removal effort further downstream of the Little Colorado River, was stimulated by a greater than expected success in these efforts. The involved Federal action agencies would like to initiate the change in the proposed action beginning in August and therefore need to do so prior to the AMWG meeting scheduled for August 13–14, 2003.

To Register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

Date and Location: The AMWG will conduct the following public meeting: Phoenix, Arizona—August 13 to August 14, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the FY 2004 budget, temperature control device risk assessment, proposed modification of non-native fish mechanical removal, feasibility report on humpback chub augmentation, experimental flows, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP. In addition, the Humpback Chub Ad Hoc Group will present their Final Report. The Ad Hoc Committee on What's In/Out of the AMP (AHCIO) and will provide an update and the Strategic Plan Ad Hoc Committee will provide comments to the AMWG relative to their review of the Draft Tribal Consultation Plan.

Date and Location: The TWG will conduct the following public meeting: Phoenix, Arizona "October 1 to October 2, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the BioWest data for downstream of Diamond Creek, multi-attribute tradeoff process, status report on mechanical removal work, vegetation mapping by GCMRC, non-native fish control, tribal consultation plan, and re-initiation of the SCORE (The State of Natural and Cultural Resources in the Colorado River Ecosystem) Report, ad hoc group updates, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: July 14, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–19200 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–025]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 5, 2003 at 10 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–3 (Market Disruption) (Certain Brake Drums and Rotors from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the President and United States Trade Representative on August 5, 2003; Commissioners' opinions and recommendations on remedy, if necessary, are currently scheduled to be transmitted to the President and United States Trade Representative on or before August 25, 2003.)
5. Inv. No. 731–TA–1046 (Preliminary) (Tetrahydrofurfuryl Alcohol from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 7, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 14, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19325 Filed 7–25–03; 11:18 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–024]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: August 4, 2003 at 1 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 731–TA–1043–1045 (Preliminary) (Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 4, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 11, 2003.)

5. Inv. Nos. 731–TA–951–952 (Preliminary) (Remand) (Blast Furnace Coke from China and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its views on remand to the United States Court of International Trade on or before August 18, 2003.)

6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19326 Filed 7–25–03; 11:18 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,283]

Advanced Micro Devices (AMD), FAB 25, Austin, TX; Notice of Revised Determination on Reconsideration

By application of April 29, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation under this case number was for Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, and resulted in a negative determination issued on April 7, 2003, based on the finding that imports of wafers and dies did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

To support the request for reconsideration, the petitioner stated that the Department had investigated the wrong worker group. Upon further review, it was revealed that the petitioner had not worked in the Lone Star Fab (also known as Fab 14 and Fab 15) but rather Fab 25, which produced a different product (a microprocessor chip).

Having identified the appropriate worker group, the Department contacted the company regarding imports of products like or directly competitive with those produced at Fab 25. As a result, it was revealed that the subject firm shifted production from Fab 25 to a foreign source within the relevant period, and subsequently imported directly competitive products to the U.S., contributing to layoffs at the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Advanced Micro Devices (AMD), Fab 25, Austin, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Advanced Micro Devices (AMD), Fab 25, Austin, Texas, who became totally or partially separated from employment on or after November 23, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 9th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19219 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–52,045]

Agere Systems, Integrated Circuits Division, Reading, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2003, in response to a worker petition filed by the International Brotherhood of Electrical Workers, AFL–CIO, Local 1898 on behlaf of workers at Agere Systems, Integrated Circuits Division, Reading, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19225 Filed 7–28–03;8:45am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,098]

Colonial Tanning Corporation, Gloversville, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 17, 2003, the Union of Needletrades, Industrial, and Textile Employees requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 23, 2003 and published in the **Federal Register** on June 19, 2003 (68 FR 36845).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Colonial Tanning Corporation, Gloversville, New York engaged in the production of tanned leather, was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2001 through April of 2003. The respondents reported no increased imports. The subject firm shifted production to China, but did not import tanned deerskins during the relevant period.

The union alleges that the subject firm is affiliated with two other companies and that these two companies imported tanned leather from foreign sources.

In the original investigation, one of the two companies noted by the union above was listed as a major declining customer; their survey response indicated no imports. In regard to the second company named by the union, a company official was contacted. In regard to this second company, it was revealed that one of the owners of the subject firm also owned the rights to the company name of the second company. It was also revealed that the total sales volume of this affiliated company was negligible relative to the sales volume at the subject firm, and thus any imports that occurred at the second company could not contribute importantly to layoffs at the subject firm.

The union also alleged that subject firm workers should be eligible because workers at a "direct competitor" (Johnstown Leather, TA-W–51,104) were certified eligible for trade adjustment assistance.

A review of the abovementioned case for workers at Johnstown Leather revealed that these workers were certified eligible for trade adjustment assistance based on increased customer imports. However, as Colonial Tanning Corporation has a different major declining customer base, this certification has no bearing on the eligibility of subject firm workers for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19220 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,539]

Divine Brothers Company, Utica, NY, Notice of Negative Determination Regarding Application for Reconsideration

By application of June 1, 2003, the Union of Needletrades, Industrial & Textiles Employees, Local 653–T requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 6, 2003 and published in the **Federal Register** on May 19, 2003 (68 FR 27107).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Divine Brothers Company, Inc., Utica, New York engaged in the production of industrial metal finishing products and supplies, was denied because criterion (2) was not met. Sales of industrial metal finishing products and supplies increased in 2002 compared to 2001 and remained relatively stable in January–March 2003 compared to the same period in 2002.

In the request for reconsideration, the union alleged that the closure of the Caster and Wheel Division (Truck Wheel) contributed to layoffs.

A company official stated that the company had made a decision to close the abovementioned division and that it closed in May of 2002. However, coinciding with the decline and ultimate closure of this division, other product lines produced by the company increased, which would explain the stable sales figures in the relevant period.

The union official also supplied information concerning allegations of layoffs of this division and bumping rights of employees under union agreements.

The petitioning workers were denied because sales and production did not decline in the relevant period, and workers are not separately identifiable, thus the information is irrelevant to a reconsideration of the original determination.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19222 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,366]

Georgia-Pacific Corporation, Operating as James River Paper Co., Inc., Consumer Products Division, Old Town, ME; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 24, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 16, 2003 and published in the **Federal Register** on June 3, 2003 (68 FR 33195).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Georgia-Pacific Corporation, operating as James River Paper Co., Inc., Old Town, Maine engaged in the production of toilet tissue, towels, napkin paper and converted case products, was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met. The subject firm did not increase its reliance on imports of toilet tissue, towels, napkin paper and converted case products during the relevant period, nor did it shift production to a foreign source. Further, division-wide sales increased during the relevant period.

The company official alleges that, in order to remain competitive, the company was forced to upgrade the raw materials used to make its paper products, and that these raw materials are now obtained from foreign sources. The official further clarifies that, because the Old Town facility was unable to efficiently process this foreign fiber source, the company shifted production to another domestic facility with better capabilities for processing this imported raw material.

The foreign sourcing of raw materials is not a factor in determining the import impact of the finished product. In assessing import impact in connection with petitioning worker eligibility for TAA, the Department considers data regarding imports like or directly competitive with those produced at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19221 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,084]

Lord Corporation, Aerospace Products Division, Erie, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Lord Corporation, Aerospace Products Division, Erie, Pennsylvania (TA–W–52,084).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19226 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,625]

Motorola, Inc.; iDen Radio Support Center; Elgin, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 21, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Motorola, Inc., iDen Radio Support Center, Elgin, Illinois was signed on May 20, 2003, and published in the **Federal Register** on June 3, 2003 (68 FR 33195).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Motorola, Inc., iDen Radio Support Center, Elgin, Illinois engaged in activities related to the repair of iDEN cellular radios. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner questions why the repair work performed at the subject facility does not constitute production.

The Department of Labor, has consistently considered repair work a "service". Further, the North American Industrial Classification System (NAICS), is a standard used by the Department to categorize products and services. Both the 1997 and 2002 editions of the NAICS designate the repair of telephones and two-way radios as classified within a code that signifies services (specifically NAICS 811213).

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19223 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,229]

Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 3, 2003, in response to a petition filed on behalf of workers at Motorola, Inc., Global Telecom

Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas.

This petitioning group of workers is covered by an active certification issued on September 30, 2002 and which remains in effect (TA–W–41,716). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19227 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,253]

Scope Molding, LLC, Almena, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 9, 2003 in response to a petition filed on behalf of workers at Scope Molding, Inc., Almena, Wisconsin.

The petitioning group of workers is covered by an earlier petition filed on July 1, 2003 (TA–W–52,216) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 18th day of July, 2003

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19228 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,957]

Temme Mold & Engineering, Evansville, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 6, 2003, in response to a petition filed by a company official on behalf of workers at Temme Mold & Engineering, Evansville, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 11th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19224 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision of the collection of the Occupational Code Request (OCR) that is being renamed Occupational Code Assignment (OCA) information. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before 60 days after date of publication in the **Federal Register.**

ADDRESSES: Pam Frugoli, Office of Policy Development, Evaluation and Research, Employment Training Administration, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, 202/693–3643 (This is not a toll-free number), Fax 202/693–2766, and e-mail *o-net@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Analysis program developed the Occupational Code Request (OCR) form as a public service to the users of the revised Dictionary of Occupational Titles (DOT) in an effort to help them in obtaining occupational codes and titles for jobs that they were unable to locate in the DOT. With the development and release of the Occupational Information Network (O*NET) system, some modifications were needed to make the OCR form correlate more closely to the information in the O*NET system. The OCR form, with these modifications, has been renamed the Occupational Code Assignment (OCA) form.

The O*NET system classifies nearly all jobs in the United States economy. However, new specialties are constantly evolving and emerging. The use of OCA is voluntary and is provided (1) as a uniform format to the public and private sector to submit information in order to receive an occupational code, (2) to provide input to a database of alternate (lay) titles to facilitate searches for occupational information in O*NET OnLine. (*http://online.onetcenter.org*), O*NET Code Connector (*http://www.onetcodeconnector.org*) as well as America's Career InfoNet (*http://www.acinet.org*), and (3) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts.

The OCA process is designed to help the occupational information user relate an occupational speciality or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O*NET system. The O*NET–SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks, and Work Activities. Since the O*NET–SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- 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;

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

III. Current Actions

ETA seeks to provide both the public and private sectors with the capability to make occupational coding inquiries. Members of the public sometimes need to know where their own occupational speciality or job title fits within the O*NET–SOC system. Therefore, a continuing need exists for this service.

The occupational analyst uses the information collection in form ETA 741—Occupational Code Assignment—Part A and Occupational Code Assignment—Request for Additional Information to aid them in assigning the most appropriate occupational code and title to the job or specialty described in the information submitted.

The form was changed in order to correlate more closely with the information in the O*NET system. For example, the OCA form requests new information items including skills, physical activities, knowledge areas, interactions, education, and training and experience.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Occupational Code Assignment.

OMB Number: 1205–0137.

Affected Public: Federal government, State and local government, business or other for-profit/not-for profit institutions, and individuals.

Cite/Reference/Form/etc.: Occupational Code Request form was form ETA 741. The "Occupational Code Assignment—Part A" is the name of the newly revised form. The "Occupational Code Assignment—Request for Additional Information" is a newly added form. It will be used only in situations where more detailed information is needed to make an occupation code assignment. See chart below.

Total Respondents: 177.

Frequency: On occasion.

Total Responses: 177.

Average Time per Response: 30 minutes for the OCA—Part A; and 40 minutes for OCA—Part A and the OCA—Request for Additional Information combined.

Estimated Total Burden Hours: 92.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
OCA—Part A	159	On occasion	159	.5	79.5
OCA—Part A and OCA—Request for additional information.	18	On occasion	18	.67	12
Totals			177		91.5

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $95.06.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 22, 2003.

Maria K. Fynn,

Acting Administrator, Office of Policy Development, Evaluation and Research Employment and Training Administration.

[FR Doc. 03–19218 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs; OMB Approval of Information Collection; Federal Employees' Compensation Act, As Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Notice of OMB approval under the Paperwork Reduction Act of 1995.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995, a new collection of information under the Federal Employees' Compensation Act, as amended. This notice announces both the OMB approval number and expiration date.

COMPLIANCE DATE: As of July 29, 2003, affected parties must comply with the new information collection requirements described below, which have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 11, 2003, OWCP requested OMB approval under the PRA of a new information collection for the Federal Employees' Compensation Act, as amended (FECA), 5 U.S.C. 8101 *et seq.* The new information collection requirements that needed OMB approval are derived from sections 8131 and 8132 of the FECA, and its implementing regulations at 20 CFR 10.707 and 10.710, and consist of requests for information necessary to calculate the amount of the United States' statutory right to a refund out of the proceeds of a judgment or settlement of an action against a third party liable to pay damages for an injury compensable under the FECA.

On July 14, 2003, OMB approved this information collection request for three years. The OMB control number assigned to this information collection is 1215–0200. The approval for this information collection will expire on July 31, 2006.

Signed at Washington, DC this 22nd day of July, 2003.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 03–19217 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. B and B Coal Company

[Docket No. M–2003–050–C]

B and B Coal Company, 225 Main Street, Joliett, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.334(a)(2), (e), and (f)(3) (Worked-out areas and areas where pillars are being recovered) to its Rock Ridge Slope (MSHA I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit its former ventilation system and plan to be approved and reinstated for the Rock Ridge Slope anthracite coal mine in lieu of requiring that areas be sealed or ventilated. The petitioner asserts that certain areas of the existing standard would result in risk taking for personnel at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Rosebud Mining Company

[Docket No. M–2003–051-C]

Rosebud Mining Company, 301 Market Street, Kittanning, Pennslyvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Little Toby Deep Mine (MSHA I.D. No. 36–08847) located in Elk County, Pennsylvania. The petitioner proposes to use two (2) portable fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using one fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and would not cause a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 30, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 22nd day of July 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–19171 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–084]

NASA Advisory Council, Space Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 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).

DATES: Monday, August 11, 2003, 8:30 a.m. to 5:30 p.m., Tuesday, August 12, 2003, 8:30 a.m. to 5:30 p.m., and Wednesday, August 13, 2003, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. 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:

- AA program Status Report.
- Division Status and Subcommittee Meeting Reports.
- Presentations and Discussion on Explorer and Discovery Program Cost Caps.
- Review of GPRA Science Theme Progress Assessments.
- Technology Management Update.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. To expedite admittance, attendees can provide identifying information three business days in advance by contacting Ms. Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at 202/358–4452. Foreign nationals attending this meeting will be required to provide the following information by close of business August 5: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be provided to the contact above no later than five working days before the meeting. Visitors to the meeting will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–19170 Filed 7–28–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, July 31, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2003.
3. Final Rule: Section 701.21(c)(7)(ii)(C) of NCUA's Rules and Regulations, Interest Rate Ceiling.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 31, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. One (1) Creditor Claim Appeal. Closed pursuant to Exemptions (6) and (8).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board

[FR Doc. 03–19305 Filed 7–24–03; 5:14 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, August 5, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: The three items are Open to the Public.

MATTERS TO BE CONSIDERED:

7487A—Railroad Accident Report—Derailment of Amtrak Auto Train P052–18 on the CSXT Railroad near Crescent City, Florida, on April 18, 2002.

7575—Railroad Accident Report—Uncontrolled Movement, Collision and Passenger Fatality on the Angels Flight Railway in Los Angeles, California, on February 1, 2001.

7299A—Aviation Accident Report—Emery Worldwide Airlines, Inc., McDonnell Douglas DC–8–71F, N8079U, Rancho Cordova, California, on February 16, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 25, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–19324 Filed 7–25–03; 11:18 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155 & 72–043]

Consumers Energy Co., Big Rock Point Nuclear Plant; Notice of Receipt, Availability for Comment, and Meeting to Discuss License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of, and is making available for public inspection and comment, the License Termination Plan (LTP) for the Big Rock Point Nuclear Facility (BRP) located in Charlevoix, Michigan.

Reactor operations at the BRP ended in August 29, 1997. The reactor was defueled and all fuel moved to an independent spent fuel storage installation (ISFSI) in March 2003. In accordance with NRC regulations in effect at that time, the licensee submitted a decommissioning plan for the BRP to the NRC in February 1995. When proposed amendments to the NRC's decommissioning regulations were published in the **Federal Register** on July 29, 1996 (61 FR 39278), the licensee requested that the review of the decommissioning plan be suspended. When the amended regulations became effective on August 28, 1996, the submitted decommissioning plan, as supplemented, became the BRP Post Shutdown Decommissioning Activities Report (PSDAR) pursuant to 10 CFR 50.82, as amended. A public meeting was held in Charlevoix, Michigan, on November 13, 1997, to provide information and gather pubic comment on the PSDAR. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied by or preceded by an LTP submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. The licensee submitted the proposed LTP for the BRP by application dated April 1, 2003. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the BRP LTP, and will accept comments from affected parties. In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is also providing notice that the NRC staff will conduct a meeting to discuss the BRP LTP on Tuesday, August 5, 2003, at 7 p.m., at the Charlevoix Stroud Hall located at 12491 Waller Road, Charlevoix, Michigan 49720.

The BRP LTP and associated environmental report are available for public inspection at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–19215 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60 for Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Hamilton County, Tennessee. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would permit the use of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI Code Case N–640, "Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME B&PV Code, Section XI, Code Case N–640," in lieu of 10 CFR 50, Appendix G, paragraph IV.A.2.b.

The regulation at 10 CFR part 50, section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G to 10 CFR part 50. Appendix G of 10 CFR part 50 requires the establishment of pressure-temperature (P–T) limits for specific material fracture toughness requirements of the reactor coolant pressure boundary materials and mandates the use of the ASME B&PV Code, Section XI, Appendix G. The requirements in 10 CFR 50, Appendix

G, establish an adequate margin to brittle failure during normal operation, anticipated operational occurrences, and system hydrostatic tests.

ASME B&PV Code, Section XI, Code Case N–640 permits the use of an alternate reference fracture toughness curve for reactor pressure vessel materials for use in determining the P–T limits. ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of "K_{IC} fracture toughness curve" instead of "K_{IA} fracture toughness curve," where K_{IC} and K_{IA} are "Reference Stress Intensity Factors," as defined in ASME Code, Section XI, Appendices A and G, respectively) for reactor vessel materials in determining the P–T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption to apply ASME Code Case N–640 is required.

The proposed action is in accordance with the licensee's application dated September 6, 2002, as supplemented by letter dated December 19, 2002 and June 24, 2003.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine the P–T limits because continued use of the present method for determining P–T limits unnecessarily restricts the P–T operating window. The two primary benefits to the licensee from the use of Code Case N–640 are:

- Challenges to the operators would be reduced since the requirements for maintaining high-vessel temperature during pressure testing would be lessened.
- Enhanced personnel safety would result because of the lower temperatures which would exist during the conduct of inspections in primary containment.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the use of the alternative analysis method to support the revision of the reactor coolant system P–T limits.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or significant increase in the amounts of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for SQN, dated February 13, 1974.

Agencies and Persons Consulted

On July 15, 2003, the staff consulted with the Tennessee State official, Ms. Elizabeth Flannagan, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 6, 2002, as supplemented by letter dated December 19, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of July 2003.

For The Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorote 2, Division of Licensing Project Monogement, Office of Nuclear Reoctor Regulotion.

[FR Doc. 03–19213 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its May 22, 2003, application for proposed amendments to Facility Operating License Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, in Hamilton County, Tennessee.

The proposed amendment would have revised the limiting condition for operation for Technical Specification (TS) Section 3.7.5, "Ultimate Heat Sink." The licensee requested that the maximum emergency raw cooling water temperature requirement in TS 3.7.5.b be increased from 83 degrees Fahrenheit (°F) to 87 °F and that the minimum ultimate heat sink water elevation in TS 3.7.5.a be increased from 670 feet to 674 feet.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 8, 2003 (68 FR 40719). However, by letter dated July 17, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 22, 2003, and the licensee's letter dated July 17, 2003,

which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of July 2003.

For the Nuclear Regulatory Commission.

Michael L. Marshall, Jr.,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–19214 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242.

Rule 206(4)–4, SEC File No. 270–304, OMB Control No. 3235–0345.

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") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 206(4)–3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all registered investment advisers. The Commission believes that approximately 1,560 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 10,982 total burden hours (7.04 × 1,560) for all advisers.

Rule 206(4)–4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We estimate that approximately 1,349 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 10,118 total burden hours (7.5 × 1,349) for all advisers.

The disclosure requirements of rules 206(4)–3 and 206(4)–4 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rules 206(4)–3 and 206(4)–4 is not submitted to the Commission. Accordingly, the disclosures pursuant to the rules are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 22, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19180 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension: Rule 27f–1 and Form N–27F–1, SEC File No. 270–487, OMB Control No. 3235–0546.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information under the Investment Company Act of 1940 ("Act") summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27f–1 [17 CFR 270.27f–1] is entitled "Notice of Right of Withdrawal Required to Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates." Form N–27F–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 45 Day Withdrawal Right with Respect to Periodic Payment Plan Certificates." Form N–27F–1, which is prescribed by rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates, of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Form N–27F–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic

payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are three issuers of periodic payment plan certificates affected by rule 27f–1. The frequency with which each of these issuers or their representatives must file Form N–27F–1 notices varies with the number of periodic payment plans sold. The Commission estimates, however, that approximately 5,907 Form N–27F–1 notices are sent out annually. The Commission estimates that all the issuers that send Form N–27F–1 notices use outside contractors to print and distribute the notices, and incur no hourly burden. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[2] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission'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 burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0004.

Dated: July 22, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19181 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

[2] The rule also permits the issuer, the principal underwriter for, or the depositor of, the issuer or a record-keeping agent for the issuer to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48212; File No. PCAOB–2003–01]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Bylaws

July 23, 2003.

I. Introduction

On March 3, 2003, the Public Company Accounting Oversight Board ("Board" or "PCAOB") filed with the Securities and Exchange Commission ("Commission") proposed rules PCAOB–2003–01 pursuant to Sections 101 and 107 of the Sarbanes-Oxley Act of 2002 ("Act"). On April 30, 2003, the PCAOB filed amendment No. 1 to those proposed rules. Notice of the bylaws, as amended, was published in the **Federal Register** on June 18, 2003.[1] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

Section 101(d) of the Act directs the PCAOB to organize and achieve the capacity necessary to carry out the purposes of the Act, and Section 101(g)(1) of the Act directs the PCAOB to adopt rules to provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under the Act. In furtherance of these provisions and its general obligations under the Act, the PCAOB has adopted a set of bylaws to establish rules, standards and procedures for the conduct of the PCAOB's business affairs. The PCAOB approved the bylaws on January 9, 2003, and authorized filing them with the Commission.[2] The bylaws were filed with the Commission's Office of the Secretary in March 2003 for publication and comment pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"). On April 25, 2003, the PCAOB adopted an amendment to Article VI of the bylaws to specify the powers of the PCAOB's Chair. On April 30, 2003, the PCAOB filed its Amendment No. 1 to the proposed bylaws.

The bylaws consist of nine Articles and contain, among other things:

A. Rules to determine the presence of a quorum of the PCAOB.

B. Establishment of a requirement to hold at least one public meeting per month.

C. Appointment of officers of the PCAOB.

D. Terms of indemnification of officers, employees and members of the PCAOB against claims arising from conduct in connection with the performance of their duties to the PCAOB.

E. Grant of authority to the PCAOB to purchase insurance against claims that may be asserted against officers, employees and members of the PCAOB in connection with the business relationship between such persons and the PCAOB.

F. Grant of authority to the PCAOB to adopt rules to govern the PCAOB as deemed necessary or appropriate to enable the PCAOB to discharge its responsibilities under the Act.

G. Rules under which capital expenditures and investments may be made by the PCAOB.

H. Establishment of a requirement that the PCAOB retain an accounting firm to annually audit the financial records of the PCAOB.

I. Delineation of the authority of the Chairman.

III. Discussion

The Act requires the Board, among other things, to oversee the audits of the financial statements of public companies that are subject to the securities laws in order to protect the interests of investors and further the public interest in having auditors prepare informative, accurate, and independent audit reports.[3]

Title I of the Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act.[4] The Board's bylaws implement Title I of the Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board and the powers and duties of the Governing

[1] Securities Exchange Act Release No. 48027 (June 13, 2003); 68 FR 36614 (June 18, 2003).

[2] Under the Act, the Board's bylaws are rules that must be approved by the Commission. See Section 2(a)(13) of the Act.

[3] Section 101(a) of the Act.

[4] Section 101(b) of the Act.

Board and officers. The bylaws are an important part of the Board's governing documents and establish procedures for the business operation and administration of the Board. The bylaws are intended to facilitate fulfillment of the Board's obligations under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rules (File No. PCAOB–2003–01) be and hereby are approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19178 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48210; File No. SR–CBOE–2003–15]

Self Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Amendment to Rule 17.2 of the CBOE's Disciplinary Rules Concerning the Initiation of Investigations of Possible Violations Within the Disciplinary Jurisdiction of the Exchange

July 23, 2003.

On April 7, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 17.2 of its Disciplinary Rules concerning the initiation of investigations of possible violations within the disciplinary jurisdiction of the Exchange. On May 30, 2003, the CBOE filed Amendment No. 1.[3]

The proposed rule change was published for comment in the **Federal Register** on June 23, 2003.[4] The Commission received no comments on the proposal, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5)[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as amended, is consistent with sections 6(b)(1),[8] 6(b)(6),[9] and 6(b)(7)[10] of the Act in that it requires compliance by the Exchange members and persons associated with its members with the Act, the rules and regulations thereunder, and Exchange rules; and provides a fair procedure for the disciplining of Exchange members. In particular, the Commission believes that the proposed rule change, as amended, should help to clarify and make explicit that the Exchange can initiate investigations in its disciplinary jurisdiction on its own when it believes that there is a reasonable basis to do so, and that complaints made to the Exchange alleging violations made by a complainant can either be oral or written.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CBOE–2003–15), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19183 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48209; File No. SR–EMCC–2003–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to EMCC's Capital Requirements for Members

July 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the general continuance standards for continued membership in EMCC's Rule 2, Section 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC 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 Statutory Basis for, the Proposed Rule Change

EMCC's Rule 2 ("Members"), Section 6, ("Admission Criteria for Members") provides that if an applicant does not meet the minimum capital requirements set forth in Section 6, EMCC's Board of Directors may include for such purposes the capital of an affiliate of the applicant if the affiliate delivers to EMCC a satisfactory guaranty. The purpose of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from J. Patrick Sexon, Assistant General Counsel, CBOE, to Sapna C. Patel, Attorney, Division of Market Regulation, Commission, dated May 29, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48038 (June 16, 2003), 68 FR 37181.

[5] In approving this proposed rule change, the Commission notes that it 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. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

the proposed rule change is to permit any existing member of EMCC who no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will permit members to have the same standards applicable to their participation in EMCC as Applicants have.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change would have an impact on or impose a 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 EMCC members have not been solicited or received on the proposed rule change.

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 within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–EMCC–2003–01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–2003–01 and should be submitted by August 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19239 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48206; File No. SR–Phlx–2003–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Volume Threshold for the Options Specialist Shortfall Fee

July 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to reduce the total national monthly contract volume threshold associated with the shortfall fee from the current rate of 14 percent to 12 percent for specialists trading in any Top 120 Option.[3]

Currently, specialists[4] are required to reach a total national monthly contract volume threshold of 14 percent in order not to be charged a shortfall fee by the Phlx.[5] Under this proposal, the total national monthly contract volume threshold would be reduced to 12 percent.

The current rate of $0.35 per contract and other procedures relating to shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.[6]

The Exchange intends to implement the 12 percent total national monthly contract volume threshold for transactions settling on or after July 1, 2003.[7]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the

[3] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by the Options Clearing Corporation.

[4] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[5] See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).

[6] A shortfall credit of $0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly time period. See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

[7] The shortfall fee had heretofore been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the economic burden on specialists who are competing for order flow in the Top 120 Options and to remain competitive. The 12 percent volume threshold should continue to encourage specialists to compete for order flow in the national market, while lessening the economic burdens placed on specialists from the imposition of the shortfall fee at a higher volume threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–45 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19179 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48208; File No. SR–Phlx–2003–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Deficit (Shortfall) Fee Credit

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to: (1) Eliminate the Exchange's Equity Option Specialist Deficit (Shortfall) fee credit ("shortfall credit"); and (2) clarify the application of the shortfall credit during the time period during which it was in effect.

Pursuant to the shortfall credit, a credit of $.35 per contract could be earned by options specialists for all contracts traded in excess of 14 percent of the total national monthly contract volume.[3] The credits could be applied against previously imposed Equity Option Specialist Deficit (Shortfall) fees for the preceding six months for issues that, in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month.[4] The Exchange proposes to clarify that a specialist may earn a shortfall credit of $.35 per contract for all contracts traded in excess of 14 percent for previously imposed shortfall fees for the preceding six months for issues that, in the month the deficit occurred, the equity option traded in excess of 10 million contract *sides* per month.[5]

The Exchange intends to eliminate the shortfall credit for all transactions settling on or after July 1, 2003.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).

[4] The contract volume reflects the total number of contracts in an option that were traded nationally for a specified month, based on volume reflected by The Options Clearing Corporation.

[5] *See* Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR–Phlx–2001–83). In the proposed rule change submitted in connection with the shortfall credit, the word "sides" was inadvertently excluded from the proposal. The shortfall credit is more easily attainable if the threshold calculation is based on contract sides. For example, 10 million contracts equal 20 million contract sides.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Exchange's shortfall credit due to recent revisions to the Exchange's Specialist Deficit (Shortfall) fee program.[6] The Exchange no longer wishes to allow for a shortfall credit due to these recent changes. However, the Exchange also seeks to clarify the application of the shortfall credit during the time period during which it was in effect in order to minimize member confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act,[8] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–48 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19182 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* SR–Phlx–2003–45, submitted on June 25, 2003 and SR–Phlx–2003–47, submitted on June 27, 2003. These filings revised the shortfall fee by decreasing the total national monthly contract volume threshold from 14 percent to 12 percent for specialists trading any Top 120 Option and imposed a limit of $10,000 to the specialist on the monthly amount of the shortfall fee for any Top 120 Option, provided certain conditions are met.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48205; File No. SR–Phlx–2003–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from August through October 2003 for the top 120 options based on volume statistics from April, May, and June 2003,[3] as set forth in the ROT Equity Option Payment for Order Flow Charges Schedule[4] and subject to certain exceptions listed below. The Phlx intends to implement the payment for order flow fees for trades settling on or after August 1, 2003 through October 31, 2003. The rate levels would not change: The top-ranked equity option would be charged a fee of $1.00 per contract; the next 49 equity options would be charged a fee of $.40 per contract;[5] and no fee would be imposed for the remaining equity options in the top 120. The ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 options encompasses three months, and the Phlx files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after May 1, 2003 through July 31, 2003, for example, the measuring period for the top 120 options was based on volume statistics from January, February, and March 2003. *See* Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR–Phlx–2003–34). For the payment for order flow fees imposed on trades settling on or after August 1, 2003 through October 31, 2003, as set forth in this proposal, the measuring period for the top 120 options is based on volume statistics from April, May, and June 2003.

[4] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00.

[5] The fees for the equity options ranked from two through fifty recently decreased from $0.50 per contract to $0.40 per contract. *See* Securities Exchange Act Release No. 48032 (June 13, 2003), 68 FR 37194 (June 23, 2003) (SR–Phlx–2003–42).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently reinstated its payment for order flow program.[6] Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.[7] The fees are set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

1. Purpose

The purpose of the proposed rule change is to establish the applicable payment for order flow fees for the top 120 options for trades settling on or after August 1, 2003 through October 31, 2003. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with section 6(b) of the Act[8] and furthers the objectives of section 6(b)(4) of the Act.[9]

[6] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75).

[7] The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the payment for order flow program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–50 and should be submitted by August 19, 2003.

[10] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19184 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48207; File No. SR–Phlx–2003–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Specialist Deficit (Shortfall) Fee

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to amend the Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to impose a limit of $10,000 to the specialist[3] on the monthly amount of the shortfall fee for any Top 120 Equity Option,[4] provided that the market share effected on the Phlx for a Top 120 Option is equal to or greater than 50 percent of the current total national monthly contract volume threshold ("volume threshold") in effect. As of July 1, 2003, the volume threshold is 12 percent in most cases.[5]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[4] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by OCC.

[5] An exception to the volume threshold amount relates to a transition period for newly listed options, which is described in Footnote 9.

Currently, the Exchange imposes a fee of $0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 14 percent of the total national monthly contract volume for such Top 120 Option is not effected on the Exchange in that month.[6] Effective July 1, 2003, the Exchange intends to reduce the volume threshold rate to 12 percent.[7] Therefore, as of July 1, 2003, for each month, if a specialist unit trades an amount equal to or greater than 6 percent of the total national market share, the shortfall fee will be imposed, but limited to $10,000.[8]

For example:

	Specialist market share for one month (in percent)	Full shortfall fee at 12%	Shortfall fee under new proposal
Scenario No. 1	9.1	[9] $18,976	$10,000
Scenario No. 2	8.8	14,851	10,000
Scenario No. 3	5.6	10,916	10,916
Scenario No. 4	5.4	21,944	21,944

The current rate of $0.35 per contract and other procedures relating to the shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.[10]

The Exchange intends to implement the monthly shortfall fee limited at $10,000, as described above, for transactions settling on or after July 1, 2003.[11]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the burden on specialists who are competing for order flow in the national market in the Top 120 Options. Limiting the monthly amount of the shortfall fee to $10,000, provided that the specialist unit garners at least 50 percent of the current volume threshold, should encourage specialists to continue to compete for market share in the Top 120 Options, while reducing the economic burden on specialists and eliminating a potential significant liability provided certain lower volume thresholds are achieved.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 [15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).

[7] The Exchange recently submitted a proposed rule change to the Securities and Exchange Commission to lower the volume threshold from the current rate of 14 percent to 12 percent, effective for transactions settling on or after July 1, 2003. *See* SR–Phlx–2003–45.

[8] Pursuant to the Exchange's current shortfall fee program, the shortfall fee is imposed in stages for newly listed options, such that the requisite volume threshold is three percent for the first full calendar month of trading and six percent for the second full calendar month of trading. Under the current proposal, the requisite volume threshold of three percent and six percent would remain unchanged, however, the $10,000 limit would apply if at least 1.5 percent of the total national monthly contract volume was reached in the first calendar month of trading and at least three percent of the total national monthly contract volume was reached in the second full calendar month of trading. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–Phlx–00–71).

[9] For example, the detailed figures for scenario number one are as follows: with a hypothetical total volume of 1,886,569 contracts and total Phlx volume of 172,172 contracts, Phlx target of 12 percent of total national would equal 226,388 contracts (1,886,569 × 12 percent). The volume shortfall in contracts is 54,216 (226,388 − 172,172). Therefore, the shortfall fee totals $18,976 (54,216 × $.35). However, the shortfall fee owed to the Exchange by the specialist, pursuant to this proposal, would be limited to $10,000 because the specialist reached 9.1 percent, which is at least 50 percent (*i.e.* greater than 6 percent) of the total volume threshold of 12 percent.

[10] A shortfall credit of $0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly time period. *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

[11] The shortfall fee had heretofore been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–47 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19185 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3528, Amdt. 1]

State of Ohio

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 11, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on July 4, 2003 and continuing through July 11, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 15, 2003, and for economic injury the deadline is April 15, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19262 Filed 7–28–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512, Amdt. 6]

State of West Virginia

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 21, 2003, the above numbered declaration is hereby amended to include Preston County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides beginning on June 11, 2003 and continuing through July 15, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Grant and Tucker in the State of West Virginia; and Garrett County in the State of Maryland may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19263 Filed 7–28–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4417]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State, Office of International Energy and Commodities Policy.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from Valero Logistics Operations, L.P. (Valero) for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993 and Executive Order 13284 of January 23, 2003, authorizing the construction, connection, operation, and maintenance at the U.S.-Mexican border in the vicinity of Laredo, Texas of a liquid pipeline capable of carrying liquefied petroleum gas (LPG), and related facilities.

Valero is a corporation organized and existing under the laws of the State of Texas and with its principal office located in San Antonio, Texas. The proposed new 8⅝ inch diameter pipeline would originate at an existing Valero pipeline system in Laredo, Texas and cover approximately 10.4 miles, crossing under the Rio Grande River and terminating at a new pipeline that will be constructed, owned and operated by Valero Internacional, S. de R.L. de C.V., a subsidiary of Valero, in Nuevo Laredo, Tamaulipas, Mexico. It is anticipated that initial contract deliveries of LPG to Mexico will be 150,000 barrels per month in Nuevo Laredo, but the pipeline capacity would be approximately 32,400 barrels of LPG per day in either direction.

As required by E.O. 11423, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before August 28, 2003, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037.

Dated: July 21, 2003.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 03–18999 Filed 7–28–03; 8:45 am]

BILLING CODE 4710–07–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 18, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15685.
Date Filed: July 15, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 CAN–EUR 0094 dated June 17, 2003
TC12 Canada-Europe Resolutions r1–r16
Technical Correction—PTC12 CAN–EUR 0095 dated June 24, 2003
Minutes—PTC12 CAN–EUR 0096 dated July 15, 2003
Tables—PTC12 CAN–EUR Fares 0032 dated June 27, 2003
Intended effective date: November 1, 2003

Docket Number: OST–2003–15697.
Date Filed: July 16, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA–EUR 0157 dated July 4, 2003
Mail Vote 308 r1–r18
TC12 North Atlantic USA-Europe (except between USA and Austria, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland)
PTC12 USA–EUR 0158 dated July 4, 2003
Mail Vote 309 r19–r34
TC12 North Atlantic USA-Europe (between USA and Austria, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland)
Minutes—PTC12 USA–EUR 0159 dated July 15, 2003
Tables—PTC12 USA–EUR Fares 0078 dated July 4, 2003
Intended effective date: November 1, 2003

Docket Number: OST–2003–15706.
Date Filed: July 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 316
PTC123 0245 dated July 22, 2003
North, Mid, South Atlantic Passenger Amending Resolution from Sri Lanka r1–r14
Intended effective date: August 15, 2003.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. 03–19241 Filed 7–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 18, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–6319.

Date Filed: July 16, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2003.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting an amendment of its experimental certificate of public convenience and necessity for Route 564 (U.S.-Mexico) to incorporate authority for service between Los Angeles and Guadalajara. Northwest also requests that the Department integrate this authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and Department policy.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.
[FR Doc. 03–19242 Filed 7–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15739]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CAVALIER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15739 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15739. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CAVALIER is:

Intended Use: "Day and term charters with twelve passengers or less".

Geographic Region: "Maine to Florida Keys, and the Great Lakes."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19267 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15740]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PAINKILLER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15740 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15470. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PAINKILLER is:

Intended Use: "Crewed sailing charters."

Geographic Region: "California."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19270 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15738]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAGNAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15738 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15738. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RAGNAR is:

Intended Use: "Coastal, day and overnight charters in the Inland waters of the Northeastern U.S."

Geographic Region: "Maine to New York."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19268 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15741]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAKE TIME.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15741 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15741. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TAKE TIME is:

Intended Use: "Charter is for small groups to cruise on the boat weekends or weeks at a time. We will be going up and down the East Coast, with people that would like to cruise the waters."

Geographic Region: "The East Coast of the United States, including Florida."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19269 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34377]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railway Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's Memphis Subdivision lines between West Memphis, AR, at UP milepost 375.9, and Memphis, TN, at UP milepost 378.1, a distance of approximately 2.2 miles.

The transaction is scheduled to become effective on July 16, 2003, and the authorization is scheduled to expire on October 2, 2003. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States*, 675 F.2d 1248 (DC Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34377, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, 2500 Lou Menk Drive, P. O Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: July 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18973 Filed 7–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys involving the National Cemetery Administration (NCA), and the Office of Inspector General (IG).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 29, 2003.

ADDRESSES: Submit written comments on the collection of information to Ronald Cheich, National Cemetery Administration (402A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *Ronald.cheich@mail.va.gov*. Please refer

to "OMB Control No. 2900–0571" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ronald Cheich at (202) 273–8087.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the National Cemetery Administration (NCA), and the Office of Inspector General (IG) Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. NCA, and IG use customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households, Business or Other For-Profit and State, Local or Tribal Government.

Listing of Survey Activities: The following list of activities is a compendium of customer satisfaction survey plans by the NCA, and IG. The actual conduct of any particular activity listed could be affected by circumstances. A change in, or refinement of, our focus in a specific area, as well as resource constraints could require deletion or substitution of any listed item. If these organizations substitute or propose to add a new activity that falls under the umbrella of this generic approval, including those activities that are currently in a planning stage, OMB will be notified and will be furnished a copy of pertinent materials, a description of the activity and number of burden hours involved. NCA, and IG will conduct periodic reviews of ongoing survey activities to ensure that they comply with the PRA.

Year	Number of respondents	Estimated annual burden (hours)	Frequency
I. National Cemetery Administration			
Focus Groups With Next of Kin (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Focus Groups With Funeral Directors (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Focus Groups With Veterans Service Organizations (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Visitor Comments Cards (Local Use) (2,500 respondents/5 minutes per response)			
2004	2,500	208	Annually.
2005	2,500	208	Annually.
2006	2,500	208	Annually.
Next of Kin National Customer Satisfaction Survey (Mail to 10,000 respondents/30 minutes per response)			
2004	15,000	7,500	Annually.
2005	15,000	7,500	Annually.
2006	15,000	7,500	Annually.
Funeral Directors National Customer Satisfaction Survey (Mail to 1,000 respondents/30 minutes per response)			
2004	4,000	2,000	Annually.
2005	4,000	2,000	Annually.
2006	4,000	2,000	Annually.
Veterans-At-Large National Customer Satisfaction Survey (Mail to 5,000 respondents/30 minutes per response)			
2004	5,000	2,500	Annually.
2005	5,000	2,500	Annually.

Year	Number of respondents	Estimated annual burden (hours)	Frequency
2006	5,000	2,500	Annually.
Program/Specialized Service Survey (Mail to 1,000 respondents/15 minutes per response)			
2004	2,000	500	Annually.
2005	2,000	500	Annually.
2006	2,000	500	Annually.
II. Office of Inspector General Patient Questionnaire (1,440 respondents/10 minutes per response)			
2004	1,440	240	Annually.
2005	1,440	240	Annually.
2006	1,440	240	Annually.

Most customer satisfaction surveys will be recurring so that NCA, and IG can create and maintain ongoing measures of performance and to determine how well VA meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate each organization's performance. NCA expects to conduct 15 focus groups annually involving a total of 450 hours during the approval period. In addition, NCA expects to conduct mail surveys with a total annual burden of 12,000 hours and will distribute comment cards with a total annual burden of 208 hours. NCA also plans to conduct mail surveys with customers of specific programs (*e.g.* Headstones and Markers, Presidential Memorial Certificates, State Veterans Cemeteries) to determine levels of service satisfaction. Program specific surveys are estimated at 500 burden hours annually during the approval period. The IG expects to distribute 1,440 surveys to patients with a total annual burden of 240 hours.

Dated: July 8, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19175 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981, or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0319."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0319" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4703 is used as a legal binding contract between VA and Federally appointed fiduciaries. It outlines a fiduciary's responsibilities with respect to the use of funds received on behalf a beneficiary who is determined to be incompetent by VA rating, minority, or finding of legal disability by a court of proper jurisdiction.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published April 16, 2003 at page 18727.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, State, local or Tribal Government.

Estimated Annual Burden: 1,467 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,600.

Dated: July 7, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19176 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0564."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0564" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 24–0296 is used to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2003, at page 13365.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,200 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 96,000.

Dated: July 8, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19177 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 145
Tuesday, July 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

Correction

In notice document 03–17779 appearing on page 41785 in the issue of Tuesday, July 15, 2003, make the following corrections:

1. On page 41785, in the second column, under the heading **SUMMARY**, in the fifth line, "as scheduled" should read "was scheduled".

2. On the same page, in the same column, under the same heading, in the ninth line, "not meet" should read "now meet".

[FR Doc. C3–17779 Filed 7–28–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Correction

In notice document 03–19043 appearing on page 43726 in the issue of Thursday, July 24, 2003 make the following correction:

On page 43726, in the third column, in the second STATUS section, in the first line, "closed" should read "open".

[FR Doc. C3–19043 Filed 7–28–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 29, 2003

Part II

Department of Justice

Antitrust Division

United States v. Mountain Health Care, P.A., Civil Action No. 1:02CV288–T (W.D.N.C.); Response to Public Comments; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Mountain Health Care, P.A., Civil Action No. 1:02CV288–T (W.D.N.C.) Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that Public Comments and the Response of the United States have been filed with the United States District Court for the Western District of North Carolina in *United States* v. *Mountain Health Care, P.A.* Civil Action No. 1:02CV288–T (W.D.N.C., filed December 13, 2002). On December 13, 2002, the United States filed a Complaint alleging that defendant, Mountain Health Care, P.A. ("MHC") and its physician owners and members, restrained competition in the sale of physician services to managed health care purchasers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, requires MHC to dissolve.

Public comment was invited within the statutory 60-day comment period. Such Comments, and the Responses thereto, are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and the Response of the United States are available for inspection in Room 4000 of the Antitrust Division, Department of Justice, 1401 H Street, NW., Washington, DC 20530 (telephone: 202–307–0001) and at the Office of the Clerk of the United States District Court for the Western District of North Carolina, Room 212, 401 West Trade Street, Charlotte, North Carolina.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the Western District of North Carolina

United States of America, Plaintiff, v. Mountain Health Care, P.A. Defendant; Response to Public Comments

[Civil No.: 1:02CV288–T; Filed]

Pursuant to the requirements of the Antitrust Policies and Procedures Act, 15 U.S.C. 16(b)–(h) (the "APPA" or "Tunney Act"), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Background

On December 13, 2002, the United States filed a civil antitrust complaint alleging that defendant, Mountain Health Care, P.A., ("MHC") and its physician owners and members, restrained competition in the sale of physician services to managed health care purchasers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. MHC is a physician-owned network consisting of the vast majority of physicians practicing in the greater Asheville, North Carolina area. MHC was formed in 1994 to increase the bargaining power of its physicians with managed care insurance companies, self-insured employers, and third-party administrators (collectively, "managed care purchasers"). Complaint ¶ 8; Competitive Impact Statement ("CIS") II.B. To facilitate that objective, MHC and its physicians established a uniform fee schedule that it incorporated into contracts with certain managed care purchasers. Complaint ¶ 10. The use of that fee schedule eliminated price competition among MHC's physicians, who did not clinically or financially integrate their practices in a way that would have justified their collective price setting conduct. Complaint ¶11. This resulted in increased physician reimbursement fees to managed care purchasers in the greater Asheville area. Complaint ¶14. MHC also exclusively represented its member physicians in negotiations with certain managed care purchasers. Complaint ¶ 13.

Also on December 13, 2002, the United States filed a proposed Final Judgment and a Stipulation signed by both it and defendant MHC agreeing to entry of the Final Judgment following compliance with the Tunney Act. Pursuant to the Tunney Act, the Stipulation, proposed Final Judgment and Competitive Impact Statement ("CIS") were published in the **Federal Register** on January 10, 2003. 68 FR 7, 1478–1482. A summary of the terms of the Complaint and the proposed Final Judgment were published for seven consecutive days in the Asheville Citizen-Times from January 24 through January 30, 2003. Pursuant to U.S.C. 16(b)–(d) the 60-day period for public comments on the Proposed Final Judgment began on January 11, 2003 and expired on March 12, 2003. During that time, nine comments and one *amicus* brief were received.

II. Response to Public Comments

A. Amicus Brief Filed by S.M. Oliva, President of Citizens for Voluntary Trade, and the Comments of Citizens for Voluntary Trade

On February 15, 2003, S.M. Oliva, president of Citizens for Voluntary Trade (CVT), filed a motion for leave to file an *amicus curiae* brief. Attached to that motion was Oliva's 7-page *amicus* brief (attached, along with the motion, as Exhibit A). On March 7, 2003, Oliva submitted the 48-page Public Comments of Citizens for Voluntary Trade to the Proposed Final Judgment (Exhibit B), repeating the same arguments made in Oliva's *amicus* brief and including lengthy recitations of CVT's view of the history of the government's intervention in health care and other "background" information. On March 19, 2003, the United States filed a response to Oliva's *amicus* request, stating that it did not oppose the Court accepting his brief and treating it as another comment to the Proposed Final Judgment. On March 27, 2003 the Court ordered that Oliva's *amicus* brief be treated as a supplemental comment to the proposed Final Judgment. In this Response, the United States responds to the assertions made in both Oliva's *amicus* brief and CVT's comments.

1. CVT's and Oliva's Arguments About Why This Case Should Not Have Been Brought Are Irrelevant in a Tunney Act Proceeding

The vast majority of the comments made by CVT and Oliva relate to whether this case should have been filed in the first instance, not to whether the relief in the Proposed Final Judgment is adequate to address the harm alleged in the Complaint. *E.g.*, Exh. A at 3 ("no need for the government's proposed remedy—dissolution of MHC—because there is no illegal behavior taking place"). Oliva asks the Court to dismiss the complaint for failure to state a claim. Exh. B at 13. Because Oliva relies on factual assertions beyond the scope of the allegations in the Complaint, this request is, in effect, a motion, under Rule 56 of the Federal Rules of Civil Procedure, for summary judgment against the United States.

Comments alleging that the United States does not have sufficient evidence to support the case it has pled, and requesting dismissal of the United States' complaint, are beyond the scope of this hearing. A Tunney Act proceeding is not an opportunity for a "*de novo* determination of facts and issues," but rather is intended "to determine whether the Department of

Justice's explanations were reasonable under the circumstances" because "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (citations omitted). Courts consistently have refused to consider "contentions going to the merits of the underlying claims and defenses." *United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir. 1981.) CVT contends that the legislative history of the Tunney Act authorizes a review of the merits of the underlying case, and not just the adequacy of the proposed relief. Exh. B at 44–45. This is incorrect. During the Senate hearings on the Act, one witness specifically urged that "as a condition precedent to * * * the entry of a consent decree in a civil case * * * the Department of Justice be required to file and make a matter of public record a detailed statement of the evidentiary facts on which the complaint * * * was predicated."[1] That recommendation, however, was rejected. Congress did not intend to turn every Tunney Act proceeding into a full-blown trial on the merits of the Untied States' complaint.

For this reason, assertions that the Untied States lacks jurisdiction, that MHC was a non-exclusive physician network, that it was really operating under a "messenger model" of contracting that has been approved by the United States, and that MHC's conduct did not cause anti-competitive effects—all of which pertain to the merits of the underlying case, but not the proposed remedy—are irrelevant to this proceeding, and should not be considered by this Court.[2] Nonetheless, the United States responds to those assertions below.

[1] The Antitrust Procedures and Penalties Act: Hearings on S. 782 and S. 1088 Before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93d Cong., 1st Sess. 26, 57 (1973) (prepared statement of Maxwell M. Blecher, attorney).

[2] Even farther afield are the lengthy and wide-ranging attacks in CVT's comments on various other subjects: The Medicaid and Medicare statutes (Exh. B at 14); the HMO Act of 1973 (*id.* at 15); settled Supreme Court precedent, *Arizona* v. *Maricopa County Medical Society*, 457 U.S. 332 (1982), holding that price fixing by physicians is unlawful (*id.* AT 18–20); the Health Care Policy Statements issued by the Department of Justice and Federal Trade Commission (*id.* at 20–23); the "morality" of this case and others like it, which in CVT's view are not designed to protect consumers but to "deny wealth to its rightful owners" (*id.* at 23–25); and several cases against physician groups brought not by the Untied States Department of Justice, the plaintiff in this case, but by the Federal Trade Commission (*id.* at 26–36).

2. The Complaint States a Claim Upon Which Relief Can Be Granted

Even if CVT or Oliva had the right to file a motion to dismiss the Complaint under Rule 56, that motion would fail because the Complaint states a claim upon which relief can be granted. *Federal Trade Commission* v. *Indiana Federation of Dentists*, 476 U.S. 447 (1986) (A horizontal agreement by health care providers, causing an anticompetitive impact on third party payors, is an unreasonable restraint of trade). CVT and Oliva have not provided any evidence to dispute the allegations made in the Complaint. Nor do CVT or Oliva appear to have any independent knowledge of the health care market in Western North Carolina. Rather, it appears they reach their concussions on the basis of what Oliva says he learned during a telephone interview with Ellen Wells, President of defendant MHC, and from reading newspaper articles found on the defendant's Web site.[3] The interest of CVT and Oliva appear to stem less from their knowledge of the Western North Carolina physician market and more from their ideology that the antitrust laws in general are unconstitutional, and that antitrust enforcement against physicians promotes socialism.[4]

The information already disclosed in the Complaint provides sufficient basis for this Court to make a public interest determination. The request of CVT and Oliva for highly detailed market information—for example, data to "assess the state of the affected marketplace" and "empirical evidence demonstrating how the proposed remedy is likely to restore competition" (Exh. A at 5)—is not justified. As noted above, this request is not relevant in this Tunney Act proceeding to the extent it relates to whether the United States had a good faith basis for concluding that MHC's conduct was anticompetitive and violated the antitrust laws. *See supra*, Section II.A.1. The United States is not required in its Complaint or in a Tunney Act proceeding to specify in detail all of the evidence upon which it based its decision to file a case here. Indeed, Congress specifically rejected such a requirement when the Act was being considered in the Senate. *See supra* Section II.A.1. Requiring the disclosure of this kind of evidence—that akin to the kind of information that would have to be disclosed during litigation in expert reports and other filings—would substantially undermine the benefits of settling government antitrust cases. One of the major benefits of antitrust consent judgments is that they enable the government "to reallocate necessarily limited [enforcement] resources," *Microsoft Corp.*, 56 F.3d at 1459, and that benefit would be lost if the United States were forced to compile and disclose during a Tunney Act proceeding the same kind of information it is required to disclose during litigation.

[3] Exh. A at 3 n.5 and accompanying text (citing Jan. 23, 2003 telephone interview); Exh. B at 46 (relying on information "Mountain president Ellen Wells told CVT"); Exh. B Appendix A (attaching several documents from Mountain Health Care website).

[4] *See* CVT Comment at 36 ("the Sherman Act is unconstitutional in CVT's judgment"); at 48 (government's enforcement efforts moving country "closer towards the complete socialization of health care under central control").

a. The United States has jurisdiction to challenge Mountain Health Care's conduct in this case. CVT questions whether the United States has jurisdiction to bring this case because at least some of MHC's contracts were with businesses organized and doing business solely in North Carolina. Exh. B at 6–9. As alleged in the Complaint, MHC has contracts with out-of-state employers and those businesses "remit substantial payments to MHC physicians in North Carolina." Complaint ¶ 5. This is more than sufficient to meet the Sherman Act's expansive reach. *Summit Health, Ltd.* v. *Pinhas*, 500 U.S. 322 (1991) (interstate commerce nexus found where hospital and medical staff conspired to exclude single physician from Los Angeles market); *McLain* v. *Real Estate Board of New Orleans, Inc.*, 444 U.S. 232 (1980) (price fixing by local real estate brokers); *Hospital Building Co.* v. *Trustees of Rex Hospital*, 425 U.S. 738 (1976) (conspiracy to block relocation and expansion of rival hospital).

CVT further claims that, beyond the question of jurisdiction, this case raises the question of whether it is in the "public interest" for the United States to bring the charges because such an action infringes upon the "regulation of private health care networks" by the State of North Carolina. Exh. B at 8. Nothing about this case, or any of the relief in the Proposed Final Judgment, undermines the state's regulation of health care providers.

b. Mountain Health Care was an exclusive network with substantial market power. Based solely on hearsay, CVT and Oliva claim that MHC is not really an exclusive network, that its providers contract freely with other networks and plans, and that those patients covered by MHC contracts make up only 8% of the patients seen by MHC's providers. *E.g.*, Exh. B at 10. Whether a physician network is "exclusive" or "non-exclusive" is

relevant to an inquiry into the competitive effects of that network. As explained in the Health Care Policy Statements issued by the U.S. Department of Justice and Federal Trade Commission:

> In an 'exclusive' venture the network's physician participants are restricted in their ability to, or do not in practice, individually contract or affiliate with other network joint ventures or health plans. In a 'non-exclusive' venture, on the other and, the physician participants in fact do, or are available to, affiliate with other networks or contract individually with other plans.

U.S. Department of Justice and Federal Trade Commission, Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust ("Health Care Policy Statements") August 1996, at 58, available at *http://www.atrnet.gov/policies/health*.[5] Those guidelines set forth "antitrust safety zones," meaning that the government would not challenge absent extraordinary circumstances, exclusive physician joint ventures comprising 20 percent or less, and non-exclusive ventures comprising 30 percent or less, of the physicians in each specialty with active hospital privileges who practice in the relevant geographic market and share substantial financial risk. *Id.* at 58–59.

In this case, MHC was a physician-owned network made up of the vast majority of physicians practicing in the Asheville area—in some specialties, 100 percent of the physicians—who did not share financial risk. Further, MHC, and members of its Board, made substantial efforts to discourage physicians from joining other networks.

The assertion that MHC's members comprise only 8 percent of the provider's patient base is misleading because that calculation includes in the denominator a substantial number of patients that are not affected by MHC's contracting practices with managed care plans: Those patients covered by Medicare and Medicaid and those patients with no insurance at all.[6] Further, in the provision of physician network services to employers self-insuring for their employees health care benefits, MHC had nearly 100% of the market.

At a more basic level, MHC possessed substantial market power given the fact that such a high percentage of Asheville-area physicians were members. This is apparently not disputed by CVT, which concedes that, "[i]f every doctor now affiliated with Mountain were to cease practicing medicine tomorrow, the managed care companies and consumers in western North Carolina would have no recourse." Exh. B. at 43.

c. Mountain Health Care did not use a "messenger model" in contracting with managed care plans. CVT and Oliva allege—again, based solely on hearsay information—that MHC was no longer using its uniform fee schedule but rather using (or "transitioning" to) a "messenger" model in contracting with managed care purchasers. Exh. A at 3; Exh. B at 5–6. The Health Care Policy Statements describe how a physician network is able to contract with managed care purchasers on behalf of competing physicians without engaging in *per se* unlawful price fixing, by using a "messenger model". The "messenger model" is an arrangement where a third party offers each individual physician an opportunity to decide individually whether or not to accept an offer from a managed care provider. Health Care Policy Statements, August 1996, at 114, available at *http://www.atrnet.gov/policies/health*. "The key issue in any messenger model arrangement is whether the arrangement creates or facilitates an agreement among competitors on prices or price related terms." *Id.* Proper use of the messenger model may mean that a physician network's conduct may not rise to the level of *per se* illegal price fixing, but it does not mean, as Oliva and CVT appear to believe, that any agreement among physicians to "messenger fees" is insulated from antitrust challenges, when, as here, the agreement has resulted in actual anti-competitive effects.

The United States thoroughly investigated the issue of whether Mountain Health Care's conduct was causing actual anticompetitive effects, regardless of whether it was using a messenger model. It bears clarification, however, that the Complaint alleges that Mountain Health Care was not merely a messenger for its member physicians; it was their exclusive bargaining agent. Physicians bargained through MHC which developed a uniform fee schedule for use in those negotiations. That collective activity among physicians to establish and bargain with that fee schedule anticompetitively raised the prices paid for physician services and thus violated section 1 of the Sherman Act. CIS, II.C.

d. Mountain Health Care's conduct resulted in a substantial lessening of competition and increased prices paid by managed care plans. Despite the Complaint's allegations to the contrary, CVT and Oliva argue that MHC's conduct did not lessen competition or increase prices, and accuse the United States of disclosing inadequate information in its Complaint and CIS about the relevant market in which MHC competed, the prices it was charging, and how its actions actually harmed consumers. Exh. A at 4–6; Exh. B at 9–13, 37–38. These arguments lack merit.

As alleged in the Complaint, the relevant market affected by MHC's conduct is Western North Carolina, encompassing Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties. Complaint ¶ 2. Within that market, MHC possessed substantial market power, given that its membership included the vast majority of physicians practicing in that market, including the bulk of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in the Asheville area. Complaint ¶ 8.

MHC's collective price-setting activity increased prices paid by managed care purchasers. Complaint ¶ 17. This is not surprising, given that MHC was created in 1994 for the purpose of increasing its members' bargaining leverage over managed care purchasers. Complaint ¶ 8; CIS § II.B.

3. There Are No "Determinative" Documents

CVT and Oliva assert that the United States is withholding "determinative" documents, in violation of the Tunney Act. Exh. at 4, 6; Exh. B at 38–40. The Tunney Act requires that the United States make available to the public copies of the proposed Final Judgment "and any other materials and documents which the United States considered determinative in formulating such proposal." 15 U.S.C. 16(b). The scope of documents considered

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[5] The Health Care Policy Statements were originally issued by the United States Department of Justice and the Federal Trade Commission in 1993 to clarify the types of cooperative conduct that health care providers, including physician networks, could engage in without concerns of violating antitrust laws. To further clarify what cooperative conduct was permissible, the agencies committed to issuing expedited Department of Justice business reviews and FTC advisory opinions in response to requests for guidance on specific proposed conduct involving the health care industry.

[6] These numbers are substantial. In the 17 counties served by MHC, there are approximately 150,000 Medicare beneficiaries (*see www.cms.gov/healthplans/statistics/mpsct/*), and 66,000 Medicaid enrollees (*see www.dhhs.state.nc.us/dma/ca/enroll/caenrl1102.pdf*). In addition, approximately 15% of the North Carolina's population as a whole is uninsured. *www.unitedhealthfoundation.org/shr2002/components/risks/LackHealthInsurance*, citing Current Population Survey, March 2002, U.S. Bureau of the Census.

determinative, however, is extremely limited. Only documents that were "a substantial inducement to the government to enter into the consent decree" are subject to disclosure. *United States* v. *Bleznak, et al.*, 153 F.3d 16, 20–21 (2d Cir. 1998). *See also Massachusetts School of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 784 (D.C. Cir. 1997) (only documents, "such as reports to the government, 'that individually had a significant impact on the government's formulation of relief—*i.e.*, on its decision to propose or accept a particular settlement'" need be disclosed). Even the one case cited by CVT recognized that the Tunney Act "does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those "materials and documents that substantially contribute to the determination [by the government] to proceed by consent decree * * *." *United States* v. *Central Contracting Co.*, 537 F. Supp. 571, 577 (E.D. Va. 1982).

In this case, there are no determinative documents. The United States conducted a thorough investigation, involving the review of extensive documents from MHC as well as from MHC physicians, customers, and competitors. None were determinative in the decision to seek MHC's dissolution, nor were there any that constituted a substantial inducement to seek such relief.

4. The Dissolution of Mountain Health Care Is a Reasonable Remedy Given Its Substantial Market Power and Conduct Over the Past Nine Years

The dissolution of MHC is an appropriate remedy based upon the facts cited in the Compliant and CIS. These facts show that MHC was created in part to enhance its market power through collective negotiations, that it has effectively used that market power through the use of a common fee schedules since its creation, and continued to enter or renew contracts under that common fees schedules until shortly before agreeing to dissolve. The Count is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

An argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, has no legal basis. The settlement in a matter between two parties is in no way binding on the manner in which a future matter between two different parties is settled, even if there are some similarities between the matters. Antitrust investigations are very fact specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC was likely to be far more effective than any injunctive relief would be.[8]

5. None of the Various and Inconsistent Request for Relief Made by CVT and Oliva Are in the Public Interest

In the *amicus* brief, Oliva requests the Court to require the United States to file a revised Complaint and Competitive Impact Statement, and then extend the public notice and comment period to permit third parties to comment on these revised disclosures. Exh. A at 7. In his comment on behalf of CVT, however, he makes the contradictory request that the Court reject the proposed Final Judgment, dismiss the Complaint with prejudice, and impose sanctions on the United States under Rule 11.[9] Exh. B at 46–47.

There is no justification for either of these contrary request. The United States made appropriate disclosures of all information. Further, to delay this proceeding would not be in the public interest. Mountain Health Care has been in existence for nine years, using its uniform fee schedule during that entire time. Entry of the Proposed Final Judgment would quickly remedy the competitive harm caused by this conduct.

B. Comment From Center for the Advancement of Capitalism

The Center for the Advancement of Capitalism ("CAC") submitted a comment raising, in summary form, the same arguments raised by the comment and brief filed by CVT and Oliva.[10] CAC claims, based solely on MHC's assertions, that MHC is complying with the government's Health Care Policy Statements because it is using a "messenger model." Exh. C at 1–2. It accuses the United States, in seeking to reduce health care costs, of ignoring the individual rights of Physicians and resulting in the "the partial socialization of medicine absent clear congressional authority." *Id.* at 2. It accuses the United States of specifically targeting physician groups that are unlikely to offer a defense. *Id.* at 2. And it repeats CVT's assertions that the United States has limited jurisdiction ("tenuous at best") because MHC's conduct did not affect interstate commerce. *Id.* at 2–3.

All but one of these arguments have been addressed, in detail, in response to CVT's and Oliva's comments. CAC's general accusation that the United States targets physician groups unable to defend themselves is not correct. In this matter, as in all of its matters, the United States targets conduct that is causing substantial anticompetitive effects and is harming consumers.

C. Comment From Marcia L. Brauchler, Physicians Ally, Inc.

Ms. Brauchler, who operates Physicians Ally, Inc., a consulting business which assists physicians in dealing with insurance companies and other payors, submitted a comment opposing the proposed Final Judgment. In her view, the United States "lacks insights into the practices of MHC's business," which was trying in good faith to comply with the government's Health Care Policy Statements. From her personal experience, she believes that the government claims that "no one operates the messenger model correctly," and that physicians are therefore presumed guilty from the outset of an antitrust investigation. She believes that the antitrust laws were intended to be applied to insurance companies, not physicians, who are not, in her view, the cause of rising health insurance premiums. She does not believe that anyone was hurt by MHC's practices. Like CVT and CAC, she states that physicians, as United States citizens, have an absolute right to associate with other professionals for their mutual benefit unless they implement "actual force against other individuals." Finally, she questions

[7] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d 463; *United States* v. *Notionol Broadcosting Co.*, 449 F. Supp. 1127, 1143 (C.D.Cal 1978); *United States* v. *Gillette Co.*, 406 F.Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[8] CVT's allegation that the United States never consulted customers who would be affected by the dissolution of MHC during the course of the investigation is correct. The United States discussed this possible remedy with numerous MHC customers.

[9] Oliva and CVT have opposed several recent antitrust consent decrees. Many of their comments, both official and unofficial, can be read at the CVT Web site, *www.voluntarytrade.org.*

[10] Oliva is currently a senior fellow at CAC. Exh. A at 1. According to its comment, CAC is a tax-exempt organization that applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues in order to identify and protect the individual rights of the American people. Exh. C at 1 n.1.

why MHC is being forced to disband while other physician groups which have been sued in the past were allowed to continue to operate. Exh. D at 1–2.

As she states in her comment, Ms. Brauchler has had personal experience in settling government antitrust cases. Exh. D at 1. She was a defendant in two antitrust actions brought by the Federal Trade Commission last year, challenging her role representing two physician groups in fee negotiations with managed care purchasers.[11] As with CVT and CAC, the vast majority of her comments relate to whether the United States had a valid basis for finding a violation and filing this case, matters not relevant to this proceeding. *See supra*, Section II.A.1. Based on its thorough investigation during the past two years, the United States believes it obtained evidence about the business practices of MHC and that evidence shows that employers, particularly those employers who opt to self-insure for their employees health care benefits, were hurt by MHC's actions. Ms. Brauchler's implication that the United States is not applying the antitrust laws to insurance companies is simply not true. The United States has brought a number of actions against firms in the health insurance industry.[12]

Finally, the argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, as noted in response to the CVT's comments, has no legal basis. Antitrust investigations are very fact-specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC is likely to be far more effective than any injunctive relief would be.

D. Comment From Anonymous "Concerned Employees"

An anonymous group of "concerned employees," submitted a comment in support of the proposed Final Judgment. This comment states that is "common knowledge" among current and former employees that Ellen Wells, MHC's chief executive officer, "purposely put off changing to Messengering because she was under the impression that the DOJ would just disappear," and because she believed that it would affect MHC's collections and impact her bonus. Exh. E. Other than expressing support for the dissolution of MHC this comment is primarily a personal criticism of Ms. Wells and raises issues that are not relevant to the relief contained in the proposed Final Judgment.

E. Comment From Anonymous Person Attaching Newspaper Advertisements

An anonymous person submitted a comment asking why MHC, if it engaged in the conduct alleged in this case, would run newspaper advertisements implying that it did nothing wrong. Exh. F. This comment does not address the substance of the proposed Final Judgment, and should be considered by the Court.

F. Comment From Janine Mazur, Mountain Health Care Department Head

Ms. Mazur submitted a comment criticizing the government's investigation and filing of this case. She states her opinion that MHC's collective rate setting has not resulted in higher physician reimbursements, claiming that MHC's fee schedule had not been changed since the start of the company. She opines that the physicians intended to provide cost-effective health care, not increase their fees. She believes that the dissolution of MHC will increase the cost of health care because it will increase the market power of national insurance carriers such as Aetna and Cigna, which have higher fee schedules than MHC's schedule. Exh. G.

Ms. Mazur is a department head of MHC, a fact that she does not disclose to the Court in her letter. Although she criticizes the proposed dissolution of MHC, her substantive comments relate entirely to the decision to bring this case in the first instance. As noted above, such comments lack any relevancy in this Tunney Act proceeding. *See supra*. Section II.A.1. Moreover, the United States conducted a thorough investigation of MHC's conduct here, and concluded that MHC's conduct reduced competition, increased prices, and that its dissolution will have a procompetitive effect on the market.

G. Comment From Steward M. Auten, President of Auten Printing, Inc.

Mr. Auten submitted a comment criticizing the government's decision to file this case. In his view, the case is based on "emotions, circumstantial evidence, hype and superficial information." He believes that MHC gives quality care and lower rates, and that the dissolution of MHC will increase health care costs in Western North Carolina. Exh. H.

Again, Mr. Auten's comment relates to the government's decision to file this case, which is not a relevant issue here. *See supra*, Section II.A.1. That decision was made after a thorough, two-year investigation of the local market. One focus of that investigation was to assess the effect that Mountain's collective rate setting conduct had on the fees paid by employers in Western North Carolina. To do that, the government interviewed numerous employers in the area and concluded that MHC's conduct was increasing their health care costs.

H. Two Comments From Individual Consumers

Two comments were received from individual consumers, Mike and Gale Grooms, who have been satisfied with the medical services they have received from Mountain Health Care. (Exh. I) Both oppose this case and the proposed dissolution of MHC. Another consumer submitted a comment that characterizes the filing of this case as "tyrannical" and questions how MHC could increase medical costs in the area given that they cover only 8% of the population. Exh. J. Even though these customers liked the service they received from Mountain Health Care, they could have received lower prices and better service with competition. These comments do not raise specific facts relevant to this Tunney Act proceeding.

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Once these comments and this Response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: June XX, 2003.

Respectfully submitted.

David C. Kelly,
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Motion of S.M. Oliva for Leave To File Brief *Amicus Curiae*

Before: Judge Lacy Thornburg

Pursuant to 15 U.S.C. 16(f), I, S.M. Oliva, acting *pro se*, respectfully move

[11] Docket No. C–4054, In the Matter of Physician Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia L. Brauchler; Docket No. C–4055, In the Matter of Aurora Associated Primary Care Physicians, L.L.C., Richard A. Patt, M.D., Gary L. Gaede, M.D., and Marcia L. Brauchler, at *http://www.ftc.gov/bc/CammissianActians/2002.htm.*

[12] *United States and Texas* v. *Aetna Inc. and The Prudential Insurance Campany of America*, 1999–2 Trade Cas. (CCH) ¶ 72,730 (N.D. Texas 1999); *United States* v. *Medical Mutual of Ohia, Inc.*, 63 Fed. Reg. 52,764 (October 1, 1998); *United States* v. *Delta Dental of Rhade Island*, 943 F. Supp. 172 (D.R.I. 1996) & 1997–2 Trade Cas. (CCH) ¶ 71,860 (D.R.I. July 2, 1997); *United States* v. *Visian Service Plan*, 1996–1 Trade Cas. (CCH) ¶ 71,404 (D.D.C. 1996); *United States* v. *Oregan Dental Service*, 1995–2 Trade Cas. (CCH) ¶ 71,062 (N.D. Ca. 1995); *United States* v. *Delta Dental Plan af Arizana, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 71,048 (D. Ariz. 1995).

this Court for leave to file the accompanying brief as *amicus curiae*.

I am a public policy analyst specializing in the study of federal antitrust settlements. I am currently a senior fellow at the Center for the Advancement of Capitalism in Arlington, Virginia, and president of Citizens for Voluntary Trade, a nonprofit association located in the District of Columbia. In the past year, I have filed extensive public comments on behalf of both organizations in response to antitrust consent orders negotiated by the Department of Justice and the Federal Trade Commission.

Of particular interest to my work is the impact of antitrust laws on the rights of physicians and other health care providers. In the FTC's consent orders with five separate physician groups last year, I provided the only extended and substantial public comments on the settlements. As such, I am in a unique position to present this Court with insight into the case at bar.

The proposed brief presents information that will hopefully assist the Court in determining whether the Proposed Final Judgment filed in this case on December 13, 2002, satisfies the public interest requirements of the Tunney Act. It is not the goal of this brief to comment on the particulars of the settlement, but on the lack of necessary information necessary to properly make a public interest determination. I expect to separately file substantial public comments discussing the entire case prior to the expiration of the comment period.

For these reasons, I request leave to file the accompanying brief as *amicus curiae*.

Dated: February 15, 2003.

Respectfully Submitted,

S.M. Oliva,
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Brief of S.M. Oliva, as *Amicus Curiae*

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Mountain Health Care, P.A. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

Summary

In reviewing the Proposed Final Judgment before the Court in this case, *amicus* offers two arguments:

- The United States failed to disclose material facts in their complaint and Competitive Impact Statement (CIS).
- The United States provided insufficient information in the CIS regarding the status and role of Mountain Health Care in the relevant marketplace, as well as how Mountain's acts directly impacted competition in those markets.

A major purpose of the Tunney Act [1] is to facilitate public comments which may assist the Court in determining whether a proposed consent decree is in the public interest. The CIS, in part, is supposed to provide the public with an adequate description of the "practices or events" giving rise to an alleged antitrust violation, as well as disclosure of any "determinative materials or documents" considered by the government in preparing the proposed Final Judgment.

In this case, the CIS failed both of these tests. The United States took substantial shortcuts in complying with the Tunney Act, and in the process failed to fulfill Congress's underlying objectives. This Court, however, possesses broad statutory power to remedy this situation, by directing the United States to file a revised CIS that provides the public—and the Court—with adequate information to decide whether the proposed decree is in the public interest.

Failure To Disclose Material Facts

In the complaint, the United States asserts that Mountain "organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement" [2] from a number of managed care companies and other third-party benefit providers. This fee schedule, according to the government, "unreasonably restrained competition" in violation of section 1 of the Sherman Act.[3] As a result, the United States filed suit to obtain the dissolution of Mountain "before further inquiry to consumers in North Carolina or elsewhere occurs." [4]

This "uniform fee schedule" is the nexus of the complaint and the resulting proposed Final Judgment. So long as Mountain maintains this schedule, consumers remain in danger under the Sherman Act. The only way to get rid of the schedule, in the government's view, is for Mountain to be denied its very existence. Otherwise, this fee schedule will continue to run amok, spreading its anti-competitive effects throughout western North Carolina.

But the problem is, the fee schedule the government speaks of may no longer be in play. According to statements made to *amicus* by Ellen Wells, Mountain's president and chief executive, Mountain's current "fee schedule" is nothing more than individual doctors informing an independent consultant about their general pricing terms. In other words, a third party spoke to Mountain's physicians separately, obtained independent fee requests, and passed that information along to the managed care companies and other payors. At no point, according to Wells, was there an agreement or conspiracy among Mountain physicians to create a "universal" schedule of fixed fees.[5]

Not only does this system not violate the Sherman Act, the United States expressly endorses this type of "messenger model" as a safe haven from the general prohibition on independent physicians collectively bargaining with payors. According to the 1996 revisions to the Department of Justice-Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care:

> Some networks that are not substantially integrated use a variety of "messenger model" arrangements to facilitate contracting between providers and payers and avoid price-fixing agreements among competing network providers. Arrangements that are designed simply to minimize the costs associated with the contracting process, and that do not result in a collective determination by the competing network providers on prices or price-related terms, are not per se illegal price fixing.

If Mountain's claim, then, is true, and they were employing (or transitioning to) a messenger model, there is no need for the government's proposed remedy—dissolution of Mountain—because there is no illegal behavior taking place. Yet nowhere in the complaint or CIS does the United States discuss, or even acknowledge, Mountain's claim that they employed a messenger model. The government doesn't even offer evidence to refute the claim. Instead, the complaint and CIS present a carefully edited, limited recitation of the facts, omitting a key detail that might influence the public's analysis of the case. In the absence of these disclosures, the public is left to incorrectly conclude that Mountain was simply an illegal price-fixing arrangement among physicians, and that

[1] 15 U.S.C. § 16(b)–(h).
[2] Compl. ¶ 1.
[3] *Id.*
[4] *Id.*
[5] Telephone interview with Ellen Wells, President of Mountain Health Care, P.A. (Jan. 23, 2003).

they made no good faith efforts to comply with the law.

Insufficient Information

Congress acknowledged, in passing the Tunney Act, that the public has an interest in "the integrity of judicial proceedings" involving proposed antitrust settlements.[6] To that end, the United States has an obligation to disclose enough facts about a case to enable the public to form reasoned judgments about the terms of a proposed Final Judgment. Of key importance is information that details the government's analysis of the marketplace, the competitive problem arising thereto, and the selected remedy. Here, we have little to go by. The United States insists that "[t]here are no determinative materials or documents" within the Tunney Act's meaning that warranted public disclosure.[7] *Amicus* disagrees.

The complaint and CIS repeatedly argue that Mountain's actions illegally "increased physician reimbursement fees."[8] The complaint argues that customers "have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence" of Mountain's actions.[9] The CIS further states that Mountain's physicians "have not clinically or financially integrated their practices" in such a way as to justify maintaining their uniform fee schedule.[10]

None of these arguments are supported by evidence, at least not evidence that's presented for public review in the complaint or CIS. For example, the public knows nothing, from the government's disclosures, of the exact nature of the market for physician services in western North Carolina. We don't know who Mountain was competing with, what prices they were charging, or even how consumer prices fared in comparison to neighboring marketplaces. We certainly don't know if Mountain's action actually harmed any consumers. We simply don't know much of anything, beyond the government's mere allegation that there was a fee schedule, and that it was illegal.

Once again, *amicus* faces conflicting information. The United States claims that Mountain increased costs and harmed consumers. Mountain's Ellen Wells, in contrast, claims to *amicus* that Mountain's customers realized an average 14–20% savings over other service networks. Nothing in the complaint or CIS points this out.[11] Furthermore, there is no evidence in the public record that suggests any Mountain customer was dissatisfied with their services or costs. Even one customer complaint would provide valuable information to the public on the exact nature of the alleged illegal actions. But once again, we're left only with the government's word, despite the existence of evidence that refutes key points of their argument.

It's worth noting that the government's lack of disclosure is hardly unusual in a Tunney Act proceeding. In the overwhelming majority of antitrust settlements, the CIS provides little useful information about a case. In one recent proceeding, Albert Foer of the American Antitrust Institute noted: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[12] All of these explanations may be applicable in this case, but none of them justify withholding relevant and material information from the public.

At an absolute minimum, the United States should provide the public with enough information to assess the state of the affected marketplace at the time the complaint is filed, and also empirical evidence demonstrating how the proposed remedy is likely to restore competition allegedly lost. The government may consider this an inconvenient burden, but the Tunney Act does not contain exceptions for official laziness.

This Court has clear authority to compel government disclosure of relevant information. Congress stated as much in the Tunney Act's legislative history, noting "the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest."[13] And in one of the few cases where a court actually employed its Tunney Act discretion, *United States* v. *Central Contracting Co.*,[14] the district judge emphasized the importance of vigorous judicial enforcement of the public's right to information:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there wil be no independent scrutiny.[15]

Similarly, this "run-of-the-mill" case runs the risk of escaping public attention and scrutiny completely. Without timely intervention by this Court to procure necessary additional information, it is likely the proposed Final Judgment will be entered without any serious examination of the government's arguments. This would render the Tunney Act effectively worthless in safeguarding the public interest.

Conclusion

The public—and this Court—cannot rely on the complaint and CIS, in their present form, to make a proper determination under the Tunney Act on whether entry of the proposed Final Judgment is in the public interest. The United States omitted key facts from the complaint, and failed to disclose relevant information that would assist the public in forming reasoned judgments about this case. The Tunney Act grants the Court ample power to ensure the government's full compliance, and this case warrants exercise of that power.

Accordingly, the Court should direct the United States to file a revised complaint and CIS, addressing the objections and concerns set forth in this brief. Additionally, the Court should extend the public comment period to allow third parties adequate time to review the revised disclosures so that they may provide appropriate comments to the Court.

Dated: February 15, 2003.

Respectfully Submitted,

S.M. Oliva,
2000 F Street, NW., #315, Washington, DC 20006–4217, Tel: (202) 223–0071, E-mail: smoliva@voluntarytrade.org, Amicus Curiae.

Certificate of Service

I hereby certify that on this 15th day of February, 2003, I caused a true and correct copy of the foregoing Motion for Leave to File and Brief of Amicus Curiae to be mailed by First Class United States Mail to:

For Plaintiff United States of America:

[6] H.R. Rep. No. 93–1463 (1974), reprinted in 1974 U.S.C.C.A.N. 6536, 6539.

[7] Competitive Impact Statement, 68 FR 1478, 1481 (Jan. 10, 2003).

[8] Compl. ¶14.

[9] Compl. ¶17(c).

[10] CIS, 68 FR at 1480.

[11] Telephone interview.

[12] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf).*

[13] H.R. Rep. No. 93–1463, reprinted in 1974 U.S.C.C.A.N. at 6538 (citing S. Rep. 93–298).

[14] 537 F. Sup. 571 (E.D. Va. 1982).

[15] *Id.* at 575.

Mark J. Botti, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Tel: (202) 307–0001.

For Defendant Mountain Health Care, P.A.:

Jeff Miles, Olber, Kaler, Grimes & Shriver, 1401 H Street, NW., Washington, DC 20005;

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S.M. Oliva.

Public Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

Before: Judge Graham C. Mullen

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. (b)–(h), and the notice filed by the United States in the January 10, 2003, edition of the **Federal Register**, Citizens for Voluntary Trade respectfully submits the enclosed public comments in response to the proposed Final Judgment in the above-captioned case.

Filed: March 7, 2003.

S.M. Oliva,

President, Citizens for Voluntary Trade, 2000 F Street, NW., #315, Washington, DC 20006, (202) 223–0071.

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Resolution

The Board of Directors of Citizens for Voluntary Trade,

Considering the fundamental role of judicial review in protecting the rights of Americans from the abuse of government power,

Recognizing the ever-increasing impact of antitrust law on the ability of Americans to maintain a capitalist system based on the principle of voluntary trade for mutual benefit,

Noting that the principles of capitalism are inconsistent with the enforcement of the antitrust laws,

Affirming that antitrust law is not the proper means of promoting honest competition and free trade among individuals and businesses,

Recalling the numerous abuses of federal antitrust authorities in applying the antitrust laws unjustly to the collective bargaining actions of physicians and health care providers,

Believing that the case currently pending against Mountain Health Care is baseless as a matter of fact, law, and justice,

Convinced that the only means to protect the rights of Mountain Health Care, and of Americans generally, is for immediate judicial action,

1. Directs the president of Citizens for Voluntary Trade to file timely and substantial comments with the United States opposing entry of the proposed Final Judgment against Mountain Health Care;

2. Appeals to the United States District Court for the Western District of North Carolina to reject entry of the proposed Final Judgment;

3. Urges the United States Department of Justice to dismiss its complaint against Mountain Health Care; and

4. Calls upon the United States Government to rescind its Statements of Antitrust Enforcement Policy in Health Care with all deliberate speed.

Introduction

On December 13, 2002, following a two-year investigation, the United States Department of Justice (DOJ) sued Mountain Health Care, P.A. (Mountain), a North Carolina corporation operating as a preferred-provider organization under state law. Mountain is a network of more than 1,800 health care providers, approximately 400 of whom are physician shareholders. Mountain sells access to its network to managed care purchasers and other insurers throughout the greater Asheville, North Carolina area, and generally in western North Carolina.

The DOJ alleged Mountain violated the Sherman Act by maintaining a fee schedule that effectively fixed prices for network services. Rather then contest the government's charges in court, Mountain agreed to surrender without a fight, and acquiesce in the government's demand for Mountain's immediate dissolution. A proposed Final Judgment directing this dissolution was submitted by the DOJ and Mountain to the United States District Court for the Western District of North Carolina on the same day as the government's complaint was filed.[1]

On January 10, 2003, pursuant to the federal Tunney Act, 15 U.S.C. 16, the United States published the proposed Final Judgment, along with a required Competitive Impact Statement (CIS) in the **Federal Register**, thereby commencing a 60-day comment period. Citizen for Voluntary Trade (CVT) henceforth submits the following comments in response to the proposed Final Judgment.

CVT is a national nonprofit association based in Washington, DC. CVT is organized to promote the public welfare by examining the enforcement and antitrust and competition laws against private businesses and individuals. CVT's standing policy is to file comments in all proceedings where the United States seeks to violate the individual rights of businesses through unjust and unfounded antitrust prosecutions.[2] This case presents just such a situation, where an innocent business in the form of Mountain Health Care is being punished despite the fact they committed no crime against the public interest. For the reasons stated below, CVT opposes entry of the proposed Final Judgment and respectfully requests the government withdraw its complaint against Mountain.

For the record, Citizens for Voluntary Trade does not have a financial interest in the outcome of this case, nor do we have any financial interest in any competitor of Mountain Health Care. These comments reflect the veiw of the Board of Directors of Citizens for Voluntary Trade.

Part I: Analysis of the Complaint

A. Mountain and the "Uniform Fee Schedule"

We begin our comments by examining the government's complaint against Mountain. The DOJ's central claim is that Mountain "organized and directed an effort to develop a uniform fee schedule" which Mountain allegedly used in negotiations with managed care companies and other third-party

[1] The case was initially assigned to Judge Lacy Thornburg, who recused himself on February 20, 2003, and the case was subsequently reassigned to Chief Judge Graham C. Mullen on February 25.

[2] S.M. Oliva, the present of Citizens of Voluntary Trade, filed a brief as *amicus curiae* with the Court on February 15, 2003, seeking the release of additional information from the United States on the allegations contained in the complaint. At the time of the filing, the Court has not yet ruled on Oliva's motion to file the brief or on the brief's substantive requests. A copy of the brief is included in the appendix to these comments.

insurers.[3] The DOJ claims this fee schedule violated Section 1 of the Sherman Act by "unreasonably" retraining competition among physicians in western North Carolina,[4] approximately 400 of whom were Mountain shareholders.

Mountain's alleged crimes seem to have begun at the time of their incorporation in 1994, eight years before the DOJ took action.[5] In essence, Mountain's very existence is considered by the government as *prima facie* evidence of antitrust violations simply because its provider network includes "the vast majority of private practice physicians in the greater Asheville area." [6] Of particular interest is the DOJ's belief that Mountain "has not clinically or financially integrated its physicians to create efficiencies" that would justify setting a uniform fee schedule.[7]

The government objects to Mountain's alleged fee schedule because Mountain relied "exclusively" on this schedule in contract negotiations with managed care companies, which the DOJ believes resulted in unfairly higher prices in the marketplace.[8] Since the DOJ considers this a legal injury to consumers, they allege Mountain violated Section 1 of the Sherman Act.

The nexus of the government's argument is that Mountain's fee schedule equaled a price-fixing scheme; that is, Mountain's participating physicians agreed to abide by the schedule exclusively in setting prices for their individual practices. Mountain publicly denied this was the case. Mountain claims they are not an exclusive network, and member physicians set their own office charges and may even join other provider networks and health plans not affiliated with Mountain.

Mountain does not deny that they've used non-exclusive fee schedules in the past. But as they note, such fee schedules are common to the majority of health plans operating in North Carolina. Mountain further contends that "[i]n response to existing antitrust guidelines. Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician."[9] The messenger model is an exception to the DOJ's general prohibition on physician collective bargaining arrangements. Under the model, a group of doctors may pass along fee information to an insurance company through a third-party "messenger," but the doctors may not speak with one another about fees or otherwise jointly discuss contract terms.

Dr. Stephan Buie, a psychiatrist and a member of the Mountain network, offered this description of Mountain's operations:

> [Mountain Health Care] works through a blind messenger system, whereby MHC negotiates a rate for services with an employer and then sends those rates to each member practice. Each practice independently decides whether to accept the rate or to counter propose a different rate. All members have been informed that it is not legal to consult with other practices about their participation or their rates. Employers were free to negotiate with other managed care organizations.[10]

Curiously, the complaint makes no mention of Mountain's messenger model claims. This omission changes the entire character of the government's case. If Mountain's claim is true, then the DOJ intentionally withheld a material fact from its complaint. Consequently, the government's view that Mountain was nothing more than a "price-setting organization" [11] would be erroneous, since the price-setting behavior itself is no longer taking place. At the very least, the DOJ should explain why Mountain's "messenger model" claim is false, why Mountain's actions still warrant the charges and remedy set forth in the complaint.

B. Jurisdictional Issues

The next problem with the complaint is the government's assertion of jurisdiction. On the one hand, the complaint's description of Mountain's actual business activities described commerce occurring exclusively within North Carolina.[12] But on the other hand, the government forcefully claims that Mountain's actions fall under interstate commerce, which is a predicate for the DOJ to bring action under the Sherman Act.[13] It is unclear whether the alleged misconduct fell within the sphere of interstate commerce. Thus, it is possible the DOJ has not met its burden to establish federal jurisdiction in this case.

Mountain is a professional corporation organized under North Carolina law. It is registered with North Carolina's commissioner of insurance as a "preferred provider organization," a tightly regulated form of physician network. Generally, regulation of health care and health insurance providers occur at the state level. If Mountain were to operate in another state, it would be subject to that jurisdiction's separate rules for health care and health insurance regulation. Since Mountain only operates in counties comprising western North Carolina [14], it is only subject to North Carolina regulation. This raises the question of whether state officials would be more competent to assess the legality of Mountain's operations than the DOJ, but we will address that point later. For purposes of assessing this Court's jurisdiction, it is only relevant to determine whether the alleged crimes involved interstate commerce.

The government claims Mountain's contract—the products of the illegal fee schedule—included arrangements with "business located outside North Carolina." [15] What is unclear is the precise identity and nature of these businesses. The government admits Mountain's doctors only render services within North Carolina boundaries.[16] The businesses receiving these services only do so within North Carolina. At all times, these intrastate transactions are conducted under the careful regulatory eye of North Carolina officials. Thus, the DOJ is asserting jurisdiction here solely because some of the businesses—and we don't know how many—Mountain provides services to may be organized outside of North Carolina.

At a minimum, some of the contracts Mountain entered into were wholly intrastate affairs; that is, Mountain provided services to businesses organized and doing business *only* in North Carolina. These arrangements are not the proper subject of a federal antitrust proceeding, but may be actionable under state law. In any case, the DOJ's complaint may not cover such acts, at least not under the Sherman Act. The complaint fails to distinguish and identify the character or Mountain's clients, however, and we are thus left with an incomplete picture.

The DOJ is overextending its reach here, at least so far as the complaint covers all contracts Mountain entered into, whether intrastate or interstate in

[3] Compl., ¶ 1.
[4] *Id.*
[5] Compl. ¶ 15.
[6] Compl. ¶ 8.
[7] Compl. ¶ 11.
[8] Compl. ¶ 14.
[9] "Myths and Facts about Mountain Health Care," *Asheville Citizen-Times* (Jan. 6, 2003) (accessed online at *http://www.mountainhealthcare.com/pressrelease.htm.*)
[10] Stephan Buie, "Competition needs to grow between insurance companies," *Asheville Citizen-Times* (Dec. 30, 2002) (accessed online at http://www.mountainhealthcare.com/pressrelease.htm).
[11] Compl. ¶ 14.
[12] Compl. ¶ 2.
[13] Section 1 of the Sherman Act, 15 U.S.C. 1, only applies to "trade or commerce among the several States, or with foreign nations."
[14] See Compl. ¶ 5.
[15] *Id.*
[16] Compl. ¶ 2.

character. Furthermore, it's also unclear whether the contracts Mountain entered into with businesses organized outside North Carolina actually involved overt acts of interstate commerce. If these contracts were between Mountain and subsidiary offices wholly operating within North Carolina, these contracts too might fall outside the reach of the Sherman Act.

In any case, there is a fundamental "public interest" question here as to whether the DOJ should be acting in a case where state authorities posses a more direct, not to mention more developed, interest in the alleged misconduct. Regulation of private health care networks remains largely a state affair, and the DOJ's actions here infringe upon the state's traditional sphere of influence. This should be a factor the Court takes notice of in reviewing the complaint and proposed Final Judgment.

C. Marketplace Description and Analysis

The complaint provides little useful information regarding the marketplace for health care services in western North Carolina. Instead, the government offers a highly generalized description of how physicians relate to managed care companies:

> Physicians frequently contract with managed care purchasers. These contracts establish the terms and conditions, including price, under which physicians will render care to the enrollees of managed care purchasers. In negotiations with managed care purchasers, physicians frequently agree to charge rates lower than their customary rates, in order to gain access to the managed care purchaser's enrollees. As a result of this lower rate, such contracts often lower the managed care purchasers' cost, and therefore lower the cost of health care for their enrollees.[17]

There are two unproven statements in this claim. The first is that physicians always seek access to the greatest number of patients for the lowest compensation. The second is that lower physician costs equals lower costs for managed care customers. Both of these statements are possibly true, but in the absence of clear and convincing evidence, they cannot simply be taken as axiomatic. The complaint includes no supplemental information that would support either claim in the context of this case. There is no description of the actual market for health care services in western North Carolina; for example, the complaint tells us nothing of who Mountain is competing with, the structure of fees in the market before and after Mountain's incorporation, or the structure of managed care contracts with individual consumers. Additionally, the complaint makes no effort to assess whether physicians prefer to accept more patients at a lower per capita reimbursement, or whether they've individually expressed a preference to see fewer patients at a non-discounted rate.

The complaint states that Mountain's network provided "access to substantially all of the physicians in Asheville and the surrounding counties."[18] While this is true, the access was apparently not exclusive. As noted above, Mountain denies they were ever an exclusive network: "[P]roviders are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers."[19]

The government believes Mountain acted as an exclusionary monopoly, unreasonably controlling the marketplace. But once again, Mountain denies this, arguing they faced more than ample competition: "Employers in the Western North Carolina market place are contracted with many different health plans. *Mountain Health Care members make up an average of only 8% of our providers patient base,* and the overwhelming majority of Mountain Health Care providers participate with other plans"[20] (emphasis added). Clearly, Mountain's operation did not leave consumers without other options.

There is simply no evidence which refutes Mountain's description of the marketplace as competitive, non-exclusionary, and otherwise free of coercive influence. In the absence of such proof, Mountain's denials should be taken at face value, since the government has the burden of establishing its case by a preponderance of the evidence, not the other way around. Having failed to meet this burden, the government's complaint is defective simply because they have not demonstrated the marketplace itself suffered from any anti-competitive effects arising from Mountain's activities.

D. Anti-Competitive Effects

Despite not proving any defects in the marketplace, the government nevertheless insists Mountain's actions harmed consumers in western North Carolina. The complaint alleges three specific harms: unreasonable restraint of price competition, denying the "benefits of free and open competition" to managed care companies and their enrollees, and forcing consumers to pay higher prices for physician services.[21] None of these allegations have merit.

As discussed above, the government never demonstrates that Mountain's fee schedule was exclusive. Mountain's own denial suggests the fee schedule was nothing more than a loose coordination of independent operators. The schedule did not cover office charges, and any patient was free to obtain services from a Mountain physician without going through the network.[22] Thus, it is unreasonable for the government to define Mountain's fee schedule as a "restraint" on price competition, since no actual restraint existed.

Next, on the question of whether Mountain denied consumers the "benefits of free and open competition," it is unclear precisely what "benefits" are at issue. The government alludes to the fact that consumers faced higher prices for physician services as the result of Mountain's actions. But that statement appears to be false. Mountain's prices apparently varied little between 1994, when the network was incorporated, and 2002, when the government filed the complaint. Indeed, as Dr. Buie noted, "Managed care organizations have taken a hard line with payment to physicians, either decreasing payments or holding them steady during the last 10 years."[23] Mountain was in the same boat as every other physician network as this respect. While it is true that premiums paid by enrollees of managed care plans have increased substantially in the past decade, even the government attributes that primarily "on larger increases in the indices for prescription drugs and hospital services,"[24] not higher physician reimbursements.

Finally, on the issue of whether consumers paid unreasonably higher prices to Mountain physicians, there is once again a lack of evidence, or even a proper standard to judge evidence. The complaint does not reveal how much Mountain charged under its fee schedule, how much non-Mountain providers charged, or how much Mountain providers charged prior to joining the network. Furthermore, there's no indication of what the government's standard is for assessing price levels. We have no indication as to what price levels are acceptable,

[17] Compl., ¶ 6.

[18] Compl., ¶ 8.

[19] "Myths and Facts about Mountain Health Care."

[20] *Id.*

[21] Compl., ¶ 17.

[22] "Myths and Facts about Moutain Health Care".

[23] *Id.*

[24] *Id.* (citing *Modern Healthcare,* Jan. 21, 2003).

either for physicians nationally or for those located within the western North Carolina marketplace. Without evidence or standards, the complaint's assertion that the physicians increased prices unreasonably is simply arbitrary and capricious.

E. Request for Relief

Since the complaint's requested relief was essentially obtained through the proposed Final Judgment, we will reserve commentary on this subject until Part IV. However, since the analysis above demonstrates the government's complaint is defective in nearly every aspect, the Court could simply dismiss the complaint for failure to state a claim entitling the government to obtain relief.[25]

Part II: Historical Background

A. Origins of Government Intervention in Healthcare

The case against Mountain ultimately has little to do with enforcing the Sherman Act and everything to do with protecting the federal government's intrusive role in the healthcare market. Indeed, if the DOJ actually believed in the type of free market they claim to be protecting here, they would be seeking to protect Mountain's right to exist rather than destroy it. But as things stand, the government maintains a direct interest in destroying Mountain, and in general preventing physicians from collectively bargaining with managed care companies. This interest is not genuinely motivated by antitrust concerns, but by simple budget politics.

In 1965, Congress brought an end to the free market that successfully served Americans for most of the republic's history. That year, Congress created Medicaid and Medicare, two programs designed to finance healthcare for the indigent and elderly, respectively.[26] The original concept was for the government to simply pay the bills for medical expenses while not interfering with physicians and the services they provided. This concept soon proved unworkable.

The core problem with Medicaid and Medicare was the divorcing of demand for services from the ability to pay. Once health care became free for certain individuals, these folks were able to spend indiscriminately. Recognizing this problem (but refusing to admit defeat), Congress responded by imposing arbitrary cost controls on Medicare and Medicaid. Originally, the two programs paid "reasonable costs" of services chosen and provided by physicians. But following passage of several amendments in 1983, Medicare and Medicaid switched to a payment system based on DRGs, or "diagnosis-related group." This change was intended to lower government spending on health care.

The DRG approach is precisely the kind of non-market price fixing the government now accuses Mountain of. A DRG divides all medical problems into a set number of categories, and then assigns a fixed, arbitrary fee for each "diagnosis," a figure that supposedly represents the average cost for treating the problem. A health care provider gets only the fixed DRG amount, regardless of actual work performed. This means that for the provider to make a profit, he must incur costs below the DRG rate.

The DRG approach is used not just under Medicare and Medicaid, but in privately owned insurance programs as well. Because the government's 1965 interventions led to an exponential rise in health care costs, Congress decided to encourage a DRG approach in private insurance by passing the HMO Act of 1973. HMOs, or health maintenance organizations, exist as comprehensive prepaid insurance plans, where providers accept a DRG-like fixed rate for medical services irrespective of actual costs. Prior to 1969, the only HMO of significant stature was Kaiser Permanente, which relied on labor unions compelling their members to join.[27] Today, of course, HMOs are the dominant provider of private health insurance coverage in the United States.

The rise of HMOs derives not from their popularity in the market, but from the 1973 law. Congress essentially rigged the market in favor of HMOs, giving them generous subsidies, and expanding tax incentives for employers that enrolled their employees in HMOs. The government's encouragement made HMOs a dominant force in the health care marketplace independent of the need to fairly compete for customers.

Indeed, it is difficult to imagine HMOs succeeding in a genuinely competitive free market. The DRG-based approach HMOs use is entirely incompatible with America's capitalist ideals. Customers generally don't voluntarily pay for what they know to be inferior service. Yet HMOs only profit by forcing costs below the level at which optimum customer service can be provided. The economic principle is egalitarian rather than capitalist: it's more important for an HMO to serve everyone than to serve everyone well. In the absence of government encouragement, few customers would voluntarily subscribe to this theory when it comes to something as essential to their life as health care.

Despite all of the government's interference, health care costs continue to rise. Rather than admit fault, the government prefers to scapegoat others for the shortcomings of Medicare, Medicaid, and managed care. Physicians are by far the easiest target. In DRG-based models, physicians are effectively stripped of their power to deal one-on-one with their patients, thus subjecting all medical judgments to the whims of government bureaucrats and HMO administrators, few of whom have any actual knowledge or experience in health care. At the same time, physicians have found their incomes restricted by non-market forces, namely the arbitrary DRG levels that bear little if any relation to actual supply and demand. Despite this, the government promotes the theory, at issue in this case, that it's the physicians that are acting illegally by trying to increase their income and their control over how they provide medical care. According to the DOJ's thinking, it is more important for the HMOs and government insurance programs to be protected from their own errors than to permit physicians even a minimal ability to defend their professions and personal livelihoods.

B. Origins of Physician Antitrust Prosecutions

For more than 80 years, the Sherman Act was not applied to the activities of physicians, attorneys, and other so-called "learned" professions. In passing the Sherman Act, Congress's target was alleged industrial trusts, such as Standard Oil and the railroads. But in 1975, the U.S. Supreme Court extended the Sherman Act's reach to independent professionals in *Goldfarb* v. *Virginia State Bar*.[28] There, the Court was asked to examine whether a minimum fee schedule for legal services constituted illegal price fixing, notwithstanding the fact a state bar itself prescribed the schedule.

A unanimous Court ruled against the bar, holding that the Sherman Act contained no exception for specific professions, even those regulated by state governments. At the same time, however, the Court noted: "In holding that certain anticompetitive conduct by lawyers is within the reach of the Sherman Act we intend no diminution of the authority of the State to regulate

[25] *See* Fed. R. Civ. Proc. 54(c).

[26] *See* 42 U.S.C. 1395, *et seq.*

[27] Scott Holleran, "What You—and Your Employer—Probably Don't Know About Your Health Plan," (Jan. 1999) (available online at *http://www.afcm.org/historyofhmos.html*).

[28] 421 U.S. 773 (1975).

its professions." [29] This is noteworthy because while the Court was mindful of protecting the federal government's exclusive authority to regulate interstate commerce, the justices also made it quite clear the states did not surrender their professional regulatory powers. In the context of the case against Mountain, this is a point worth emphasizing, since the DOJ's actions here trample on North Carolina's ability to supervise and regulate physicians and medical organizations, while not advancing a genuine interest related to interstate commerce.

Seven years after *Goldfarb*, the Supreme Court made its first—and to date only—major decision related to antitrust prosecution of physician organizations. In *Arizona* v. *Maricopa County Medical Society*,[30] a divided Court [31] held that a maximum-fee schedule adopted by a physician group was *per se* unlawful under Section 1 of the Sherman Act. The majority explicitly rejected any call to put the Medical Society's actions in proper context, citing the circular nature of the *per se* rule:

> The respondents' principal argument is that the per se rule is inapplicable because their agreements are alleged to have procompetitive justifications. The argument indicates a misunderstanding of the per se concept. The anticompetitive potential inherent in all price-fixing agreements justifies their factual invalidation even if procompetitive justifications are offered for some. Those claims of enhanced competition are so unlikely to prove significant in any particular case that we adhere to the rule of law that is justified in its general application. Even when the respondents are given every benefit of the doubt, the limited record in this case is not inconsistent with the presumption that the respondents' agreements will not significantly enhance competition.[32]

In dissent, Justice Powell preferred to actually look at the facts, and concluded:

> The medical care plan condemned by the Court today is a comparatively new method of providing insured medical services at predetermined maximum costs. It involves no coercion. Medical insurance companies, physicians, and patients alike are free to participate or not as they choose. On its face, the plan seems to be in the public interest.[33]

The situation in *Maricopa* is not dissimilar from this case. Like *Maricopa*, no coercion was involved, and the fee schedule arrangement—to the extent one actually exists here—is wholly voluntary. And if the government were to go to trial in this matter, they would almost certainly use a *per se* standard in analyzing Mountain's actions. In doing so, the government would be able to obtain a judgment against Mountain without having to prevent any substantial evidence as to the actual context of Mountain's operations or their effect on the marketplace; the government would only need to demonstrate that prices were fixed in some manner to prevail. Yet, as Justice Powell warned us in *Maricopa*, this approach often works against the supposed intent of the antitrust laws:

> It is settled law that once an arrangement has been labeled as "price fixing" it is to be condemned per se. But it is equally well settled that this characterization is not to be applied [457 U.S. 332, 362] as a talisman to every arrangement that involves a literal fixing of prices. Many lawful contracts, mergers, and partnerships fix prices. But our cases require a more discerning approach. The inquiry in an antitrust case is not simply one of "determining whether two or more potential competitors have literally 'fixed' a 'price.' * * * [Rather], it is necessary to characterize the challenged conduct as falling within or without that category of behavior to which we apply the label 'per se price fxing.' That will often, but not always, be a simple matter." *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 9 (1979).
>
> Before characterizing an arrangement as a per se price-fixing agreement meriting condemnation, a court should determine whether it is a " 'naked restrain[t] of trade with no purpose except stifling of competition.' " *United States* v. *Topco Associates, Inc.*, 405 U.S. 596, 608 (1972), quoting *White Motor Co.* v. *United States*, 372 U.S. 253, 263 (1963). See also *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 49–50 (1977). Such a determination is necessary because "departure from the rule-of-reason standard must be based upon demonstrable economic effect rather than * * * upon formalistic line drawing." *Id.*, at 58–59. As part of this inquiry, a court must determine whether the procompetitive economies that the arrangement purportedly makes possible are substantial and realizable in the absence of such an agreement.[34]

In *Maricopa*, the Medical Society's purpose was not to stifle competition, but to contain rising medical costs. Here, there is no evidence which suggests Mountain's intentions were to stifle or impair competition. Instead, Mountain's principal function was to provide patients and insurers with access to a broad network of health care providers. Superficially, at least, this would seem to be "pro-competitive." But once again, there is substantial evidence to suggest the government's actions in cases like *Maricopa* and Mountain are about something other than antitrust.

C. The DOJ–FTC "Statements"

In the years following *Goldfarb* and *Maricopa*, the DOJ and FTC developed substantial experience going after physician organizations. The DOJ has filed five civil claims against physician groups since 1991, all of which have resulted in consent orders. None of these cases involved a remedy as drastic as the one imposed here on Mountain—outright dissolution—although in 1983, a preferred provider organization did dissolve on the eve of DOJ action. There is no record of any DOJ or FTC complaint against a physician group proceeding to trial, judgment, and appeal. Thus, there is no controlling precedent from the Supreme Court or any court of appeals on the constitutionality of the specific policies used by the government in reviewing and prosecuting physician activities.

The major policy at issue is the FTC–DOJ Statements of Antitrust Enforcement Policy in Health Care ("Statements"). The Statements were adopted by joint action of the FTC and DOJ Antitrust Division in September 1993, and revised by the agencies in 1994 and 1996. Congress never enacted the Statements into law, and thus these policies remain nothing more than the opinion of the FTC and the DOJ's Antitrust Division.

In physician network cases, the critical policy is Statement 8, which effectively labels all networks owned by nominally competing physicians as *per se* illegal. Statement 8 says these networks are only legal under the Sherman Act if the physicians "share substantial financial risk." As lawyers at the firm representing Mountain before this Court noted in 1996: "It is this requirement that has generated the most controversy. This is so not because the concept of sharing risk is unusual in the context of a legitimate joint venture. Instead, the controversy stems from the fact that the enforcement statements 'approve' only two forms of risk sharing: capitation and withholds."[35] Capitation means physicians are paid a fixed amount per month for each consumer enrolled in a given health plan; withholds means the payer keeps a certain percentage of a physician's reimbursement unless certain cost

[29] 421 U.S. at 793.

[30] 457 U.S. 332 (1982).

[31] The case was decided by a 4–3 vote, because Justices Blackmun and O'Connor were recused.

[32] 457 U.S. at 351.

[33] *Id.* at 357.

[34] *Id.* at 361.

[35] Bruce R. Stewart and E. John Steren, "Will New Guidelines Clarify Role of Antitrust Law in Health Care?" Legal Backgrounder, Vol. 11, No. 23 (June 21, 1996).

containment goals, such as reducing particular procedures. Physician networks have no choice under Statement 8 but to employ one of these two methods, despite the fact that both capitation and withholds substantially increase physician risks without providing any actual benefit to physicians or health care consumers.

If physicians don't wish to share risk under Statement 8, but still want to negotiate with insurance companies through a network, the doctors must turn to Statement 9, which authorizes the "messenger model" described earlier. The messenger, as the name implies, is not supposed to be a negotiator, but a one-way courier of information from insurance companies to independent physicians. Or, put another way, "the messenger acts essentially as a mute and blindfolded delivery boy between the payer and each physician in the network."[36]

Statements 8 and 9 create an unworkable marketplace where physicians possess no genuine bargaining power. The three tools at the physicians' disposal—capitation, withholding, and messengering—are insufficient in dealing with HMOs on a level playing field. The government is well aware of this, and maintains these options precisely for that reason. After all, HMOs are government-sponsored entities that would perish in a truly free market. The only way to maintain the HMO's viability is to eliminate the "threat" of concerted physician action. That's what Statements 8 and 9 are designed to accomplish, and they've done so quite effectively, albeit at the expense of the government's integrity in enforcing its own laws.

In the context of this case, it must be repeated that Mountain claimed to employ the messenger model system set forth in Statement 9. This claim is never addressed, because the government intentionally omitted this fact from its compliant. In past cases, however, the government claimed that even though a network employed a messenger model, it did so incorrectly. This means the government itself—which is composed of antitrust lawyers, not health care professionals—subjectively decided they didn't like the look of things. In most recent prosecutions of physician networks, the defendant argues they were following the best available legal advice in employing the messenger model. Yet in every case, this advice did not save them from the government, which changes the rules in mid-game when they don't like a particular result.

[36] *Id.*

D. Constitutional Analysis of the DOJ's Antitrust Policies

At a fundamental level, the prosecution of Mountain represents the latest attack in a full-scale war against physicians and their basic individual rights. The government's legal premise is shaky at best, since they're arguing in favor of a nebulous concept of "consumer rights" despite the complete absence of evidence that any consumer was harmed in a legal sense. But beyond that, the government's moral premise is far more troubling. In order to accept the government's argument that Mountain violated the antitrust laws, this Court must also subscribe to the notion that Mountain's physician shareholders are serfs of the HMO's (and by extension the government), since these doctors possess no individual rights whatsoever when it comes to fulfilling their economic self-interest.

By dissolving Mountain, the government seeks to deprive the physician shareholders of any ability to negotiate fairly with insurance companies. This makes it for more likely the physicians will surrender greater amounts of their professional autonomy just to ensure a steady paycheck from week-to-week. In turn, this leads to an economic relationship not unlike ancient feudalism, where the procedures generate wealth which is unjustly appropriated by feudal lords whose only claim to the wealth is the benefit of political power and patronage. HMOs do not earn their wealth through production, but through the appropriate of wealth generated by physicians. The government serves to facilitate the HMOs through policies such as this antitrust prosecution. The goal isn't to protect consumers, but to deny wealth to its rightful owners.

This feudal model will only continue to escalate in the absence of judicial intervention. And such intervention is warranted on constitutional grounds, for one of several independent reasons. First, the government is using antitrust policy in a manner that denies basic rights to some citizens but not others. Physicians aren't just treated differently than HMOs; doctors are also treated differently than almost every other class of professional in this country. Labor unions enjoy exemptions from antitrust laws, not because their acts are less likely to violate the antitrust laws, but because unions are politically well-connected in a way that physicians are not. While one could argue this is simply the nature of a democracy, the Constitution prohibits the federal government from distinguishing rights among arbitrarily selected classes of individuals. The Privileges and Immunities Clause of Article IV, the Due Process Clause of the Fifth Amendment, and the Ninth and Tenth amendments all provide ample support for the equality of physicians to every other class of American citizen.

Furthermore, Congress lacks any affirmative power to provide for the kind of professional destruction imposed by the DOJ in this case and others like it. The Commerce Clause of Article I extends only to interstate commercial acts. Mountain's actions, by the DOJ's own evidence, were wholly intrastate in their actual character, despite the alleged tangential effects on commerce outside of North Carolina. Beyond that, the Tenth Amendment recognizes North Carolina's sovereignty over the regulation of health care matters, a point not challenged by the DOJ in this case.

Ultimately, the government's case against physician networks like Mountain has more to do with moral values than legal judgments. The DOJ's position is that physicians enjoy no basic right to economically benefit from their skills—at least not when such benefits might hamper the government's efforts to ensure the triumph of HMOs in the private insurance market. This contradicts the very principles at the heart of the Constitution and the Declaration of Independence, which hold the individual right to life, liberty, property, and pursuit of happiness as paramount to any policies that force individuals—such as physicians—to sacrifice their rights for the sake of others.

Part III: Recent Cases

A. OGMC of Napa Valley

The Center for the Advancement of Capitalism (CAC)[37] first filed comments on behalf of a physician organization in May 2002, in the matter of Obstetrics & Gynecology Medical Corporation of Napa Valley (OGMC),[38] an FTC complaint against a six-physician network in California.[39] Like Mountain, OGMC was accused of injuring HMOs and health care consumers by attempting to collectively bargain for higher fees. And like the proposed settlement here, OGMC agreed to dissolve. Additionally, the individual OGMC physicians agreed to a variety of

[37] The Center for the Advancement of Capitalism is a nonprofit corporation that generally promotes the moral basis of capitalism. While CVT officials have discussed this case with CAC, this comment letter reflects only the viewpoints of CVT.

[38] FTC File No. 011–0153.

[39] The six physicians were named individually by the FTC in addition to their professional corporation.

restrictions on their personal conduct for a period of 20 years.

CAC submitted timely and extensive comments to the FTC's complaint and proposed settlement. CAC offered four principal arguments: First, OGMC's alleged collective bargaining did not violate the FTC Act, 15 U.S.C. 45, *et seq.*; second, the FTC's action against OGMC was *per se* unconstitutional under the Privileges and Immunities Clause[40] and the Fourteenth Amendment; third, the forced dissolution of OGMC would actually harm competition; and finally, that the proposed settlement itself was contrary to the public interest. CAC's comments offered extensive analysis and proof in support of its arguments, and consequently expected the FTC to seriously consider the comments prior to entering its final order against OGMC.

That did not happen. Not only did the FTC fail to seriously consider CAC's comments, they effectively failed to acknowledge or consider them at all. On May 17, 2002, the FTC announced the adoption of a final consent order against OGMC after a comment period elapsed in which "no comments were received" or considered by the Commission. This despite the fact CAC's comments were submitted to the FTC four days before the stated deadline. Upon further inquiry, FTC officials admitted their error in neglecting to consider CAC's comments. However, FTC officials then proceeded to lie to both CAC officials and OGMC's counsel, falsely claiming CAC's comments were both considered and taken into account in formulating the final order.

In documents obtained by CVT through the Freedom of Information Act (FOIA), FTC officials acknowledge they failed to initially consider CAC's comments, but prior to service of the final order on OGMC, the Commission belatedly considered and voted on a reply to CAC's comments. This is inconsistent with the statements of OGMC counsel, however, who addressed the issue to FTC counsel in a letter dated two months after the settlement was approved:

> The final Order, however, does not reflect the receipt of [CAC's] comments, nor does it address any of the substantive points that the Center made in the comments. If the facts are as a representative of the Center has described them to use, we believe that, at a minimum, our clients' procedural due process rights have been violated and, potentially, their substantive due process rights.[41]

According to the FOIA documents received, the FTC denied that any violation of OGMC's rights occurred, yet the Commission has never fully explained the discrepancy between the public statement that no comments were received and the contrary representations made to CAC. CVT and CAC are currently pursuing a FOIA appeal to obtain additional information on this issue.

Procedural shenanigans aside, the substantive problem was that the reply CAC finally received from the FTC contained little substantive refutation of CAC's comments. The government made no attempt to seriously address the constitutional, practical, and ethical arguments raised. Instead, the FTC cited a broad disagreement with CAC's philosophy opposing antitrust. While that disagreement was already understood by CAC, the comments at issue addressed the government's specific conduct in prosecuting OGMC and physician groups generally. To that argument, the FTC could only muster a broad evasion.

> The analysis that the Commission issued when it accepted the consent agreement for public comment provides a detailed basis for this determination, through its extensive discussion of both the complaint and the consent order. Moreover, with respect to [CAC's] concerns about the complaint allegations, it is important to note the consent order is the product of a negotiated settlement between the Commission and the respondents.[42]

As is the case with Mountain, the FTC's complaint and analysis of their settlement with OGMC provided little useful information for the public to disseminate in analyzing the proposed order. Instead, the FTC offered a series of unproven assertions against the defendants, and expected the public to accept them at face value without even minimal scrutiny. Furthermore, the government's argument that the settlement was the product of "negotiation" with OGMC is disingenuous at best. As is the case here, the settlement forced the network's dissolution. In general, one rarely finds a party to a negotiation committing suicide as part of a mutual exchange. Indeed, as we will discuss below, the process used by the government in obtaining consent orders from physician groups is anything but a genuine "negotiation."

B. The Colorado Cases

Following on their triumph in Napa Valley, the FIC's attention next turned to three settlements with physician groups in the Denver area. While nobody was forced to dissolve, FTC officials did manage to substantially hamper several small businessmen in the greater Denver area in the name of protecting competition.

The FTC's chief target in the Denver cases was Marcia Brauchler, the president of Physician's Ally, Inc., a healthcare management consulting firm. Brauchler is an unusual monopolist, as her annual income is approximately $33,000, less than most government employees earn. Physician's Ally is run out of Brauchler's home, and consists of herself and a single part-time assistant.[43]

Despite her modest operation, the government considered Brauchler a dangerous threat to competition because of her work consulting two physician groups, Aurora Associated Primary Care Physicians (AAPCP) and Physician Integrated Services of Denver (PISD), which each consisted of about 40 physician-owners.

AAPCP and PISD both operated under the federal government's "messenger model" requirements, with Brauchler as the third-party messenger. As far as she, the doctors, and her attorneys were concerned, their operation was perfectly consistent with the DOJ–FTC guidelines. Then one day in June 2001, Brauchler received a letter from the FTC announcing they had launched an investigation of her, AAPCP, and PISD. FTC staff immediately demanded more than 13,000 pages of documents, most of which Brauchler produced using a rented photocopier in her living room.

Four months after submitting these documents, the FTC informed Brauchler that she had the option of settling immediately or facing a full-scale investigation and administrative trial. Brauchler was not informed of the actual charges against her, and the FTC said no complaint had been prepared. Nevertheless, the FTC would push for a consent order in the absence of any formal charges.

Despite the government's repeated characterization of the consent order process as a "negotiation," Brauchler's experience provides a more accurate picture. In November 2001, Brauchler was told the FTC would prepare a proposed settlement, send it to her counsel for reivew, and then expect her approval. Brauchler was repeatedly promised an opportunity to see the actual complaint against her, but the

[40] U.S. Const., art. IV, 2.

[41] Letter from Glenn Stover to Jeffrey Klurfeld, Director, FTC Western Regional Office 1–2 (July 17, 2002).

[42] Letter from Benjamin I. Berman, FTC acting secretary, to S.M. Oliva 2 (May 30, 2002).

[43] Unless noted otherwise, all information regarding the case against Marcia Brauchler can be attributed to a series of telephone and e-mail interviews CVT conducted with Ms. Brauchler.

FTC would continually delay this, first promising the complaint in January 2002, then March, before finally delivering it in April, *after* Brauchler had agreed to a settlement.

The settlement itself was the product of coercion. The FTC simply presented a proposal and expected it to be accepted without discusssion. Brauchler describes a January 2002 "negotiation" between her attorney and FTC staff attorney Paul Nolan as follows:

> Paul was seeing red flags. Management was strongly behind the staff recommendation in this case, that there wasn't a long window for negotiations, and that the FTC would not accept much less than was in the initial settlement offer. The FTC staff, according to Mr. Nolan, was hearing some "noise" that they should start issuing subpoenas if they sensed that there was any "backsliding" on PISD's willingness to settle essentially on the terms set forth in the settlement offer. Mr. Nolan gave a short list of non-negotiable items * * * The FTC had no interest in setting up a regulatory framework that would allow PISD to continue in operation as it strove to achieve the necessary levels of integration to permit collective bargaining. Mr. Noland said the FTC would be responsive to very narrow proposals of a technical nature, but not to significant substantive changes. Mr. Noland offered that the FTC viewed the proposed settlement as a vanilla-type order.[44]

Nolan added that should the FTC be required to conduct a full investigation, "there would be more incentive to pursue disgorgement of the profits derived from the antitrust violation." In other words, if Brauchler and PISD asserted their right to a trial, the FTC would seek to punish them by demanding "disgorgement" of profits in addition to the other proposed remedies. Keep in mind, the profits Brauchler allegedly earned from these "antitrust violations" amounted to little more than $30,000 per year, while the alleged victim of her actions included some of the nation's largest health maintenance organizations.

The process Brauchler describes is not, we believe, atypical. At the same time her cases were being "settled," another Colorado-based physician consultant R. Todd Welter, was also facing the FTC's wrath. Like Brauchler, Welter is a self-employed management consultant. Like Brauchler, he was forced to sign a consent order "with a gun to my head."[45] Welter and Brauchler were both innocent victims of an FTC witch-hunt designed to placate HMO complaints.

As a result of the consent order he signed, Welter lost substantial share of his business revenue. What's notable about the Welter case is that the FTC apparently fabricated key facts of its complaint. The FTC claimed that eight physician networks that were clients of Welter were organized by him into a negotiating bloc called "Professionals in Women's Care" or PIWC. In interviews with PIWC, however, Welter maintained that PIWC was nothing more than the name of a common folder he kept certain clients in; there was never any effort made to collectively bargain on behalf of the PIWC unit.

What all three Colorado cases have in common is the government's insistence that HMOs—multi-billion dollar corporate entities—were the victim of small physician consulting firms. This is patently absurd on its face. In reality, the government decided to punish these consultants and their physician clients for rejecting the HMOs proposed contracts, which the physicians viewed as reimbursing them far below the market value for their services. It was solely a policy question, not a legal one. The government used antitrust law to decide the outcome of a private negotiation, just as the DOJ is prosecuting Mountain now because the government would prefer to see HMOs expand their network within North Carolina.

CVT filed extensive public comments in the Welter case. The FTC barely acknowledged receipt of these comments, refusing to answer the substantive arguments raised by CVT. Consequently, CVT filed a follow-up letter with the FTC asking a series of specific questions about the Welter case and the government's general policy on health care. To date, CVT has received no reply.

C. System Health Providers

At around the same time Welter's case was settled, the FTC also announced a similar deal with a substantially larger group of physicians in Texas, System Health Providers. CVT's comment letter in this case described the situation as follows:

> The facts of this care are fairly simple. Genesis Physicians Group consists of "approximately" 1,250 physicians practicing medicine in the "eastern part of the Dallas-Fort Worth metropolitan area." In 1995, GPG formed System Health Providers, a medical management company. Since 1998, GPG has been the sole owner of SHP stock.
>
> From 1996 to 1999, GPG engaged in collective bargaining with insurance companies on behalf of its members. These actions were taken under "risk-sharing arrangements" where, presumably, some clinical and financial integration of the member physicians' practices took place. These arrangements were consistent with Federal Trade Commission policy, which permits collective bargaining only under "risk-sharing" arrangements.
>
> GPG's risk-sharing activities failed miserably. They resulted in "significant losses" to the physicians, and the risk-sharing entity formed by GPG was forced to file for bankruptcy protection in 1999. Thereafter, GPG and SHP began to engage in collective bargaining via non-risk-sharing arrangements. In other words, the physicians maintained their individual practices while using a common agent to negotiate with HMOs and other insurance companies. This practice is prohibited by the FTC, because it is considered per se illegal price fixing. Consequently, the FTC began its investigation of GPG and SHP, resulting in the consent agreement now before the public record.[46]

Not only were SHP's physicians punished, they were punished for attempting to maintain the economic viability of their practices. Despite uncontroverted evidence that the business models outlined in Statements 8 and 9 of the FTC–DOJ policies failed, the government maintained they worked. Rather than face a grievous policy error, the government decided to continue blaming physicians.

One interesting note from the FTC's complaint against SHP was this explanation of how the marketplace for healthcare was supposed to work, at least in the government's opinion:

> Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, it is the practice of payors in the Dallas area to make contract offers to individual physicians or groups at a fee level specified in the RBRVS, plus a markup based on some percentage of that fee (*e.g.*, "110% of 2001 RBRVS").[47]

This is a curious, but telling statement. If the goal of antitrust policy is to promote free competition, than it should not matter whether HMOs use RBRVS in negotiating their private contracts with physicians. It also shouldn't matter whether physicians adopt RBRVS as the baseline for their own reimbursement demands. After all, in a true market economy, prices are always set by the market actors, not an outside third-party. Yet here the third-party—the federal government—is

[44] E-mail interview with Marcia Brauchler (Jan. 23, 2003).

[45] CVT conducted multiple telephone interviews with Mr. Welter, and any statements of fact in this section should be attributed to these interviews.

[46] Comments of Citizens for Voluntary Trade 2–3 (Sept. 18, 2002) (FTC File No. 011–0196).

[47] Complaint, *In re System Health Providers, Inc.*, and *Genesis Physicians Group, Inc.*, ¶ 10.

arbitrarily imposing price levels on private industry. This further proves the claim that the government's antitrust prosecutions of doctors are motivated by a desire to ultimately protect Medicaid and Medicare from potentially cost-raising actions by physicians asserting their economic rights.

D. Conclusions Based on Recent Cases

While the Court cannot reexamine the government's actions in the prior cases discussed above, it is essential that the Court take judicial notice of how the government conducted these cases, and how their policy judgments are affecting the administration of justice. The cases CVT participated in gave us a clear sense that the government is not acting in good faith when they pursue physician networks and their consultants in antitrust proceedings. Quite the opposite, government ethics seem to go the way of the Spanish Inquisition when it comes to health care policy and antitrust.

Comparisons to the Inquisition may seem overwrought, but in fact the parallels are ominous. The government, much like Torquemada, is on a persistent quest to pursue and punish heresy against doctrine, despite the fact that the underlying dogma is grounded in the complete absence of fact. Much of the antitrust consent decree process is shielded from public view in secret proceedings where the public (and generally the defendants) are unable to obtain a complete understanding of the facts and arguments. The minute the government's policy is called into question, they immediately hide behind dogma or some similarly irrational pronouncement of faith in antitrust doctrine.

This has certainly been CVT's experience in submitting comment letters. Despite repeated, comprehensive, and respectful attempts to gain some insight into the government's antitrust policies and consent decree process, the DOJ and FTC offer little more than token consideration and general platitudes. Both agencies hide behind the Constitution, claiming our arguments amount to nothing more than a constitutional challenge to the Sherman Act itself. While it's true that the Sherman Act is unconstitutional in CVT's judgment, the issue in these cases, and before this Court today, is whether the government's application of the Sherman Act to the exercise of individual rights by physicians is legal and constitutional. This question has never been substantively addressed by a federal court, because if it were, CVT maintains these prosecutions would immediately cease. No rational judge would uphold the government's nonsensical and unconstitutional efforts to impose the will of a handful of bureaucrats on the nation's health care system.

At a minimum, the government should demonstrate some accountability by answering CVT's comments in a careful, rational, and thoughtful manner. This would only benefit the public by providing insight into both the government's enforcement policies as well as the consent order process. As things currently stand, however, the government comes off as an arrogant entity that can't be bothered to explain basic facets of policies that impact a significant sector of the American economy.

Part IV: Analysis of the Proposed Final Judgment

A. The Competitive Impact Statement

Turning to the Competitive Impact Statement, the government makes little effort to actually enhance the public's understanding of the complaint or the proposed judgment. Instead, the CIS largely repeats the unproven and unfounded allegations of the complaint. This approach is not surprising. Even supporters of the government's antitrust policies, such as American Antitrust Institute president Albert Foer, have expressed dismay at the DOJ's lack of candor in past cases: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[48] While this may explain the lack of insight from the CIS in this case, it does not justify or excuse the government's failure to uphold their public interest mandate under Tunney Act.

As we noted with the complaint, the CIS makes no serious or credible effort to describe the marketplace Mountain competes in, or how specific customers and individuals within that market were affected by alleged Sherman Act violations. The CIS repeats the complaint's key thesis: "The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates with Mountain Health Care.[49]" Yet once again, there is nothing in the CIS that proves this statement. The DOJ could have presented a complaint from a managed care purchaser, a comparison of fees between Mountain and non-Mountain contracts, or even a basic economic analysis of the marketplace. The DOJ provided none of this. As a result, it is impossible to credibly show the complaint's allegations possess even a basic level of credibility.

The DOJ will likely take the position, in response to this criticism, that they need not prove any basic facts regarding their case, because to do so would amount to a trial, something which the proposed Final Judgment seeks to avoid. Certainly we can understand the interests of judicial economy require the Court not waste its time proving allegations that both parties have stipulated to. But at the same time, the Tunney Act requires a finding that the proposed Final Judgment is in the "public interest." This should mean the defendant's mere acquiescence to the government's position need not be the final word. Indeed, given that Mountain openly questioned the government's recitation of the facts, we suggest the court has an obligation to conduct some proceedings in order to show the government advanced their complaint and CIS in good faith.

For example, the DOJ asserts in the CIS that no "determinative materials or documents" considered by the government in "formulating the proposed Final Judgment."[50] Under the Tunney Act, such documents must be released if they exist. Curiously, in almost all antitrust settlements, the DOJ claims no such "determinative" documents exist. This is yet again proof that the government seeks to avoid any genuine scrutiny or accountability for their actions. In 1982, just a few years after the Tunney Act's passage, a federal judge concluded the DOJ was not doing its best to act in good faith where "determinative" documents were concerned:

> The Court simply cannot accept an interpretation of legislation that permits the government to assert in 172 out of 188 cases that it considered neither documents nor any other materials determinative in reaching its conclusion to enter into a consent decree.[51]

The Tunney Act does not require full disclosure of the DOJ's files, but it does require a good faith review. Only action by the Court can effectively remedy the government's failure to disclose

[48] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf).*

[49] CIS, 68 FR 1,478, 1,480 (Jan. 10, 2003).

[50] CIS, 68 FR at 1,481.

[51] *U.S.* v. *Central Contracting Co.*, 537 F. Supp. 571, 577 (E.D. Va. 1982).

"determinative" documents, since in a case such as this one, the DOJ's mere assertion that no such documents exist is insufficient. As noted by the district court in 1982:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there will be no independent scrutiny.[52]

From a public standpoint, the case against Mountain is not a "big case," at least not from a national perspective. And sadly, in the majority of antitrust settlements, there is "no independent scrutiny." This seems part of the government's design. By targeting small businesses which lack the resources to force the government to trial (or even discovery), the DOJ is able to build a track record of antitrust victories. This is not just important from a political standpoint—impressing congressional appropriators—but from a judicial one. The courts become far more perceptive towards antitrust prosecution once the government establishes "expertise" in a given field, such as physician networks. What few courts realize, however, is that this experience is built on a foundation of coercion and fraud. The government wins by never facing any serious scrutiny, and this is contrary to the intent and language of the Tunney Act.

B. The Proposed Remedy

Even if the government could prove its antitrust allegations against Mountain, the remedy contained in the proposed Final Judgment is completely inconsistent with antitrust law. The settlement requires "the complete and permanent dissolution of Mountain Health Care as an on-going business entity" and the termination of "all preexisting contracts with payers," all within either 120 days of the filing of the DOJ's complaint against Mountain, or 10 days after this Court enters the final judgment, whichever is later.

The function of the antitrust laws—at least in theory—is to restore competition lost, not to impose punitive remedies on antitrust offenders. In this case, the dissolution of Mountain and the termination of its contracts constitute a punishment, rather than a restoration of competition. For this reason alone, the proposed Final Judgment must be rejected.

In Napa Valley, the FTC required OGMC to dissolve. That case, however, only involved a small network encompassing a single specialty, and OGMC was already planning to dissolve their cooperative arrangement prior to the FTC's action. In this case, Mountain was not planning to dissolve, and its network provides far more comprehensive services to its customers.

In most of the prior antitrust cases discussed above, the government generally obtained remedies short of dissolution. These remedies took the forms of injunctions restricting the physicians' ability to jointly negotiate with payers and insurers. While these remedies were equally illegal and unjustified, they do demonstrate the excessive nature of the required dissolution of Mountain. The DOJ could simply have adopted conduct restrictions similar to those in the Colorado cases or System Health Providers. This would have, in theory, satisfied the government's antitrust concerns while not substantially disrupting the health care market in North Carolina.

Indeed, the government's arrogant disregard for Mountain's consumers is galling. By requiring Mountain to terminate their existing contracts, the DOJ manages to violate the rights of thousands of individuals, not just Mountain's shareholders. Based on the documents presented by the government, it's safe to assume these customers were never consulted as to what they wanted, or even if they had any problem with Mountain in the first place. Despite the government's assertion that antitrust laws are about protecting consumers, there is not a single piece of evidence that demonstrates consumer interest was ever taken into account here.

Finally, there is nothing in the government's filings that prove its main argument justifying this remedy—dissolving Mountain will lower consumer health care costs. The entire history of government-sponsored managed care tells us that higher costs are solely a function of government intervention and interference in the free market, and that collective bargaining action by physicians have no substantial impact on what ultimate consumers—patients—actually pay. According to the Congressional Budget Office, which studied the physician collective bargaining issue in 1999, allowing physicians the right to jointly negotiate with HMOs would only increase consumer premiums by about 1.9% annually. This is hardly a figure that justifies the massive government regulation imposed by this proposed Final Judgment. The government also never takes into account the fact that Mountain's physicians, like most doctors nationally, are facing continued reductions in HMO and federal insurance reimbursements. Indeed, Mountain argues their doctors have not experienced significant fee increases in more than 10 years. In no other marketplace would the government penalize individuals for seeking a pay raise once every decade. Of course, in no other industry does the government so blatantly tip the scales in favor of one side as they do with managed care providers.

C. Defining the "Public Interest"

The first principle of the Tunney Act is that a proposed settlement must be in the "public interest." This term is never defined in the act, nor any other statute where it is employed. The Constitution certainly never speaks of a "public interest." So we're left to divine the phrase's correct meaning.

The government's definition is simple—the "public interest" is whatever we say it is. This is why they can impose a remedy, such as dissolving Mountain by force, that noboby asked for and that yields no particular benefit for anyone aside from the government's lawyers. Obviously the Tunney Act rejects this thinking, since it requires the Court to actually scrutinize the government's action, rather than simply acting as a rubber stamp. The failure of previous courts to scrutinize antitrust judgments has, in effect, misled the government into believing in their own omnipotence.

In an individual rights republic like the United States, the more appropriate definition of the "public interest" is nothing more than the aggregate of private interests. Protecting the public from violations of individual rights should be the government's paramount aim in any case brought under the authority of the United States. In this case, as we've aptly demonstrated, the government is initiating a violation of Mountain's individual rights rather than protecting the rights of Mountain's consumers.

If every doctor now affiliated with Mountain were to cease practicing medicine tomorrow, the managed care companies and consumers in western North Carolina would have no recourse. Without any providers of medical service, the marketplace would no longer exist. Herein lays a fundamental truth that the government refuses to acknowledge—producers create and define the marketplace, not consumers. Consumers can demand all the services they want, but in the end somebody must provide those services according

[52] *Id.* at 575.

to mutually agreed upon terms. To do otherwise, as the government proposes here, would be to enslave producers to the whims of consumers. If that's how the DOJ defines "public interest," then its antitrust policies have more in common with Karl Marx and Benito Mussolini than they do Thomas Jefferson and Abraham Lincoln.

D. The Court's Powers and Duties

Finally, the government, through the CIS, asks this Court to take to adopt a very selective reading of the Tunney Act in determining its role in reviewing the proposed Final Judgment. The DOJ cites case law that dissuades the Court from taking an active role in assessing the government's case. Citing the D.C. Circuit in *United States* v. *Microsoft,*[53] the DOJ argues:

> [T]he court's role * * * is limited to reviewing the remedy in relationship to the violations the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." * * *the court" is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into to other matters that the United States might have but did not pursue.[54]

This position essentially permits the government to present a complaint unchallenged without even minimal scrutiny, regardless of the actual merits of the government's case. This is not consistent with the letter or intent of the Tunney Act. The law gives the Court broad discretion to assess every aspect of an antitrust settlement, including the complaint, the government's good faith in bringing the case, and the impact of the proposed remedies on individual rights and welfare. If this Court finds the government's complaint or CIS is defective on key questions of fact or application of law, there is nothing in the Tunney Act which commands the Court to simply ignore that.

The legislative history of the Tunney Act supports an expansive interpretation. The House Judiciary Committee concluded "the public does have an interest in the integrity of judicial procedures incident to the filing of a proposed consent decree by the Justice Department." The House also concluded: "Nor is [the Tunney Act] intended to authorize techniques not otherwise authorized by law. The legislative language, however, is intended to isolate further and, thereby, to perclude factors identified as contributing to the rise of the so-called abuse of "judicial rubber stamping." This hardly sounds like commanding language foreclosing the Court's ability to examine the government's complaint to ensure that it conforms to actual facts and law.

It must also be pointed out that while the government cites a number of precedents in the CIS with respect to the Court's role in this proceeding, none of the cases cited emanate from the Supreme Court or the Fourth Circuit. Therefore, this Court is not bound to follow those decisions. Combined with the lack of any case law on the underlying constitutionality of the government's antitrust Statements on health care, this Court is well within its rights to act as a court of first impression on many of the issues raised in these comments.

Part V: Alternatives to the Proposed Final Judgment

For any of the numerous independent grounds cited in these comments, the Court should reject entry of the proposed Final Judgment as inconsistent with the public interest 15 U.S.C. 16(f). The Court should also dismiss the complaint with prejudice, given the government's failure to set forth any claims that would entitle them to relief under the Sherman Act, and because the government omitted material facts from the complaint in order to defraud the Court and the American people.

If the Court decides not to dismiss the complaint, than alternatively it should order a full trial on the merits. While Mountain signed the consent order in large part to avoid a trial, this action must be viewed in the context of an antitrust consent decree procedure. No actual "negotiation" took place, as the government obtained all the relief they would have sought at trial. Furthermore, Mountain's counsel advised them to settle immediately before even permitting some discovery or attempting to actually negotiate with the government. In retrospect, Mountain president Ellen Wells told CVT that Mountain now regrets signing the consent agreement, and considers the proposed Final Judgment a mistake. This Court is certainly not required to coddle a defendant's remorse in agreeing to a settlement, but given the enormous imbalance in Mountain's bargaining position relative to the government, the Court should take appropriate action to ensure the interests of justice are not comprised by the government's abuse of discretion.

If the Court were to order a full trial on the merits, the United States would likely withdraw the complaint or immediately negotiate a more equitable settlement with Mountain. The DOJ has never tested the viability of its physician network policies at trial, and we believe they're not about to start here. Thus, ordering a trial would likely produce a result more conducive to the interests of Mountain and the public generally.

Finally, given the blatant and intentional misconduct of the government in prosecuting this case, CVT asks the Court to consider imposing sanctions on the United States under Federal Rule of Civil Procedure 11. The Court, on its own initiative, may impose sanctions against a party when they make representations to the Court which have no evidentiary support. In this case, the government made numerous allegations, described above, for which there is no evidentiary support or where material facts were omitted in order to mislead the Court into reaching an erroneous conclusion. Sanctions are certainly warranted, either in the form of monetary compensation to Mountain, or in such other manner as the Court deems appropriate.

Conclusion

The government's war on physicians must end. Every day the United States spends trying to blame doctors for the failure of three decades of government policies is a day that this country moves closer towards the complete socialization of health care under central control. While the Court is not in a position to make policy pronouncements, this case presents a compelling opportunity for the judiciary to defend its rightful place in the constitutional order from government manipulations. At every turn, in this case and dozens more, the DOJ has subverted the integrity of the judicial system by advancing fraudulent and unethical antitrust "settlements" that amount to nothing more than a web of deceit. This pattern simply cannot be allowed to continue.

Mountain Health Care is the innocent victim of the United States' failure to protect the individual rights of physicians and consumers. Sanctioning the proposed Final Judgment amounts to judicial coercion, a rubber-stamping of the government's mob assault on the freedoms and liberties of physicians to join together voluntarily to preserve and promote their economic self-interest. This is not a valid use of the antitrust laws, or any laws propagated by a republican society. Rejection of the proposed Final Judgment is the only possible outcome that would serve the public interest.

[53] 56 F.3d 1148 (D.C. Cir. 1995).

[54] CIS, 68 FR at 1,481.

Appendices to the Public Comments of Citizens for Voluntary Trade

Before: Judge Graham C. Mullen

Filed: March 7, 2003.

S.M. Oliva,
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Appendix A—Documents From Mountain Health Care's Website

Source: *http://www.mountainhealthcare.com/pressrelease.htm.*

Mountain Health Care To Dissolve, Liquidate Assets

Asheville, NC—(Friday, Dec. 13, 2002)—Mountain Health Care (MHC), the largest preferred provider health care network in Western North Carolina, confirmed today that it has consented to the decision by the U.S. Department of Justice (DOJ) to dissolve and liquidate its assets. The company hopes to sell its assets to a new buyer that will continue to provide physicians' services to the community, which includes 22 western North Carolina counties.

The government Friday filed what's known as a complaint and consent decree in U.S. District Court in Asheville, triggering a timetable for dissolution in April, 2003.

According to Todd Guthrie, M.D., chairman and president of the board of Mountain Health Care, the filing is a result of two years' review of documents and several health care organizations in the region as part of an examination of antitrust rules that effectively prohibit physicians from operating provider networks. To date, only Mountain Health Care is affected by this ruling.

MHC is privately held, with 401 physician stockholders, and that fact alone—not the admission of any unlawful conduct—is a substantial reason for the government-ordered closure. "We are but one of numerous physician-owned organizations operating under similar business models from across the nation who are facing the same situation," Guthrie said. "While we don't find solace in that fact, it is important to know that we apparently have not been singled out."

"We are terribly saddened and shocked by this news," he said. "Since 1994, Mountain Health Care has been a vibrant, pro-competitive force in our community, helping to protect the health of nearly 70,000 of our neighbors at reasonable and competitive prices. We obviously disagree with the DOJ decision."

Mountain Health Care has more than 1,800 providers including hospitals, ancillary services, laboratories and primary and specialty care providers.

Chief Executive Officer Ellen M. Wells, said that all stockholders, third party administrators and brokers and nearly 300 employers representing about 70,000 employees, have been notified of the government's decision. She said there are no benefits in challenging the decision.

"According to our attorneys, our only opinion was to go to trial against the DOJ, and we were advised that the cost of doing so far exceeded an amount we can afford," Wells said. "Simply put, we don't have the same resources as Microsoft, for example, which did take on the government in protracted legal proceedings. It would be ethically and morally wrong for us to pass costly legal expenses on to our customers and ultimately to patients," she said.

Wells emphasized that the consent decree filing is not evidence of any wrongdoing, rather an agreement to dissolve and sell its assets to another owner. "The reason is that Mountain HealthCare is a large, physician-owned network, and government antitrust guidelines are complex and permit physicians to own and operate networks only under very narrow circumstances. They don't treat physician-owned companies like they do others owned, for example, by insurance companies. We think this is wrong."

Wells also pointed out that the government's antitrust rules for networks are not simple. "The DOJ thought Mountain HealthCare network included too many physicians—which we though benefited consumers since it gives them more physicians from which to choose, as opposed to a smaller, more restrictive network."

With respect to sale of its assets, Guthrie said the board has already discussed such a sale with a number of potential buyers who are interested in doing business in the Asheville areas. "We hope to liquidate our assets to a buyer that will continue to provide physicians' and other providers services to our community. In the meantime, we will continue to respond to the needs of our constituency." Guthrie said.

Guthrie said the review process and identity of potential buyers is confidential. "Mountain HealthCare will maintain high-quality, proficient levels of professional service to its network and employers until the assets sale process is complete", Wells said.

Competition Needs To Grow Between Insurance Companies

By M.D. Stephan Buie

Posted: Dec. 30, 2002 11:06 p.m. (Asheville Citizens Times)

The Citizen-Times reported on Dec. 14 that the U.S. Justice Department has ordered Mountain HealthCare to dissolve, based on accusations of price fixing. People interviewed in the article expressed the hope that dissolving Mountain HealthCare will lead to increased competition and lower health-care costs. What people outside health care do not understand is that for the last 10 years or more physician costs have been controlled by managed care companies and have risen at a rate lower than general inflation. The competition that is needed is among insurers, and dissolving Mountain HealthCare will decrease that competition rather than increase it.

Mountain HealthCare is an association of independent medical practices and was set up not to fix prices, but to compete with managed care organizations. It is not an insurance company, but provides a panel of physicians for insurance companies to contract with. It was established with the advice of attorneys who are experts in federal antitrust law. It works through a blind messenger system, whereby MHC negotiates a rate for services with an employer and then sends those rates to each member practice. Each practice independently decides whether to accept the rate or to counter propose a different rate. All members have been informed that it is not legal to consult with other practices about their participation or their rates. Employers were free to negotiate with other managed care organizations. The physician members also are on panels of other managed care organizations. It is not clear to me how this is price fixing, but as the article indicates, MHC, unlike Microsoft, does not have the money to battle the Department of Justice.

The article about the Mountain HealthCare dissolution stated, "local businesses were socked with premium increases of 30 percent or more this year." Insurance rates are affected by physician costs, hospital costs, drug costs, and the administrative costs of the insurance companies, whose major executives have salaries in the millions of dollars. Managed care organizations were initially created to contain costs and to increase efficiencies in health care. They were successful in decreasing costs initially, and brought increases down to the rate of general inflation. After they cut the fat out of the provider systems, though, it is not clear that they have been as effective in trimming their own fat. Their methods of controlling costs have led ot greater inefficiencies in medical practices, however, in terms of collecting for charges and excessive requirements for treatment plans. Managed care organizations have taken a hard line with payment to physicians, either decreasing payments or holding them steady during the last 10 years. The individual medical practice has no bargaining power with these large companies. It is their way or the highway. If you own a business, imagine running that business without a price increase for the last 10 years.

MHC gave local physicians an organization that provided employers what they need from a managed care organization but would be more responsive to the physicians. In fact, I have often been frustrated that MHC was not more responsive to the needs of the physicians. Their billing was often as confusing as the managed care organizations, but at least they answered the phones when we called.

More physicians are moving away from enrollment in managed care organizations and are demanding cash payment for services. Billing for our services has become extremely complex, time-consuming and costly. Each managed care organization may have several claim centers. If we send our claim to the wrong one, it is rejected without explanation. Their claim centers apparently have no cross-referencing so they can't tell us the correct center to send the claim to. The insurance staff in my office have become convinced that this confusion is intentional, as the harder it is to collect for services, the less the insurance companies have to pay. They do not want to make the system work because it is to their benefit for it not to work.

We are spending more and more time chasing less and less money.

The long-term effect of this will be that insurance will be worth less even as one pays more for it. Fewer physicians will be on managed-care panels because they cannot afford to and one will have to pay out of pocket for one's medical care and submit one's own claim for insurance reimbursement. That is already happening in several local medical offices. The competition will not be among providers but among patients to see who can get medical care. My hope is that some type of reform will prevent that, while allowing physicians to collect for services provided.

Stephen Buie, M.D., is a specialist in psychiatry practicing with the Pisgah Institute in Asheville. He is also an active member of the Buncombe County Medical Society. He lives in Asheville.

Myths and Facts About Mountain Health Care

Posted: January 6, 2003 (Asheville Citizens Times)

Since the federal government's announcement of a forced dissolution of Mountain Health Care a few weeks ago, some of the facts of the case have gone unanswered. Here are answers to some of the misunderstandings and most commonly-asked questions about this issue.

Myth: Mountain Health Care is an insurance company and/or contracts with managed care companies.

Fact: Mountain Health Care is a fully credentialed network of providers (physicians, therapists, nurses and medical laboratories, to name a few) which contracts directly with self funded employers and fully insured companies. Mountain Health Care does not approve or pay claims, and has no contracts with managed care companies.

Myth: In order for an individual to see a Mountain Health Care provider his/her employer must participate with Mountain Health Care.

Fact: Since Mountain Health Care is not an exclusive network, providers are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers.

Myth: The Mountain Health Care fee schedule resulted in artificially higher reimbursements for physicians.

Fact: The majority of health plans covering lives in Western North Carolina have fee schedules, most of which offer higher total reimbursements than Mountain Health Care's fee schedule. In response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician.

Myth: Mountain Health Care providers set their office charges based on the Mountain Health Care fee schedule.

Fact: Providers in WNC establish their own office charges. These charges apply to all patients seen by the provider regardless of their health plan, are set independently and are not shared with other providers.

Myth: All Mountain Health Care providers are company shareholders.

Fact: Of the 1800 participating providers in the Mountain Health Care network only 401 physicians have chosen to be stockholding members.

Myth: Mountain Health care has no competition in the Western North Carolina market.

Fact: Employers in the Western North Carolina market place are contracted with many different health plans. Mountain Care members make up an average of only 8% of our providers patient base, and the overwhelming majority of Mountain Health Care providers participate with other plans.

Myth: The federal government discovered the Mountain Health Care's fee schedule is so high is has led to higher health care costs in Western North Carolina.

Fact: Premiums have increased in all types of health care plans and in most regions across the country; the increase in healthcare costs in Western North Carolina is not unusual. There are many factors that influence overall health care costs across the nation including improved technology, rapidly escalating drug prices, an aging population, the trend toward higher jury awards in medical malpractice cases and hospital consolidations. Physician fees account for less than 22% of total health-care costs and it is difficult to see how Mountain Health Care, whose covered lives represent only 8% of our providers' patient base, could be held primarily responsible for these increases. The January 21 issue of Modern Healthcare magazine stated, "The government blamed the acceleration [of health-care costs] on larger increases in the indices for prescription drugs and hospital services," while MHC's prices, with minor exceptions, did not increase between 1994 and the present.

Myth: The doctors who formed Mountain Health Care did so in an attempt to secure comparatively higher reimbursement rates.

Fact: Mountain Health Care was formed to ensure quality, cost effective health care for the residents of western North Carolina. We hope that our members and all residents of western North Carolina, after considering all the facts, understand that the existence of Mountain Health Care did not cause your health care costs to increase. We also hope you will realize that the forced dissolution of Mountain Health Care will in no way lower or drastically alter health care costs within the region. Now, as always, Mountain Health Care and its participating providers have the best interest of our members and community at heart and will do all that we can to continue to provide cost effective, quality health care to you.

Appendix B

Brief of S.M. Oliva as *Amicus Curiae*

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Mountain Health Care, P.A. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

Summary

In reviewing the Proposed Final Judgment before the Court in this case, *amicus* offers two arguments:

- The United States failed to disclose material facts in their complaint and Competitive Impact Statement (CIS).
- The United States provided insufficient information in the CIS regarding the status and role of Mountain Health Care in the relevant marketplace, as well as how Mountain's acts directly impacted competition in those markets.

A major purpose of the Tunney Act [1] is to facilitate public comments which may assist the Court in determining whether a proposed consent decree is in the public interest. The CIS, in part, is supposed to provide the public with an adequate description of the "practices or events" giving rise to an alleged antitrust violation, as well as disclosure of any "determinative materials or documents" considered by the government in preparing the proposed Final Judgment.

In this case, the CIS failed both of these tests. The United States took substantial shortcuts in complying with the Tunney Act, and in the process failed to fulfill Congress's underlying objectives. This Court, however, possesses broad statutory power to remedy this situation, by directing the United States to file a revised CIS that provides the public—and the Court—with adequate information to decide whether the proposed decree is in the public interest.

Failure To Disclose Material Facts

In the complaint, the United States asserts that Mountain "organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement" [2] from a number of managed care companies and other third-part benefit providers. This fee schedule, according to the government, "unreasonably restrained competition" in violation of section 1 of the Sherman Act.[3] As a result, the United States filed suit to obtain the dissolution of Mountain "before further injury to consumers in North Carolina or elsewhere occurs." [4]

This "uniform fee schedule" is the nexus of the complaint and the resulting proposed Final Judgment. So long as Mountain maintains this schedule, consumers remain in danger under the Sherman Act. The only way to get rid of the schedule, in the government's view, is for Mountain to be denied its very existence. Otherwise, this fee schedule will continue to run amok, spreading its anti-competitive effects throughout western North Carolina.

But the problem is, the fee schedule the government speaks of may no longer be in play. According to statements made to *amicus* by Ellen Wells, Mountain's president and chief executive, Mountain's current "fee schedule" is nothing more than individual doctors informing an independent consultant about their general pricing terms. In other words, a third party spoke to Mountain's

[1] 15 U.S.C. § 16(b)–(h).

[2] Compl. ¶ 1.

[3] *Id.*

[4] *Id.*

physicians separately, obtained independent fee requests, and passed that information along to the managed care companies and other payors. At no point, according to Wells, was there an agreement or conspiracy among Mountain physicians to create a "universal" schedule of fixed fees.[5]

Not only does this system not violate the Sherman Act, the United States expressly endorses this type of "messenger model" as a safe haven from the general prohibition on independent physicians collectively bargaining with payors. According to the 1996 revisions to the Department of Justice-Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care:

> Some networks that are not substantially integrated use a variety of "messenger model" arrangements to facilitate contracting between providers and payers and avoid price-fixing agreements among competing network providers. Arrangements that are designed simply to minimize the costs associated with the contracting process, and that do not result in a collective determination by the competing network providers on prices or price-related terms, are not per se illegal price fixing.

If Mountain's claim, then, is true, and they are employing (or transitioning to) a messenger model, there is no need for the government's proposed remedy—dissolution of Mountain—because there is no illegal behavior taking place. Yet nowhere in the complaint or CIS does the United States discuss, or even acknowledge, Mountain's claim that they employed a messenger model. The government doesn't even offer evidence to refute the claim. Instead, the complaint and CIS present a carefully edited, limited recitation of the facts, omitting a key detail that might influence the public's analysis of the case. In the absence of these disclosures, the public is left to incorrectly conclude that Mountain was simply an illegal price-fixing arrangement among physicians, and that they made no good faith efforts to comply with the law.

Insufficient Information

Congress acknowledged, in passing the Tunney Act, that the public has an interest in "the integrity of judicial proceedings" involving proposed antitrust settlements.[6] To that end, the United States has an obligation to disclose enough facts about a case to enable the public to form reasoned judgments about the terms of a proposed Final Judgment. Of key importance is information that details the government's analysis of the marketplace, the competitive problem arising thereto, and the selected remedy. Here, we have little to go by. The United States insists that "[t]here are no determinative materials or documents" within the Tunney Act's meaning that warranted public disclosure.[7] *Amicus* disagrees.

The complaint and CIS repeatedly argue that Mountain's actions illegally "increased physician reimbursement fees."[8] The complaint argues that customers "have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence" of Mountain's actions.[9] The CIS further states that Mountain's physicians "have not clinically or financially integrated their practices" in such a way as to justify maintaining their uniform fee schedule.[10]

None of these arguments are supported by evidence, at least not evidence that's presented for public review in the complaint or CIS. For example, the public knows nothing, from the government's disclosures, of the exact nature of the market for physician services in western North Carolina. We don't know who Mountain was competing with, what prices they were charging, or even how consumer prices fared in comparison to neighboring marketplaces. We certainly don't know if Mountain's actions actually harmed any consumers. We simply don't know much of anything, beyond the government's mere allegation that there was a fee schedule, and that it was illegal.

Once again, *amicus* faces conflicting information. The United States claims that Mountain increased costs and harmed consumers. Mountain's Ellen Wells, in contrast, claims to *amicus* that Mountain's customers realized an average 14–20% savings over other service networks. Nothing in the complaint or CIS points this out.[11] Furthermore, there is not evidence in the public record that suggests any Mountain customer was dissatisfied with their services or costs. Even one consumer complaint would provide valuable information to the public on the exact nature of the alleged illegal actions. But once again, we're left only with the government's word, despite the existence of evidence that refutes key points of their argument.

It's worth noting that the government's lack of disclosure is hardly unusual in a Tunney Act proceeding. In the overwhelming majority of antitrust settlements, the CIS provides little useful information about a case. In one recent proceeding, Albert Foer of the American Antitrust Institute noted: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[12] All of these explanations may be applicable in this case, but none of them justify withholding relevant and material information from the public.

At an absolute minimum, the United States should provide the public with enough information to assess the state of the affected marketplace at the time the complaint is filed, and also empirical evidence demonstrating how the proposed remedy is likely to restore competition allegedly lost. The government may consider this an inconvenient burden, but the Tunney Act does not contain exceptions for official laziness.

This Court has clear authority to compel government disclosure of relevant information. Congress stated as much in the Tunney Act's legislative history, noting "the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest."[13] And in one of the few cases where a court actually employed its Tunney Act discretion, *United States*, v. *Central Contracting Co.*,[14] the district judge emphasized the importance of vigorous judicial enforcement of the public's right to information:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there will be no independent scrutiny.[15]

Similarly, this "run-of-the-mill" case runs the risk of escaping public attention and scrutiny completely. Without timely intervention by this Court to procure necessary additional information, it is likely the proposed Final Judgment will be entered without any serious examination of the government's arguments. This would render the Tunney Act effectively worthless in safeguarding the public interest.

Conclusion

The public—and this Court—cannot rely on the complaint and CIS, in their present form, to make a proper determination under the Tunney Act on whether entry of the

[5] Telephone Interview with Ellen Wells, President of Mountain Health Care, P.A. (Jan. 23, 2003).

[6] H.R. Rep. No. 93–1463 (1974), reprinted in 1974 U.S.C.C.A.N. 6536, 6539.

[7] Competitive Impact Statement, 68 FR 1,478, 1,481 (Jan. 10, 2003).

[8] Compl. ¶ 14.

[9] Compl. ¶ 17(c).

[10] CIS, 68 FR at 1,480.

[11] Telephone Interview.

[12] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf*).

[13] H.R. Rep. No. 93–1463, reprinted in 1974 U.S.C.C.A.N. at 6538 (citing S. Rep. 93–298).

[14] 537 F. Supp. 571 (E.D. Va. 1982).

[15] *Id.* at 575.

proposed Final Judgment is in the public interest. The United States omitted key facts from the complaint, and failed to disclose relevant information that would assist the public in forming reasoned judgments about this case. The Tunney Act grants the Court ample power to ensure the government's full compliance, and this case warrants exercise of that power.

Accordingly, the Court should direct the United States to file a revised complaint and CIS, addressing the objections and concerns set forth in this brief. Additionally, the Court should extend the public comment period to allow third parties adequate time to review the revised disclosures so that they may provide appropriate comments to the Court.

Respectfully Submitted,

Dated: February 15, 2003.

S.M. Oliva,
2000 F Street, NW., #315, Washington, DC 20006–4217, Tel: (202) 223–0071, E-mail: smoliva@voluntarytrade.org, Amicus Curiae.

The Center for the Advancement of Capitalism

March 10, 2003.

Mr. Mark J. Botti,
Chief, Litigation Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 4000, Washington, DC 20530.

Re: Public comments in United States v. Mountain Health Care

Dear Mr. Botti: Pursuant to the rights of the public under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), I am writing to express the opposition of the Center for the Advancement of Capitalism (CAC)[1] to the proposed Final Judgment in the case of United States v. Mountain Health Care, now pending before the U.S. District Court for the Western District of North Carolina. CAC has reviewed the Competitive Impact Statement and the proposed Final Judgment and it finds that the proposed Final Judgment undermines the public interest and ought to be rejected by the Court.

1. The Proposed Final Judgment Ordering the Dissolution of Mountain Health Care Is Unjustified by the Facts

The proposed Final Judgment demands the complete dissolution of Mountain Health Care on the grounds that it illegally negotiated a uniform fee schedule with insurance companies. Such a draconian end to a company that has been in existence since 1994 and competently and caringly served the health needs of almost 70,000 North Carolinians is shocking. It clearly implies that Mountain Health Care's mere existence as a physician-owned network of healthcare providers is outside the confines of legal behavior under the government's interpretation of the antitrust laws, whatever Mountain's actual behavior. CAC rejects this implication outright. In no way did the government adequately justify its dissolution of Mountain Health Care.

Under FTC–DOJ policy, doctors may collectively bargain with health insurance companies by using three methods: capitation, withholding, and the messenger model. Capitation requires physicians accept a fixed fee per patient regardless of the actual costs of treating that patient. Withholding allows the insurer to withhold a percentage (20–30% or more) of a physician's reimbursement unless some arbitrary goal is met, such as reducing the frequency of a particular procedure. The messenger model allows a third-party to serve as a one-way conduit from the insurer to the doctors.

Mountain Health Care maintains that in accordance with the above guidelines, it now uses the messenger model in its negotiations. Yet nowhere is this critical fact mentioned in the government's Competitive Impact Statement. CAC considers this to be a galling and relevant omission.

2. The Case Against Mountain Health Care Is an Attempt on the Part of the Government To Erode the Rights of Physicians in the Name of Serving an Improperly Defined Concept of the "public interest"

The "public interest" is properly defined by the principle of individual rights as expressed in the Declaration of Independence and animated by the Constitution. The principle of individuals rights is not mere claptrap to be ignored by DOJ lawyers, but the organizing principle of legitimate government.

Yet CAC's observations of the government's antitrust actions in health-care lead it to believe that the government is simply pursuing a policy of reflexively reducing healthcare costs, even at the price of squelching the rights of physicians to pursue their legitimate economic interests via institutions able to negotiate on-par with health insurance companies.

In effect, current government policies in healthcare uses antitrust to obtain the partial socialization of medicine absent clear congressional authority, violates the rights of physicians to profit from their work, and removes the financial incentive that brings most individuals to pursue careers in the healthcare industry.

Yet every attempt CAC has made thus far to point out these glaring contradictions in other Antitrust Procedures and Penalties Act proceedings has resulted in the government's evasion of CAC's core arguments. We hold that even under the nation's system of antitrust, the government can not make literal serfs of some of its citizens because they seek to pursue their legitimate economic interests. Consumers can not possibly benefit from denying physicians the right to collectively bargain their fees.

3. The Court Ought To Use Its Authority Under the Antitrust Procedures and Penalties Act To Check the Unrestrained Government Incursion Against the Rights of Physicians

CAC notes that the complexities of antitrust proceedings are such that few of the government's targets for enforcement can afford to offer a full defense of their actions, even as they maintain their complete innocence. Mountain Health Care claims that it only agreed to the settlement because it has limited assets that preclude it from fighting the requisite court battle with the government.[2] CAC's observations of the government's antitrust actions in healthcare lead it to believe that the government specifically targets those unlikely to offer a defense. While CAC recognizes the burden on the accused to defend themselves, we nevertheless consider this pattern to be relevant in observing how the government carries out its mission of defining and defending the public interest.

4. Mountain Health Care's Business Under Review Was Not Interstate Commerce

CAC also observes that Mountain Health Care's conduct as a preferred-provider organization took place wholly within North Carolina, as outlined in the Competitive Impact Statement. The Justice Department's assertion of jurisdiction here is tenuous at best.

Conclusion

Ultimately, CAC's observations of these facts lead it to question the appropriateness of the proposed Final Judgment. Considering the impact on both Mountain Health Care doctors and their patents, CAC believes a substantive review and ultimate rejection of the proposed Final Judgment is in order. If the Antitrust Procedures and Penalties Act protects the public interest from inadequate antitrust settlements, than it is incumbent upon the Court to use it to protect the public from excessive antitrust settlements. The "reaches of the public interest" apply to both producers and consumers, and gross injustice toward producers can not be held to be in the legitimate interest of consumers.

CAC believes the government's position is clear and direct: any attempt by physicians to advance their own economic rights collectively is inherently suspect, if not outright illegal. It would be refreshing to see the government's case stand the test of a trial, but in that absence, CAC believes the Court still has it within its power to challenge the government's brazenly erroneous conclusions by rejecting the proposed Final Judgment.

Respectfully Submitted,

Nicholas P. Provenzo,
Chairman.

February 25, 2003

Mr. Mark J. Botti (via facsimile 202–307–5802),
Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 4000, Washington, DC 20530.

[1] The Center for the Advancement of Capitalism is a District of Columbia corporation organized in 1998, and exempt from income tax under Section 501(c)(4) of the Internal Revenue Code. CAC's mission is to present to policymakers, the judiciary and the public analyses to assist in the identification and protection of the individual rights of the American people. CAC applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues, and provides empirical studies and theoretical commentaries on the impact of legal and regulatory institutions upon the rights of American citizens. CAC has no financial interest in the outcome of this case, nor has CAC received any compensation from the defendants in connection with these comments.

[2] *http://www.mountainhealthcare.com/pressrelease.htm* on 4/10/03.

Re: Public comments in United States v. Mountain Health Care

Dear Mr. Botti: I am writing to express opposition to the proposed Final Judgment in the case of *United States v. Mountain Health Care*, now pending before the U.S. District Court for the Western District of North Carolina. The proposed judgment will not benefit the public interest, and will actually cause harm to consumers by depriving thousands of North Carolina residents of the benefits of a comprehensive, stable physician network.

In my opinion, the Justice Department lacks insights into the practices of Mountain's business to understand their good faith efforts to comply with the DOJ–FTC Statements of Antitrust Enforcement Policy in Health Care and has ignored the ramifications of the consent decree being imposed on Mountain. Through personal experience with the anti-trust settlement process, the government claims that no one operates the messenger model correctly. This presumption means physicians, and their advisors, are presumed guilty from the beginning of an investigation.

Also, the anti-trust laws, as they are being applied against physician networks, are only helping the parties that the Sherman Act was originally intended to protect the public against * * * the health plans. The modern day "robber barons" are the insurance companies, with billions of dollars in profits and unchecked power against employers and healthcare providers. Physicians have not caused rising healthcare premiums, as the standard FTC–DOJ consent language would suggest. In fact, the physician fee schedules from insurance carriers, including the largest payor, Medicare, have not even kept up with normal inflation, much less medical inflation rates since the 1970s.

The "excuse" of per se price fixing in pursuing these prosecutions is an attempt by the government to not have to prove a case. The fact that physicians, and their advisors, have no resources to sustain an FTC–DOJ investigation much less contest a settlement offer, should not be a reason for the government to continue bullying professionals into settlement after settlement without providing a reasonable means for physicians to continue to operate a practice in a world dominated by billion-dollar insurers. However, the federal government continues chalking up 'victories' in the arena of physician network dissolution under the guise of ridding the world of anti-trust offenders. I've asked repeatedly, and have not received an answer, "Who's been hurt?" in these recent cases pursued by the DOJ and FTC. I ask again, and beg for an answer, "Who's been hurt?" in this case against Mountain.

While I'm not happy to have settled anti-trust cases recently, I find the inconsistency in the application of the consent decree with Mountain disturbing. Why should one physician network be offered an opportunity to continue to operate while another is forced to disband? In either event, the physicians are forced to operate their practices with blinders on, practicing as individuals at the mercy of the health plan forced to operate their practices with blinders on, practicing as individuals at the mercy of the health plan contract offers. In both outcomes the physicians are left with no ability to do anything, having "failed" at the application of the only safe harbor offered by the government—the exclusive messenger model. How would one treatment of the organization (continue versus disband) affect the members of the patient community differently? Dissolution seems to only serve the purposes of exacting a harsher punishment.

The Justice Department has not taken into account the interests of actual consumers. Nor have they ever considered the rights of Mountain's shareholders and physicians. As citizens of the United States, they have an absolute right to freely associate with other professionals for their mutual benefit. It is not a crime to act in one's economic self-interest, so long as one does not implement actual force against other individuals. Since there's no evidence Mountain ever initiated force against its customers, there is no justification for the extreme remedy provided for in this final judgment.

For these reasons, the Justice Department should withdraw the proposed Final Judgment and dismiss its complaint against Mountain.

Please include these comments in the official record of this case, pursuant to the Tunney Act.

Sincerely,

Marcia L. Brauchler,
Physicians' Ally, Inc., P.O. Box 260661, Littleton, CO 80163–0171, (303) 346–2935.

BILLING CODE 4410–11–M

PHYSICIANS' ALLY, INC.
Health Care Consulting
2722 W. Cactus Bluff Place
Highlands Ranch, CO 80129

Fax

To:	Mark Botti	**From:**	Marcia Brauchler
Fax:	202-307-5802	**Pages:**	3
Phone:		**Date:**	3/10/2003
Re:	Mountain Health Care	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Please find following this fax cover a public comment letter.

BILLING CODE 4410–11–C

January 25, 2003.

Dear Mr. Botti, I am writing to comment about the proposed Consent Decree relating to the dissolution of Mountain Health Care. It is common

knowledge among current and former employees that the CEO, Ellen Wells, purposely put off changing to Messengering because she was under the impression that the DOJ would just disappear. She was also concerned that it might reduce the 5% withhold that MHC was charging the providers on their claims and jeopardize the collections, thus impacting her bonus. She has shown noting but total disrespect for the government and total disregard for the employers that contracted with MHC for what they thought were discounted rates from physicians. MHC deserves to dissolve and Ellen Wells deserves to be named as the primary perpetrator of this disaster.

Sincerely,

Concerned employees

January 26, 2003.

Mr. Mark Botti

Chief Litigation I Antitrust division, United States Dept. of Justice, 1401 H Street NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti, If Mountain Health Care did what you say it did, why does the company run ads in the newspaper making it sound like it is totally innocent of anything? (Please read the ads that I include in this letter). I am confused.

Thank you.

Myths and Facts about Mountain Health Care

Since the federal government's announcement of a forced dissolution of Mountain Health Care a few weeks ago, some of the facts of the case have gone unanswered. Here are answers to some of the misunderstandings and most commonly-asked questions about this issue.

Myth: Mountain Health Care is an insurance company and/or contracts with managed care companies.

Fact: Mountain Health Care is a fully credentialed network of providers (physicians, therapists, nurses and medical laboratories, to name a few) which contracts directly with self funded employers and fully insured companies. Mountain Health Care does not approve or pay claims, and has no contracts with managed care companies.

Myth: In order for an individual to see a Mountain Health Care provider his/her employer must participate with Mountain Health Care.

Fact: Since Mountain Health Care is not an exclusive network, providers are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers.

Myth: The Mountain Health Care fee schedule resulted in artificially higher reimbursements for physicians.

Fact: The majority of health plans covering lives in western North Carolina have fee schedules, most of which offer higher total reimbursements than Mountain Health Care's fee schedule. In response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician.

Myth: Mountain Health Care providers set their office charges based on the Mountain Health Care fee schedule.

Fact: Providers in western North Carolina establish their own office charges. These charges apply to all patients seen by the provider regardless of their health plan, are set independently and are not shared with other providers.

Myth: All Mountain Health Care providers are company shareholders.

Fact: Of the 1800 participating providers in the Mountain Health Care network only 401 physicians have chosen to be stockholding members.

Myth: Mountain Health Care has no competition in the western North Carolina market.

Fact: Employers in the western North Carolina market place are contracted with many different health plans. Mountain Health Care members make up an average of only 8% of our providers patient base, and the overwhelming majority of Mountain Health Care providers participate with other plans.

Myth: The federal government discovered that Mountain Health Care's fee schedule is so high it has led to higher health care costs in western North Carolina.

Fact: Premiums have increased in all types of health care plans and in most regions across the country; the increase in health care costs in western North Carolina is not unusual. There are many factors that influence overall health care costs across the nation including improved technology, rapidly escalating drug prices, an aging population, the trend toward higher jury awards in medical malpractice cases and hospital consolidations. Physician fees account for less than 22% of total health-care costs and it is difficult to see how Mountain Health Care, whose covered lives represent only 8% of our providers' patient base, could be held primarily responsible for these increases. The January 21, 2002 issue of Modern Healthcare, the industries leading business trade journal stated, "The government blamed the acceleration [of health-care costs] on larger increases in the indices for prescription drugs and hospital services," while Mountain Health Care's prices, with minor exceptions, did not increase between 1994 and the present.

Myth: The doctors who formed Mountain Health Care did so in an attempt to secure comparatively higher reimbursement rates.

Fact: Mountain Health Care was formed to ensure quality, cost effective health care for the residents of western North Carolina.

We hope that our members and all residents of western North Carolina, after considering all the facts, understand that the existence of Mountain Health Care did not cause your health care costs to increase. We also hope you will realize that the forced dissolution of Mountain Health Care will in no way lower or drastically alter health care costs within the region. Now, as always, Mountain Health Care and its participating providers have the best interest of our members and community at heart and will do all that we can to continue to provide cost effective, quality health care to you.

January 8, 2003.

Mark J. Botti, Chief

Litigation I, Antitrust Division, United States Department of Justice, 1401 H Street NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti: In the 16 years I have been in the managed health care industry I have never heard anything as ridiculous as the accusations made by the DOJ and their decision to shut down Mountain Health Care.

The DOJ's press release states that Mountain Health Care's contracting is a practice which resulted in consumers paying increased prices to Mountain Health Care's physician members for health care services. This is ridiculous. Yes, the MHC physician's have a fee schedule, but they also have a fee schedule with Aetna, Cigna, United Health Care, BC/BS and the list goes on and on. In no way was the physician's reimbursement under the Mountain Health Care fee schedule higher than it was under any of the other managed

care contracts the physician's participated on. Their fee schedule had not been changed since the start of the company. In fact, some of the fees they were accepting were lower than Medicare & even Medicaid (both government agencies).

The physicians were not the ones benefiting from this; the community and people covered by Mountain Health Care were. And whether you realize this or not, it was the physician's intent to make sure these people had cost effective affordable health care and not that their reimbursement was higher. Aside from working in the managed health care industry, I also work in a physician's office and I can tell you how pleased the average consumer was who came in and presented their Mountain Health Care cards at the front desk with their Mountain Health Care coverage, not once did I hear a negative word.

"The Antitrust Division is committed to ensuring that consumers buying health care services receive the benefits of competition," is the statement your representative made. Having worked in the managed health care industry in Western North Carolina for the past 5 years in both the PPO side and the Physician side concurrently I can tell you that there is plenty of competition going on here.

Having been a spectator of your "investigation" into Mountain Health Care and not getting the chance to speak my mind I felt this was my only opportunity to finally speak up. It seemed to me that the moment your investigators arrived on the scene they were determined to shut Mountain Health Care down based upon information and statements given to them by the competition and it just took them two years to find a way they could make it all sound feasible to the consumers, who will be drastically affected by this.

It is sad that the press has interviewed people who have no working knowledge of the healthcare industry for their news articles who make statements about how Mountain Health Care disbanding will decrease their health insurance costs, because their is no way that is going to happen. What is going to happen is the Aetna & Cigna type companies will now move in for the kill and know that these small employer groups and family run companies will have no choice but to go with their costly plans in order to insure their employees and family members. This in itself will drive up the cost of healthcare in this region. This will actually increase the physician's reimbursements since the other company's fee schedule reimbursements are higher than Mountain Health Care's was and people will be forced to join those plans or be uninsured. This will increase their rates and their out of pocket expenses.

The only people who will benefit from your decision to close Mountain Health Care will be the other health care plans and the monopolistic PPO set up by the hospital system here in Asheville. What you have chosen to do here and the decisions you have made are wrong. The DOJ and the judge who signs the order obviously have no idea how much damage they will be doing to the people of Western North Carolina including myself and my children. The economy here is hurt enough. This is only going to make matters worse and I find it hard to believe there isn't one individual within the Department of Justice or the government who is savvy enough to see this.

Sincerely,

Janine Mazur,

301 Spartan Heights, Hendersonville, NC 28792.

Mr. Mark J. Botti,

Chief, U.S. Department of Justice, Litigation/Antitrust Division, 1401 H Street, NW., Room 4000, Washington, DC 20530.

Re: Mountain Healthcare, Asheville, NC

Dear Mr. Botti: Sometimes there is merit in antitrust action; this is NOT one of those times! This decision seems based on emotions, circumstantial evidence, hype and superficial information.

Medical care is costly enough here in Western North Carolina without the Department of Justice pushing costs higher by eliminating a group that gives quality care, lower rates and many options for treatment.

We should not be wasting our government resources on well-intentioned ventures but causing unintended consequences.

I suggest you get an experienced, educated senior official to look through the smokescreen, see the real facts and stop the damage to Western North Carolina.

Regards,

Stewart M. Auten,

President.

January 2, 2003.

Mark J. Botti,

Chief, Litigation 1, Antitrust Division, US Dept of Justice, 1401 H St. NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti: Let me relate to you how concerned I am about the dissolution of Mountain Health Care. For years our family used various insurance companies that our employer contracted insurance for the employees. Never have I been more satisfied with a company as I was with Mountain Health Care. We received our annual physicals therefore cutting down on future expense by the insurance company.

Please reconsider your actions.

Thank you,

Mike and Gale Grooms.

January 9, 2003.

Dear Mr. Botti: Both my wife and I were under Mountain Health Care + we had no complaints. Your people are wrong about charging them with price fixing. How can they raise the area medical cost when they have only 8% of the area population? It is an honest and well run operation. Your action is tyrannical.

Sincerely,

(Name unreadable)

[FR Doc. 03–19051 Filed 7–28–03; 8:45 am]

BILLING CODE 4410–11–M

Federal Register

Tuesday,
July 29, 2003

Part III

Department of Agriculture

Forest Service

National Environmental Policy Act Documentation Needed for Limited Timber Harvest; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB88

National Environmental Policy Act Documentation Needed for Limited Timber Harvest

AGENCY: Forest Service, USDA.

ACTION: Notice of final interim directive.

SUMMARY: The Forest Service gives notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These revised procedures are being issued by Interim Directive (ID) 1909.15–2003–2 to Forest Service Handbook 1909.15, Chapter 30, Section 31.2, which describes categorical exclusions, *i.e.*, categories of actions which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement.

This ID adds three such categories of actions to the agency's NEPA procedures that are applicable to small timber harvesting projects: Category 12 allows harvest of live trees not to exceed 70 acres with no more than ½ mile of temporary road construction; Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction; and Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction.

EFFECTIVE DATE: This interim directive is effective July 29, 2003.

ADDRESSES: The new Forest Service categorical exclusions are set out in Interim Directive (ID) 1909.15–2003–2, which is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies are available by contacting Chris Holmes, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104. Additional information and analysis can be found at *http://www.fs.fed.us/emc/lth*.

FOR FURTHER INFORMATION CONTACT: Chris Holmes, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205–1006. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 192 million acres in national forests, national grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors, and district rangers, manages the surface resources and, in some instances, the subsurface resources of those lands. The Forest Service, in compliance with the Council on Environmental Quality (CEQ) regulations at Title 40, Code of Federal Regulations, sections 1507.3 and 1508.4 (40 CFR 1507.3, 1508.4), is authorized to identify categories of actions that it has found to have no individual or cumulatively significant effect on the human environment.

On January 8, 2003, the Forest Service published a proposal (68 FR 1026) to revise its directives for implementing the National Environmental Policy Act (NEPA) and CEQ regulations contained in Forest Service Handbook (FSH) 1909.15, Chapter 30, Section 31.2. This proposal would add three categories of actions to this section for limited timber harvesting. These categorical exclusions were numbered 10, 11, and 12. Since the publication of the proposal, the agency has added two new categorical exclusions for fire management activities, which were numbered 10 and 11 (68 FR 33814, June 5, 2003). Accordingly, these categorical exclusions for limited timber harvest have been renumbered 12, 13, and 14.

Category 12 allows harvest of live trees not to exceed 70 acres with no more than ½ mile of temporary road construction. The purpose of this category is to allow low-impact silvicultural treatments through timber harvest. This category cannot be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another type, such as converting a timber stand to an open field. Category 12 does not include these types of treatments. Examples of projects that could be implemented under Category 12 include thinning of overly dense stands of trees to improve the health and vigor of the remaining trees, and removing individual trees for forest products or fuelwood. Within the 70 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction. This categorical exclusion allows salvage harvest in areas where trees have been severely damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product. The use of Category 13 is limited to salvage of dead and dying trees by timber purchasers. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications. Noncommercial activities would not include temporary road construction.

In the development of these categorical exclusions, the Forest Service reviewed the effects of 154 projects, with actions similar to those allowed in the three categories. A few of the projects reviewed resulted in minor soil disturbance and compaction. A few other projects reviewed showed that small numbers of noxious weeds or invasive plants entered the area where the trees had been removed. Based upon a post-implementation field review of these projects by professional experts, the responsible officials found that these impacts were within forest plan standards and were not significant in the NEPA context (40 CFR 1508.27).

With the exception of one project reporting cumulative visual impacts, environmental effects were localized and of limited duration. The visual impacts of this one project were found to be cumulative with those of an old timber harvest visible from a scenic river. These visual impacts were

determined to not be significant since they still met scenery management objectives for the river corridor.

Based upon their post-implementation field review of these projects along with past, present, and reasonably foreseeable future actions, the responsible officials found that the individual and cumulative effects of the projects reviewed were not significant in the NEPA context. The Forest Service, therefore, concluded that the activities described in the three categories do not individually or cumulatively have a significant effect on the human environment.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and they must comply with all applicable Federal, Tribal, and State laws for protection of the environment. These categorical exclusions shall not apply where there are extraordinary circumstances, such as potentially significant effects on the following: Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species; floodplains, wetlands or municipal watersheds; Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; American Indian and Alaska Native religious or cultural sites; archaeological sites, or historic properties or areas (FSH 1909.15, ch. 30, sec. 30.3, para. 2).

These categorical exclusions differ from those recently promulgated for hazardous fuels reduction and fire rehabilitation (68 FR 33814, June 5, 2003). While some small fuel reduction projects may fit the new categories 12 and 13, most fuel reduction projects done under the auspices of the National Fire Plan will be larger in scope than would be allowed under categories 12 and 13. Most projects implementing the National Fire Plan are larger in size, and involve a combination of activities such as thinning, pruning, and prescribed burning, in addition to timber harvest. Activities using categories 12, 13, and 14 are limited to timber harvest and therefore have a more narrow application.

A 60-day comment period was provided for the proposed interim directive setting out these categorical exclusions (68 FR 1026, January 8, 2003). In addition, the Forest Service gave direct notice of the proposal and invited comment from national organizations and Federal agencies. A one-page notice was faxed to 73 interested groups. These groups included environmental organizations such as the Defenders of Wildlife, professional societies such as the American Fisheries Society, timber groups such as the Intermountain Forest Industry Association, Federal agencies such as the Environmental Protection Agency, and State organizations such as the Council of State Governments.

Approximately 16,700 comment letters were received from individuals; representatives of Federal agencies; Tribes; State and local government agencies; environmental groups; professional organizations; and both commodity and non-commodity groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed as paper copy. All suggestions and comments have been reviewed and considered in preparation of this notice of the final interim directive.

In response to comments on the proposed categorical exclusions, five revisions were made to the original proposal.

In Category 12, two changes have been made. (1) The acreage limitation has been changed from 50 to 70. This was based on comments that recommended using the mean of the acreage of the projects reviewed, as was done for the other categories. In the proposal, the rationale for 50 acres was that it was a conservative adjustment to the mean of 70. Public comment questioned the need for this reduction. Use of the mean reflected the consideration by the agency that this acreage is well within the range of acreages in the project data used to support these categories. (2) Also in Category 12, the example concerning fuel loading formerly in paragraph b was removed. Since the original proposal, the Forest Service adopted Category 10 (68 FR 33824, June 5, 2003) that better addresses situations in which this example would be used. Category 10 is found in Interim Directive (ID) 1909.15–2003–1 to Forest Service Handbook 1909.15, Chapter 30, Section 32.1.

In Category 14, the following changes have been made: (1) The restriction of two tree lengths was removed for the harvesting of healthy adjacent trees; (2) the term "green" was changed to "live, uninfested/uninfected trees" for clarification; and (3) "non-commercial" was added to make it clear that the category can apply to "cut and leave" insect and disease control activities. The removal of the restriction of two tree lengths for the harvesting of healthy adjacent trees was done because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. The provision for noncommercial "cut and leave" activities is appropriate for situations in which felling of trees is needed to reduce populations of insects, but sales of that timber would not be economically viable.

Comments on the Proposal

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the issue of timber harvest and particularly salvage harvest on National Forest System lands. Many people supported the proposal or favored further expansion, while many others opposed the proposal or recommended further restrictions.

Comment: Some respondents voiced general agreement with the proposal. Some indicated that they think current analysis and documentation requirements are too burdensome and that the proposal would provide for more efficient management. Others believed that the proposal had appropriate limitations on the use of the categorical exclusions and that the agencies had done sufficient analysis to conclude that the categories of limited tree harvest do not have significant environmental effects.

Response: These comments were in support of the proposal and need no specific response.

Comment: A number of respondents felt that the Forest Service had not adequately demonstrated a need for the proposed timber management categorical exclusions (CEs). Some respondents requested that the agency demonstrate that the current National Environmental Policy Act (NEPA) process is unduly burdensome for these types of projects.

Response: The categorical exclusions are provided as a tool to improve planning efficiency (40 CFR 1500.4(p) and 1500.5(k)). From 1981 through 1998 the Forest Service categorically excluded some limited timber harvesting activities from documentation in an environmental assessment or environmental impact statement using the category found in Forest Service Handbook (FSH) 1909.15, section 31.2, paragraph 4 (Category 4). Small timber sales implemented through these categorical exclusions provided local managers with the flexibility to respond to localized insect

and disease infestations, improve forest health through thinning, salvage dead and dying trees, and provide merchantable forest products. This category was vacated when a District Court found that there was insufficient evidence in the agency's administrative record to support its establishment. The government did not appeal the District Court's ruling on the case. The loss of this category has resulted in small timber harvests, without the potential for significant impacts, requiring preparation of at least an environmental assessment in order to proceed. This has resulted in extended timeframes and the expenditure of undue energy and funding to complete minor timber harvesting projects.

Comment: Some respondents commented that the proposal to expand the number of categories was an attempt by the agency to circumvent NEPA compliance.

Response: The use of categorical exclusions is not a circumvention of NEPA compliance. NEPA and its implementing regulations envision a process of disclosing significant environmental impacts of major Federal actions. To avoid repetitive documentation of known non-significant effects of minor actions, the Council on Environmental Quality (CEQ) regulations provide a process for defining categories of activities whose effects are normally exempt from documentation in an environmental assessment or an environmental impact statement. The process of defining these categories is an integral part of the NEPA regulatory framework. In this case, the documented review of activities similar to those included in these categories supports the determination that the three categories defined here describe actions which do not individually or cumulatively have a significant effect on the human environment and meet the intent of the CEQ regulations that govern the establishment of categorical exclusions. The agency is establishing these categories because the appropriate implementation of NEPA requires concentrating agency analysis efforts on major Federal actions and not expending scarce resources analyzing agency actions where experience has demonstrated the insignificance of effects.

Comment: Some respondents believed that Forest Service use of these categories would allow the agency to bypass important procedural steps for projects, such as the notification and involvement of the general public, State agencies, and Tribal governments prior to implementation of proposed projects.

Response: As directed by CEQ regulations (40 CFR 1507.3), the Forest Service has developed agency policy for implementing the NEPA process. As noted in Chapter 10, section 11, of FSH 1909.15: "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions." Chapter 30, section 30.3(3), of FSH 1909.15 further states: "Scoping is required on all proposed actions, including those that would appear to be categorically excluded." As part of the scoping process for proposals potentially covered by these categorical exclusions, the responsible official must determine the extent of interest and invite the participation of affected Federal agencies, affected Tribes, State and local agencies, and other interested parties, as appropriate. The Forest Service is committed to fulfilling its public involvement responsibilities with all parties potentially interested in projects qualifying for these categorical exclusions. The agency is working on additional methods to broaden public awareness of all proposed activities undergoing any level of NEPA review (CEs, EAs, and EISs) through electronic Web-based technology. It is the line officer's responsibility to invite participation of all interested and affected individuals and groups and to do so by whatever method or technology is effective to achieve participation of those individuals or groups.

Comment: Several respondents expressed concern that effects on Tribal governments had not been appropriately analyzed in the rulemaking process as required by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

Response: The Forest Service recognizes it has trust responsibilities towards Tribes and this responsibility includes a duty to consult with Tribes to obtain meaningful and timely input on agency actions having substantial direct impacts on Tribes. Executive Order 13175 defines policies that have tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The addition of these categorical exclusions to the agency's NEPA procedures is concerned with the level of documentation required for specific types of actions. As such, these policies do not have Tribal implications as defined in the Executive Order.

Effects on Tribal governments may occur on specific sites where the categories will be used and where there are Tribal interests. Tribes will be contacted during the scoping process and appropriate government to government consultations will be conducted on those projects with Tribal implications even though the project may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement.

Comment: Many respondents asked that the Forest Service adhere to various laws, Executive orders, and agency policies, such as: the Endangered Species Act, Clean Air Act, Clean Water Act, National Forest Management Act, Migratory Bird Treaty Act, National Historic Preservation Act, Forest Service Transportation System Management Policy, Northwest Forest Plan, the Grizzly Bear Recovery Plan, and Executive orders on management of floodplains and wetlands and on Tribal consultation.

Response: The Forest Service agrees. The level of NEPA documentation does not affect agency responsibility to follow other applicable laws, regulations, Executive orders, and policies. For example, categorically excluded timber sales are reviewed for their potential to impact waters listed as impaired by State water quality agencies. When appropriate, the Forest Service conducts appropriate consultation with Federal, State, and Tribal agencies for these projects. For example, agencies must also review the potential effects from these types of actions on threatened and endangered species and on designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act, and consultation is conducted as appropriate with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

Comment: Numerous respondents commented on the role that "special interest groups" play in affecting the management of the national forests. Some individuals assumed that these categorical exclusions were dictated by industry groups and objected vigorously to commodity use of national forests. Others commented on the role that they

saw environmental groups playing in the direction of national forest management over the past several decades, especially in reducing commodity production from national forests.

Response: NEPA and its implementing regulations outline a process by which Federal Government decision-makers consider the potential environmental impacts of proposals. The NEPA process is applied to proposed actions that are governed by both the enabling legislation and the annual appropriation acts that direct agency actions. Forest Service management of National Forest System lands is founded in legislation such as the Organic Act of 1897, the Bankhead-Jones Act, the Multiple Use Sustained Yield Act, and the National Forest Management Act.

Many comments arguing either for restriction or for expansion of the agency's categorical exclusion authority are based on differing perspectives on the appropriate uses of national forests. The agency is required to manage for multiple uses and to consider the environmental effects as required in the NEPA statute.

These categorical exclusions will allow the Forest Service to improve its efficiency by reducing the delay and paperwork for proposed actions that, in the absence of extraordinary circumstances, do not individually or cumulatively have a significant impact on the human environment (40 CFR 1500.4(p), 1500.5(k)). In addition to complying with environmental statutory requirements, the proposed projects must be consistent with all other agency legislative and regulatory direction and must be consistent with land and resource management plans that govern activities on each national forest. Those projects that are appropriately categorically excluded can therefore meet goals of the multiple-use mission without the preparation of an environmental assessment or an environmental impact statement.

Comment: Many respondents expressed opinions on the issue of subjecting decisions allowed under these categorical exclusions to the public notice, comment, and appeal process. Some respondents considered the public notice, comment, and appeal process as absolutely essential for responsive decision-making. Others felt the appeals process is unnecessarily burdensome and lengthy, leading to agency inability to conduct land management activities in a timely manner.

Response: The agency recently completed rulemaking to revise the agency's administrative appeals process at 36 CFR part 215, which is mandated by the Appeal Reform Act (ARA) of 1993. The agency's interpretation of public notice, comment, and appeal opportunity under the ARA is outlined in the **Federal Register** notice for the final rule (68 FR 33582, June 4, 2003). The agency believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional procedures for notice, comment, and appeal contained in the appeals rule and that applying the provisions of the appeals rule to categorically excluded actions is neither intended nor required by the ARA. Thus, proposed activities that are categorically excluded are not subject to the requirements of the appeals rule at 36 CFR 215.4(a) and 36 CFR 215.12(f).

Comment: A number of respondents raised issues related to the possible significant cumulative impacts of projects under these categories or the impacts of implementing such projects in combination with other activities under other authorities. Most of the statements were general, but some mentioned specific impacts such as those on wildlife or water quality. Some of these respondents reiterated quotes contained in the **Federal Register** notice for the proposal (68 FR 1026, January 8, 2003) that noted that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment.

Response: For each of the 154 timber sales considered in defining these categories, the question of whether there were significant cumulative effects was specifically addressed. The reviewers examined the possibility of significant cumulative effects from these activities and all other activities within the appropriate boundaries for potential resource effects. For example, based on assessment of wildlife conditions in the local habitat area, or water quality impacts relative to a watershed, significant cumulative effects were not observed.

There are many statutory requirements and agency policies and guidelines that protect the environment from both individual and cumulative environmental effects. Many of these are described in the document "Detailed Rationale for Categorical Exclusions" located at *http://www.fs.fed.us/emc/hfi/rationale.pdf.*

The previous use of Category 4 was limited (it was applied to only 0.03% of National Forest System land in 1998) due to restrictions in the event of extraordinary circumstances, as well as other factors in forest plan standards and guidelines that limit forest management activities. These same factors are expected to influence the number of projects in the future.

Some public concerns with regard to environmental effects, both individual and cumulative, include those regarding wildlife populations and water quality. Soil and water resources are protected during timber harvest projects through implementation of State and EPA approved Best Management Practices (BMPs) as described in a later response.

With regard to wildlife, the Forest Service is authorized by the Endangered Species Act (ESA) to carry out programs for the conservation of endangered and threatened species, and must ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered, threatened, or proposed species, or result in the destruction or adverse modification of designated critical habitat.

By regulation, the Forest Service is required to consult with the U.S. Fish and Wildlife Service (FWS) or National Oceanic and Atmospheric Administration (NOAA) Fisheries whenever any proposed actions or activities may affect an endangered or threatened species or adversely modify designated critical habitat. The Forest Service regularly coordinates and consults with the appropriate state wildlife agency, FWS, and NOAA Fisheries on species protection and conservation efforts to address potential individual and cumulative impacts of agency practices on threatened and endangered wildlife and fish species and their habitat.

It is important to note that if a proposed project may have a significant effect on a species listed or proposed to be listed on the List of Endangered and Threatened Species or may have adverse effects on designated critical habitat for these species, the action agency, under existing agency NEPA procedures, may not use a categorical exclusion.

Comment: A number of concerns were expressed with regard to retention of snags, retention of downed woody material, and old growth. These concerns related to both wildlife habitat and ecosystem structure and function. There were also concerns related to visual impacts of the activities covered in the proposed categories.

Response: Forest plan standards and guidelines address structural components of wildlife habitat; for example, snag retention, coarse woody debris left onsite, and old growth retention. They also address visual management. All Forest Service actions within a national forest, including

categorically excluded actions must by statute be consistent with the forest plan (16 U.S.C. 160–4(i)).

Comment: Several respondents asked that the agency conduct NEPA analysis for this proposal, including a cumulative effects analysis on the impacts of this proposed ID and other recent rulemakings.

Response: A response to this comment is found in the Regulatory Certifications section, titled "Environmental Impact." The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA.

Comment: Some respondents assert that the stated requirements that activities must be consistent with land and resource management plans are misleading since such plans will be categorically excluded.

Response: Forest Service NEPA procedures in FSH 1909.15 and current land and resource management planning regulations at 36 CFR part 219 do not presently provide a categorical exclusion for revisions or amendments to land and resource management plans.

The Forest Service may, if it finalizes and implements its planning rule as proposed (67 FR 72816, December 6, 2002), identify a category of plan decisions which do not individually or cumulatively have a significant effect on the human environment and may, therefore, be categorically excluded from NEPA documentation in an environmental assessment (EA) or environmental impact statement (EIS). The public would have an opportunity to review and comment on such an amendment to the Forest Service Handbook if such a categorical exclusion is proposed. It should be noted that under the proposed Forest Service planning regulations, new plans, plan revisions, and amendments continue to require a rigorous public involvement process. Categorical exclusions apply to the level of documentation required under CEQ's regulations implementing NEPA (40 CFR 1500.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan standards, guidelines, goals, and objectives would require a plan amendment. The Forest Service will continue to conduct the appropriate level of environmental analysis and disclosure commensurate with the significance of environmental effects, both for land and resource management plans and for project-level planning.

Comment: Some respondents said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that timber harvests automatically trigger analysis and documentation in an EA or EIS since they contain elements specifically listed as requiring this level of documentation, including "controversy," "uncertainty," and "precedent for future action" and, as such, cannot be categorically excluded.

Response: When using these three categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Forest Service extraordinary circumstances apply. The responsible official will prepare a project file and decision memo that will be available for public review (FSH 1909.15, ch. 30, sec. 32.3). The decision memo contains the responsible official's rationale for categorically excluding an action and selecting that particular category, and includes a determination that no extraordinary circumstances exist.

Years of experience by the Forest Service with Category 4 and earlier categories, including both low-impact silvicultural and sanitation/salvage projects, indicate that categories 12, 13, and 14 would not set a precedent. In addition, 32 of the projects reviewed were documented using EAs and Findings of No Significant Impact (FONSIs). For these projects, the FONSI indicated that the effects were not significant. The EAs for these projects included an assessment of the degree of the controversy about effects, uncertainty about effects, and precedent for future action, and found them to be not significant (40 CFR 1508.27).

Comment: One request for correction of information under the USDA Information Quality Guidelines was received in response to the proposal for categorical exclusions for small timber harvest. Concerns were raised by petitioners under the Data Quality Act that "measurement" must be used instead of "observation" to comply with USDA Information Quality Guidelines. The following is a response to that concern. Both the request for correction, and a more detailed response to the request than that found below, can be found at *http://www.fs.fed.us/qoi*.

Response: The Forest Service has evaluated the assessment of the 154 projects that provides the basis for its categorical exclusions, and found that this assessment complies with the USDA Information Quality Guidelines. The USDA Information Quality Guidelines, under "Objectivity of Regulatory Information," include the following: "Use reasonably reliable and reasonably timely data and information (*e.g.*, collected data such as from surveys, compiled information, and/or expert opinion)." The expert opinion used to generate the observations in question is documented at *http://www.fs.fed.us/emc/lth*. Specifically, the use of local expertise in resource disciplines such as soils, hydrology, fisheries biology, and wildlife biology is documented in the information on the study of the 154 projects. These experts are highly trained, usually holding degrees in their specialties at the bachelor's or master's level. They are also provided ongoing training to assure currency in their discipline. They are familiar with current literature relating to their specialty and local area, as well as applicable laws, regulations, policies, and land and resource management plan standards and guidelines required for protection of the environment. They have field knowledge of local conditions. The combination of this expertise, complemented by the interdisciplinary approach used by the Forest Service in managing environmental resources, render the specialists well qualified to make site-specific judgments as to the effects of a particular practice in a particular area.

In addition, where the local biologist finds that there is potential for an effect on a federally listed species, its designated critical habitat, or species proposed for listing, the project would be evaluated by professionals from the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration Fisheries. A categorical exclusion would not be used if the agency determines that the action may adversely affect listed species, species proposed for listing, critical habitat, or proposed critical habitat.

The USDA Information Quality Guidelines, under "Objectivity of Regulatory Information" also includes considerations of transparency. For this interim directive, the data from the 154 projects were available to the public upon request and on the Web during the comment period.

Comment: Some respondents questioned the size of the sample and the procedures used in selecting the 154 projects evaluated in determining that these categories of activities will have insignificant effects on the human environment.

Response: The Forest Service reviewed 154 small timber sale activities which could potentially have been included in these categories. To identify projects for review, the Forest Service requested field units to review a sample of timber harvests that would have qualified under former Category 4

or were similar in size and scope. Field units were asked to send the Washington Office any results from past monitoring efforts on the effects of: (1) projects that were performed under Category 4, or (2) projects that were done with an environmental assessment (EA) or environmental impact statement (EIS) but fit the requirements of Category 4, or were similar in size and scope. In the request, there was no specific time period for the completion of projects selected.

If past monitoring data did not exist, then each forest that has historically used timber harvest CEs, or projects that are similar in size and scope to Category 4, were asked to monitor at least two randomly selected CEs or projects as defined above. Monitoring was accomplished by reviewing the site after the project was completed based on the professional observations of resource specialists and line officers. All monitoring results were submitted using Web-based forms designed specifically for this monitoring effort. Both individual and cumulative environmental effects were assessed as part of this monitoring procedure. Where forests had only one or two projects that met the request criteria, those projects were selected. Where forests had more than two projects that met the request criteria, projects were chosen using a process that was unbiased with respect to the level of potential environmental effects. A description of how each project was selected is available on the Web site *http://www.fs.fed.us/emc/lth.*

Comment: Some respondents suggested that the Forest Service monitor categorically excluded limited timber harvest activities to ensure that they do not have significant environmental effects.

Response: Monitoring would take place after the categories are established and after they are used for a particular action. Monitoring is not relied upon as a basis or rationale for establishing these categorical exclusions. Forest land and resource management plans already provide for monitoring of management activities to determine compliance with applicable laws, regulations, and standards and guidelines; effectiveness of project implementation, including any specified mitigation measures; validation of models and assumptions used in the planning processes; and environmental impacts. Projects implemented under these categories will be included in these ongoing monitoring efforts.

Comment: Some respondents suggested that, without NEPA analysis, categorically excluded actions would not consider current scientific information and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

Response: The Forest Service has repeatedly conducted NEPA analyses for timber harvest projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agency concluded that these analyses describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, the Forest Service must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions (FSH 1909.15, sec. 30.3). This determination includes appropriate surveys, use of the best available science, appropriate consultation with Tribes, and coordination with agencies that have regulatory responsibilities under other statutes such as the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clean Air Act.

Comment: Some respondents believed that limited timber harvesting for salvage purposes should not be carried out at all. They said the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than the event causing the mortality. Still others cited research studies (*e.g.,* Beschta, R.L.; Frissell, C.A.; Gresswell, R. [and others]. 1995. Wildfire and salvage logging: recommendations for ecologically sound post-fire salvage logging and other post-fire treatments on Federal lands in the West. Corvallis, OR: Oregon State University) that report that there is generally no ecological need to act, and that quick actions may create new problems. Some cited other research studies regarding environmental impacts of timber harvesting.

Response: Ecological reasons are not the only reasons for an agency to take action. Salvaging dead and dying timber provides commercial forest products in support of the Forest Service's legally mandated mission. Numerous laws, including the Multiple Use Sustained Yield Act and the National Forest Management Act, establish the basis for managing national forests in a manner to provide goods and services. In addition, salvage activities, in certain situations, can reduce fire hazard from excessive fuel buildup, or prevent the buildup of insect populations in accumulations of dead trees that can then attack healthy trees; *e.g.,* the spruce beetle. Severe fires and insect infestations can lead to reduced scenic, recreational, wildlife, and timber values on Federal and neighboring Tribal, State, or private land. Public comment from neighbors of Forest Service land expressed their concerns regarding risks to their property from untreated fire or insect hazards on neighboring Forest Service land.

As the Beschta *et al.* report points out, salvage activities can have negative environmental impacts, depending on the condition of the site, the harvesting system, time of the year, and many other factors. However, practices and guidelines have been developed with regard to soil and water protection and wildlife habitat, on appropriate sites that will lead to no significant effects. The Forest Service agrees with Beschta *et al.* that care should be taken in designing salvage projects, as well as other timber sale projects, and the agency has an extensive array of guidelines and procedures to prevent and mitigate negative environmental impacts during these activities.

The fact that none of the 154 sampled projects showed significant environmental impacts indicates that these practices are effective at reducing or eliminating environmental impacts. As described in the rationale for the categorical exclusion for fuels reduction projects *http://www.fs.fed.us/emc/hfi/rationale.pdf,* thinning methods are used for forest stand improvement, wildlife habitat improvement, and hazardous fuels reduction. The body of knowledge concerning these practices is mature. Scientific research and evaluations of project monitoring are reflected in laws, regulations, and agency policy related to implementation of these activities. Some of the many laws, regulations, and policies are described in the rationale document.

One example of these environmental safeguards that apply to proposed timber harvest projects that are described in categories 12, 13, and 14 is the protection of soil and water resources. This protection is provided through implementation of State and EPA approved Best Management Practices (BMPs) as well as forest plan standards and guidelines. BMPs are site-specific design and operating criteria intended to maintain soil productivity and water quality to State standards. Federal agencies incorporate BMPs into project design. For example, to minimize soil compaction, puddling, rutting, and gullying with resultant sediment production and loss of soil productivity, the project supervisor and/or Contracting Officer are responsible

for determining when the soil surface is unstable and susceptible to damage and is then responsible for suspending or terminating operations.

BMPs also establish practices for addressing soil and water quality issues associated with temporary roads. BMPs are codified in regional handbooks and provide practices for the treating and decommissioning of roads to reduce impacts on sedimentation.

EPA states that BMPs are the primary mechanism for control of non-point source pollution and compliance with the Clean Water Act. Monitoring of BMP effectiveness has historically been accomplished informally as a part of each project review. Several States also conduct their own more extensive programs to ensure the maintenance of water quality.

The harvesting practices used and mitigation measures implemented in salvage projects will be decided on a site-specific basis by technical specialists who routinely use current scientific literature and technologies, as well as their local knowledge of the soil, wildlife and other environmental conditions in an area. While individual research studies are used by technical specialists to predict environmental effects, site-specific information about practices and local conditions is necessary to make expert judgments about potential environmental effects of a project. In addition, the scope and context of a specific project are considered when determining the significance of environmental impacts of that project under NEPA (40 CFR 1508.27).

Comment: Several respondents expressed concern over the number and location of categorically excluded limited timber harvest activities that could be implemented within a given area or a limited timeframe. Some respondents raised concerns that the agency could misuse the categories by segmenting larger projects into sizes that qualify under the CEs. Some respondents noted that such segmentation would violate CEQ regulations.

Response: The responsible official is required to properly identify the characteristics of the proposed action (FSH 1909.15, ch. 10, sec. 11.2). The agency adopted the following from the CEQ regulations for all their proposals that may undergo environmental review, including the documentation for categorical exclusions, "proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." The Forest Service also adopted the CEQ definition for determining the scope of a proposed action as defined at 40 CFR 1508.25, which discusses connected and related actions. Consequently, segmenting a larger project into smaller projects in order to meet the acreage requirements and be considered under these CEs is contrary to Forest Service guidance. Agency oversight of the application of these categories through internal reviews such as Chief's, regional, and forest reviews, emphasizes these compliance requirements and will prevent abuses.

Comment: Some respondents indicated they believe the Forest Service should set limits on the volume that may be harvested under these categories since it may be possible to exceed the volume available under the previous Category 4 authorization.

Response: In gathering data on the 154 projects used to define the limits of these categories, it was evident that potential environmental impacts are better predicted using acres treated rather than the total volume of timber removed, regardless of acreage. Harvesting a given volume of timber from one acre is likely to have different environmental impacts than harvesting the same volume from tens or hundreds of acres. In addition, timber volumes are estimated in advance of the sale, and there can be errors associated with those predictions; an acreage limit is not as subject to the uncertainties of estimation. Finally, acreage limits are easier to control and administer in the field and easier to describe to the public. It is possible that individual projects would exceed the volume limitations in the previous Category 4. The data from the 154 surveyed projects support the finding that there will be no significant environmental impacts from implementing actions within these acreage limitations.

Comment: Some respondents would prefer to see the acreage limitation of the categories decreased while others would like to see them increased.

Response: To determine the potential impacts of limited timber harvesting activities, data were gathered from 154 timber sales that could possibly have been included in one of the proposed categories. None of the projects evaluated had significant impacts on the human environment. Rather than setting the acreage limits at the limits of the range evaluated, the Forest Service believes it is prudent and conservative not to exceed the mean of acres treated under each of the proposed categories. In the original proposal, the acreage limit of 50 for Category 12 was reduced from the actual mean of 70. Public comment questioned the need for this reduction. Use of the mean reflected the consideration by the agency that the acreage is well within the range of acreages in the project data used to support these categories.

Comment: Some respondents indicated that there should be no restriction on new road construction, while others believed that no roads should be constructed, as the absence of roads indicates an activity is too far from a community. Other respondents suggested that up to ½ mile of low-standard road should be allowed, while others believed that roads should be constructed only in rare cases.

Response: In accordance with 36 CFR 212.1, new road construction is defined as an activity that results in the addition of forest classified or temporary road miles. Timber harvest activities involving the addition of forest classified road miles are not included in the proposed categorical exclusions. Proposals for timber harvest activities that involve new classified road construction would be analyzed and documented in an EA or EIS. As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. A total of 35 of the 154 timber sales reviewed required temporary road construction. No significant effects were found in reviewing these projects. The average length of temporary road construction for these 35 sales was ½ mile. The agency elected to use this average ½ mile temporary road length as a limit for its limited timber harvest categorical exclusions.

All temporary roads constructed for timber harvest projects that qualify for categories 12, 13, and 14, will be conducted under the terms of the timber sale contract. Temporary road construction authorized under timber sale contracts must be consistent with environmental quality standards and must consider minimizing impacts on land and resources, in accordance with 36 CFR 223.30 and 36 CFR 223.38. In accordance with 36 CFR 223.37, temporary roads are treated to reestablish vegetative cover as necessary to minimize erosion. Such treatment shall be designed to reestablish vegetative cover as soon as practicable. Therefore, any potential environmental effects are short-term. Non-commercial "cut and leave" activities are the only activities that may qualify under these categories that would not involve a timber sale contract. Noncommercial

activities would not include temporary road construction.

Comment: Some respondents suggested that any road construction should be carried out only following a thorough environmental analysis. Others indicated that culverts should not be replaced or upgraded without a watershed analysis.

Response: These categorical exclusions provide only for construction of temporary roads and do not propose adding additional road miles to the National Forest System. Where use of these proposed categorical exclusions involving no more than ½ mile of temporary road construction, with or without culverts, is being proposed, the responsible official must review the proposed action to ensure that the temporary road construction is consistent with environmental quality standards (36 CFR 223.30) which include minimizing increases in soil erosion and providing favorable conditions of water flow and quality. The responsible official must also determine that no extraordinary circumstances exist, and document those findings in a decision memo (FSH 1909.15, ch. 30, secs. 30.3 and 32.3).

Comment: Some respondents suggested that the categorical exclusions should specify that temporary roads will be constructed only where the roads will be reclaimed/obliterated upon activity completion.

Response: As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. In accordance with 36 CFR 223.37, upon completion of the timber sale contract, the purchaser is required to treat temporary roads constructed or used during the authorized activity. This involves the reestablishment of vegetative cover on the roadway and other areas in order to minimize erosion from the disturbed area. Once the authorized timber sale contract is completed, the temporary road becomes unneeded as described in 36 CFR 212.5(b)2 and should be decommissioned or considered for other uses such as trails.

Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to a road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders and scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. How temporary roads are decommissioned is a project-specific decision and therefore appropriately decided at the project level (36 CFR 212 and FSM 7703.2). The decision to convert a temporary road to another use would entail a new decision that requires additional NEPA review.

Comment: Some respondents stated that the Forest Service should comply with Executive Order 12866, Regulatory Planning and Review, by assessing the economic costs and benefits of the initiative. Respondents say that this assessment should include the non-market costs of the initiative to landowners, businesses, communities, water quality, recreation, scenery, non-traditional forest products, and game.

Response: In compliance with Executive Order 12866, the Forest Service has prepared a cost-benefit analysis and has determined that these categorical exclusions will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic effect expected to result from this action is a reduction in the administrative burden of preparing unnecessary environmental assessments and findings of no significant impact, and benefits to the environment and nearby communities as a result of limited timber harvesting to improve forest health and salvage merchantable forest products. The agency estimated an annual savings of $6.4 million that would otherwise be spent on environmental assessments.

Comment: Several respondents requested clarification of the harvest treatments which could be implemented under Category 12. Some of these respondents indicated too much flexibility was provided to the local manager under uneven-aged techniques. Others believed the limitation on even-aged management treatments should be removed.

Response: The Forest Service Manual (FSM) 2470.5 contains the definitions of silvicultural practices on National Forest System lands. An uneven-aged system is defined at FSM 2470.5 as: "A silvicultural system involving manipulation of a forest to simultaneously maintain: a. Continuous high-forest cover; b. Recurring regeneration of desirable species; c. Orderly growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products." Individual tree selection and group selection are the two recognized uneven-aged cutting systems. FSM 2470.5 defines group selection cutting with the groups (openings to regenerate shade-intolerant species) as usually no more than 2 acres in size. Additional instructions may also exist in the forest plans developed for each unit. Timber harvesting activities must be consistent with the objectives of site-specific prescriptions approved by certified silviculturists (FSM 2478.03 (5)). Professional forestry standards and agency oversight ensure uneven-aged techniques are properly prescribed and implemented, including acreage limitations on opening sizes.

Uneven-aged systems (individual tree selection and group selection) maintain the canopy of a forest stand and therefore have relatively little effect on the structural and aesthetic properties of stands. Even-aged regeneration harvests, such as clearcutting, seed tree, and shelterwoods, were excluded from use in Category 12. Because the cutting operations involved in Category 12 retain the canopy of the forest, adequate regeneration of tree species is not a concern. However, because projects using this category will use the timber sale contract, they are subject to 36 CFR 223.30 (c). This requires the approving officer to ensure that each timber sale contract, permit, or other authorized form of National Forest timber disposal includes, as appropriate, requirements for regeneration of timber as may be made necessary by harvesting operations.

Comment: Some respondents disputed the need for Category 13 because of the importance of dead and dying trees to the forest ecosystem.

Response: Dead and dying material is an important component of a healthy forest ecosystem. Forest plan standards for snag density (standing dead trees) and cavity habitat will be met when salvage activities take place.

Comment: Some respondents indicated that regeneration harvesting using both even-aged and uneven-aged silvicultural systems should be allowed under Category 13.

Response: Category 13 addresses salvage harvesting. The Society of American Foresters Dictionary of Forestry defines salvage cutting as "the removal of dead trees or trees damaged or dying because of injurious agents other than competition to recover economic value that would otherwise be lost." As such, salvage harvesting is not

oriented to any specific silvicultural system.

Comment: Several respondents requested clarification of Category 14. Some of these respondents believed the language in the draft notice is excessively permissive while others believed it is too restrictive in terms of the acreage needed to deal with forest health problems.

Response: This category has been changed to clarify that it will apply to both infested/infected trees and adjacent live uninfested/uninfected trees whose removal is determined necessary to control the spread of insects or disease. In addition, the restriction of two tree lengths was removed for the harvesting of healthy adjacent trees, because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. This provides the local manager with latitude when responding to rapidly expanding insect or disease situations. The manager, in turn, relies upon advice from professional forest entomologists and pathologists when determining the appropriate treatment. Another clarification is that noncommercial treatments, such as "cut and leave," for example, used for treatment of southern pine beetle, are covered by this category.

The projects reviewed support both salvage and sanitation operations as cutting trees in these categories have the same kind of environmental impacts. For both Category 13 and 14, regeneration of tree species will follow 36 CFR 223.30 (c), as described above for Category 12. Other restoration activities will be governed by site-specific restoration objectives and forest plan standards and guidelines.

Concerns over misuse of this category to allow more trees than those necessary to protect forest health to be harvested can be addressed through agency oversight on the application of this category.

Conclusion

The USDA Forest Service finds that the categories of action defined in the categorical exclusions presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The agency's finding is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the timber harvest projects reviewed; the resource specialists who validated the predicted effects of the reviewed activities through monitoring or personal observation of the actual effects; and, finally, the agency's belief that the profile of past small-scale timber harvest activities represents the agency's past practices and is indicative of the agency's future activities.

These categorical exclusions will permit timely response to small timber harvest requests and to forest health problems involving small areas of National Forest System land. Additionally, they would conserve limited agency funds.

The text of the proposed categorical exclusions is set out at the end of this notice.

Regulatory Certifications

Environmental Impact

This final interim directive adds direction for three categorical exclusions to Forest Service Handbook (FSH) 1909.15 for guiding field employees regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for tree harvest activities. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures and, therefore, establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist employees in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the Forest Service has provided an opportunity for public review and has consulted with the CEQ during the development of these categorical exclusions. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

The categorical exclusions in this final interim directive have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, this action is subject to OMB review under Executive Order 12866 and OMB has reviewed the categorical exclusions in this interim directive at both the proposed and final stages.

This action to add three categorical exclusions to the Forest Service's NEPA procedures will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic analysis conducted to support this action estimates that it would result in quantifiable annual cost savings to the agency of approximately $6.4 million due to the reduced analyses that would be required for projects covered by these categorical exclusions. The economic analysis is available at *http://www.fs.fed.us/emc/lth.* 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. This action may, however, interfere with an action taken or planned by another agency or raise new legal or policy issues.

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

The agency believes small businesses in general may benefit from a potential increase in small timber harvest opportunities as a result of these new categories. Although the Forest Service finds this increase difficult to quantify, it believes that more timber harvest opportunities may be available when using a categorical exclusion rather than an environmental assessment, resulting in an increase in the amount of timber

volume available for small businesses and local mills. It is expected that there would be equal access to economic opportunities to businesses through timber sale contracts, stewardship contracts, and other contracting instruments. Additionally some of these sales are expected to be set aside for small business under the agency's small business timber set-aside program.

Federalism

The Forest Service has considered the categorical exclusions in this final interim directive under the requirements of Executive Order 13132, Federalism, and has concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

The categorical exclusions in this final interim directive do not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

No Takings Implications

The categorical exclusions in this final interim directive have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed categorical exclusions do not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

In accordance with Executive Order 12988, it has been determined that the categorical exclusions in this final interim directive do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the order.

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 the categorical exclusions in this final interim directive on State, local, and Tribal governments and the private sector. These categorical exclusions do not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

The categorical exclusions in this final interim directive have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these categorical exclusions do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

The categorical exclusions in this final interim directive do not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: July 23, 2003.

Sally Collins,

Associate Chief.

Text of Final Interim Directive Setting Out Three New Categorical Exclusions

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with planning and administering small timber harvest projects. Selected headings and existing text are included to assist the reader in placing the interim directive in context. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy from the address shown earlier in this notice and from the Forest Service home page on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15,30.txt.*

FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion From Documentation

[To provide context for understanding the new categorical exclusions that are established as paragraphs 12, 13, and 14 in section 31.2, the introductory text of section 31.2 (identified by italics) follows:]

31.2—Categories of Actions for Which a Project or Case File and Decision Memo Are Required.

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, o project or cose file is required and the decision to proceed must be documented in a decision memo (sec. 32). As o minimum, the project or cose file should include any records prepored, such as (1) the nomes of interested and affected people, groups, and agencies contacted; (2) the determinotion thot no extraordinary circumstonces exist; (3) a copy of the decision memo (sec. 30.5 (2)); (4) a list of the people notified of the decision; (5) a copy of the notice required by 36 CFR port 217, or any other notice used to inform interested ond affected persons of the decision to proceed with or to implement an oction that hos been cotegorically excluded. Mointoin o project or cose file and prepore a decision memo for routine, proposed actions within any of the following cotegories.

* * * * *

12. *Harvest of live trees not to exceed 70 acres, requiring no more thon ½ mile of temporary road construction.* Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Removal of individual trees for sawlogs, specialty products, or fuelwood.

h. Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

13. *Salvage of dead ond/or dying trees not to exceed 250 acres, requiring no more thon ½ mile of temporory rood construction.* The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

Examples include but are not limited to:

a. Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.

b. Harvest of fire damaged trees.

14. *Commerciol ond non-commercial sonitotion harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporory road construction, including removol of infested/infected trees ond adjocent live uninfested/uninfected trees as determined necessary to control the spreod of insects or diseose.* The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations.

b. Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian

longhorned beetle, and sudden oak death pathogen.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 709/P.L. 108–60

To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)

Last List July 16, 2003

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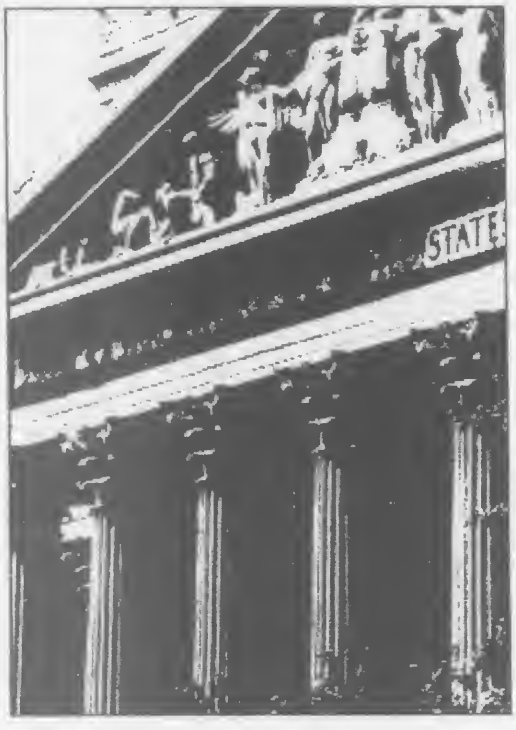

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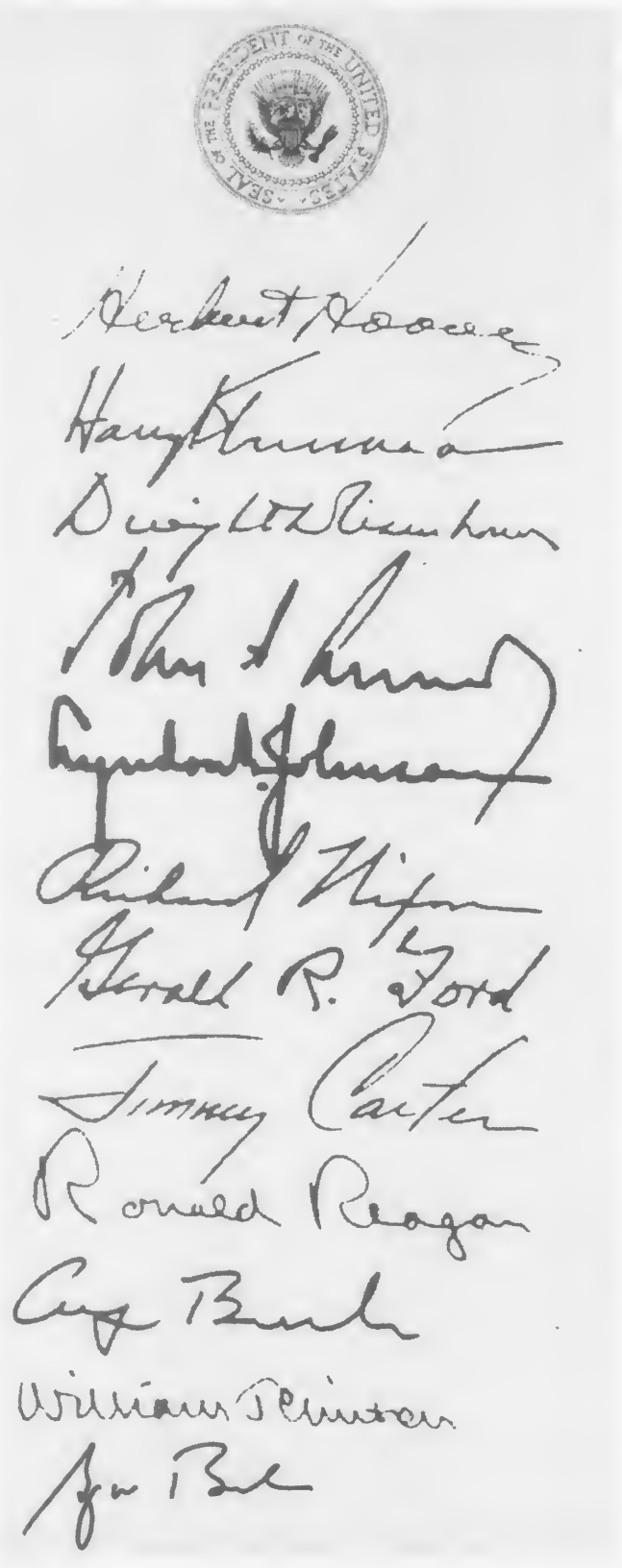

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